

Implication of the POCSO Act in India on Adolescent Sexuality: A Policy Brief



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1. BACKGROUND

India enacted the Protection of Children from Sexual Offences Act (POCSO Act) in 2012 to plug the legislative gaps concerning sexual violence against children and prescribe child-friendly provisions during investigation and trial. This was influenced by civil society efforts,¹ government data on child sexual abuse,¹ exhortation for a legislation by the Supreme Court,² as well as obligations under the Constitution and the United Nations Convention on the Rights of the Child, 1989 (UNCRC). The POCSO Act defines “child” to mean “any person below the age of eighteen years” and effectively increased the age of consent for sexual acts from 16 years to 18 years.

With 253 million adolescents,³ India is home to the largest adolescent population in the world, and public health surveys indicate that a significant proportion of Indian teenagers are sexually active.⁴ According to the National Family Health Survey-5, 2019-21 (NFHS-5), 10% of women in the age group of 25-49 years had their first sexual intercourse before the age of 15, and 39% had their first sexual intercourse before the age of 18 years.⁵ The POCSO Act, however, does not recognise the possibility of consensual sexual activity among or with older adolescents above 16 years. A five-state study based on judgments of Special Courts under the POCSO Act revealed that “romantic” cases i.e. cases in which the victim admitted to a relationship with the accused, constituted 21.2% cases in Andhra Pradesh, 15.6% in Assam, 21.5% in Delhi, 21.8% in Karnataka (in 3 districts), and 20.5% of the decided cases in Maharashtra.⁶ A three-state study of “romantic cases”⁷ decided by Special Courts in Assam, Maharashtra and West Bengal, indicated that such cases constituted 24.3% of the total cases disposed between 2016-2020.⁸

In recent years, some High Courts have questioned whether the POCSO Act was enacted with the intention of regulating adolescent sexuality, and have recommended legal reform.⁹ In *Vijayalakshmi v. State Rep. the Inspector of Police*¹⁰ the Madras High Court observed that the use of the POCSO Act could lead to irreversible damage to the reputation and livelihood of youth whose actions were only a consequence of “biological attraction” and questioned the wisdom of criminalising such acts.¹¹ In *Sabari v. Inspector of Police*¹² the Madras High Court observed that relationships amongst teenagers or with slightly older persons, was not unnatural or alien but a result of natural biological attraction, and recommended that the age of consent be reduced to 16 years.

The criminalisation of adolescents and young people and their entanglement in the criminal justice and juvenile justice systems necessitates a review of the existing legislative framework. This policy brief unpacks the implications of 18 years as the age of consent on adolescents’ rights under domestic law and international human rights law, and proposes a policy alternative that advances rights and strikes a balance between their protection and evolving autonomy. It draws upon legal standards, empirical studies, judicial precedents, as well as focus group

¹ Ministry of Women and Child Development, [Study on Child Abuse: India, 2007](#), p.74

² *Sakshi v. Union of India*, AIR 2004 SC 3566 at para 35.

³ [Census of India, 2011](#), Table C13, available at http://www.censusindia.gov.in/2011census/Age_level_data/Age_level_data.html

⁴ International Institute for Population Studies, ‘National Family Health Survey (NFHS-5) 2019-21: India’ (Ministry of Health and Family Welfare, Government of India) 210 (NFHS-5); Swagata Yadavar, Why India is unprepared for its gathering teen sexual revolution, https://www.business-standard.com/article/current-affairs/india-is-unprepared-for-its-gathering-teen-sexual-revolution-118011200170_1.html

⁵ NFHS-5, p.210.

⁶ See “Study on the working of Special Courts under the POCSO Act, 2012 in Delhi”, Centre for Child and the Law, National University of India University, Bangalore, pg. 18, 29 January 2016, “Study on the working of Special Courts under the POCSO Act, 2012 in Andhra Pradesh”, Centre for Child and the Law, National University of India University, Bangalore, pg. 35, 28 November 2017, “Study on the working of Special Courts under the POCSO Act, 2012 in Assam”, Centre for Child and the Law, National University of India University, Bangalore, pg. 63, 13 February 2017, “Study on the working of Special Courts under the POCSO Act, 2012 in Maharashtra”, Centre for Child and the Law, National University of India University, Bangalore, pg.38, 7 September 2017, “Study on the working of Special Courts under the POCSO Act, 2012 in Karnataka”, Centre for Child and the Law, National University of India University, Bangalore, pg. 66, 8 August 2017.

⁷ A case was considered to be a “romantic” case where the victim, her family members or any prosecution witness states that the relationship with the accused was romantic in nature. It also includes cases where the court concluded that the relationship was romantic or consensual.

⁸ Ramakrishnan & Raha, “Romantic” Cases under the POCSO Act, p.6, Enfold Proactive Health Trust: 2022.

⁹ *Vijayalakshmi v. The State Rep. the Inspector of Police* CrI.O.P.No.232 of 2021 [Madras High Court], decision dated 27 January 2021; *Atul Mishra v. State of UP*, Criminal Misc. Bail Application No. 53947 of 2021 (Allahabad High Court); *Shembhalang Rynghang v. State of Meghalaya*, CrI. Petn. No. 64 of 2021 (High Court of Meghalaya); *Kuldeep v. State of Himachal Pradesh* 2019 SCC OnLine HP 2659 (Himachal Pradesh High Court).

¹⁰ *Vijayalakshmi v. The State Rep. the Inspector of Police* CrI.O.P.No.232 of 2021 [Madras High Court], decision dated 27 January 2021

¹¹ *Ibid* at para 28.

¹² *Sabari v. Inspector of Police*, Criminal Appeal No.490 of 2018, decided on 26.04.2019 [High Court of Madras]

discussions with Investigating Officers, and interviews with Child Welfare Committee Members, Juvenile Justice Board Magistrates and Members, Special Court Judges, lawyers, mental health experts, medical practitioners, public prosecutors, academicians, and NGOs working in the area of children's rights

2. LEGAL CONTEXT

Since the 19th century, age of consent laws have been marked by shifts in the understanding of childhood, adolescence and adulthood, fuelled by developments in women's and child rights discourse, as well as multiple socio-cultural and political factors. The legislative provisions have been reflective of a colonial and patriarchal understanding of females as properties of their father or their husband.¹³ In India, the age of consent was blurred with the age of marriage, and social reformers often sought to increase the age of consent, with the explicit aim of raising the age of marriage.¹⁴

In 1860, the Indian Penal Code stipulated 10 years as the age of consent for both married and unmarried girls.¹⁵ In 1889, the death of Phulmoni Dossee, a 10-year-old girl in Calcutta, after her much older husband tried to consummate the marriage,¹⁶ served as a trigger to raise the age of consent for sexual intercourse to 12 years with the objective of protecting "female children from immature prostitution and from premature cohabitation".¹⁷ In 1925, the age of consent was further raised to 14 years for girls and 13 years for rape within marriage. In 1949, it was once again raised to 16 years and to 15 years for marital rape. For 63 years, the age of consent for sexual intercourse stood at 16 years, until the POCSO Act, 2012 raised it to 18 years. The POCSO Act is also gender neutral and for the first time introduced an age of consent for children of all genders. Significantly, when it was first introduced in the Rajya Sabha, the POCSO Bill, 2011¹⁸ recognised the possibility of consensual sexual activity with a child between 16-18 years and specified grounds such as the use of force, violence, threats, intoxicants, drugs, coercion, fraud, and others, in the presence of which consent would be vitiated.¹⁹ The Ministry of Women and Child Development (MWCD) justified the exception on the ground that the law cannot be blind to social realities and criminalisation of adolescents for such acts would be detrimental.²⁰ However, following concerns raised by the Parliamentary Standing Committee (PSC), that the exception would inevitably shift focus on the conduct of the victim during trial,²¹ it was withdrawn when the Bill was placed before Parliament.²²

In 2013, despite the recommendations by the Justice Verma Committee that the age of consent be reduced to 16 years, Section 375, IPC was amended and the age of consent was increased to 18 years. Where two underage minors are involved in a sexual relationship, the Juvenile Justice (Care and Protection of Children) Act, 2015 is applicable with the possibility of a child above 16 years being tried as an adult for heinous offences.²³

¹³ Dr. Matthew Waites, *The age of consent: young people, sexuality and citizenship* Basingstoke: Palgrave Macmillan (2009), p.62. Amita Pitre & Lakshmi Lingam, "[Age of consent: challenges and contradictions of sexual violence laws in India](#)", *Sexual and Reproductive Health Matters*, 29:2.

¹⁴ Pitre & Lingam, *ibid*.

¹⁵ Government of India, [Report of the Age of Consent Committee, 1928-1929](#), Central Publication Branch, 1929.

¹⁶ Subhashri Ghosh, "Coming of Age in Colonial India: The Discourse and Debate over the Age of Consummation in the Nineteenth Century" in: K. Moruzi and M. J. Smith, ed., *Colonial Girlhood in Literature, Culture and History, 1840-1950*, London: Palgrave Macmillan (2014), p.87.

¹⁷ *Supra* n.15, p. 10.

¹⁸ [The Protection of Children from Sexual Offences Bill, 2011](#), as introduced in the Rajya Sabha.

¹⁹ The proviso to Clause 3 on penetrative sexual assault of the POCSO Bill, 2011 stated: "Provided that where such penetrative sexual assault is committed against a child between sixteen to eighteen years of age, it shall be considered whether the consent for such an act has been obtained against the will of the child or the consent has been obtained by use of violence, force, threat to use force, intoxicants, drugs, impersonation, fraud, deceit, coercion, undue influence, threats, when the child is sleeping or unconscious or where the child does not have the capacity to understand the nature of the act or to resist it.

Explanation I.— For the purposes of this section,— (a) "consent" means the unequivocal voluntary agreement where the person has by words, gestures, or any form of non-verbal communication, communicated willingness to participate in the act referred to in this section; (b) "unequivocal voluntary agreement" means willingness given for specific and be limited to the express act consented to under this section.

Explanation II.— A child, who does not offer actual physical resistance to penetrative sexual assault is not by reason only of that fact, to be regarded as consenting to the sexual activity."

²⁰ Department-related Parliamentary Standing Committee on Human Resource Development, [240th Report on The Protection of Children from Sexual Offences Bill, 2011, 21 December 2011](#), para 6.7.

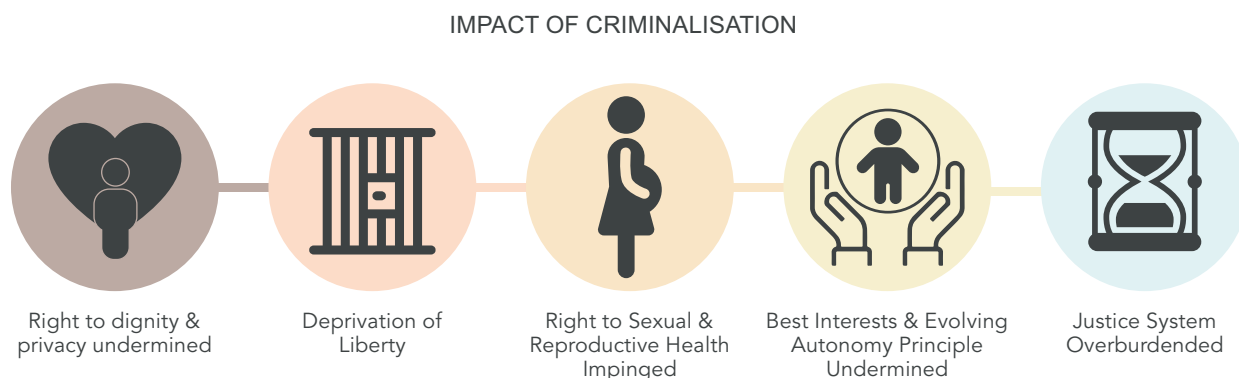
²¹ *Ibid*, para 6.6.

²² Statement by Ms. Krishna Tirath, Minister of the State of Ministry of Women and Child Development when the Protection of Children from Sexual Offences Bill, 2011 was moved in the Rajya Sabha on 10.05.12.

²³ JJ Act, 2015, Sections 15, 18(3).

In 2018, the marital rape exception in the IPC, as per which sexual intercourse by a man with his wife not below 15 years would not constitute rape, was read down by the Supreme Court of India for being unconstitutional and violative of the rights of children and the POCSO Act.²⁴ Thus, although a child marriage is valid under personal law and the Prohibition of Child Marriage Act, 2006, except in certain circumstances, sex within such a marriage constitutes rape or aggravated penetrative sexual assault. In 2019, following gruesome incidents of sexual violence against children, the minimum punishment for penetrative sexual offences under the POCSO Act was enhanced,²⁵ and the death penalty was introduced for aggravated penetrative sexual assault.

3. ADVERSE IMPACT OF CRIMINALISATION ON RIGHTS OF ADOLESCENTS AND THE JUSTICE SYSTEM



The lack of recognition of consensual sexual behaviour of older adolescents has resulted in their automatic criminalisation, as well as a conflation of consensual acts with non-consensual acts. While all children and adolescents are entitled to protection from sexual exploitation and violence, the approach adopted under the POCSO Act renders adolescents vulnerable to criminal prosecutions for normative sexual behaviour. This section examines the implications of such criminalisation on their right to dignity, personal liberty, privacy, health, and their best interests and the impact on the justice system.

Right to dignity and privacy of adolescents undermined

Sexual behaviour in adolescents, particularly from the onset of puberty, is widely established as being natural, normative, and an integral part of adolescent development and their transition into adults.²⁶ All persons, including children, are entitled to the right to dignity and privacy and these rights also apply in the context of their personal relationships.²⁷ By ignoring adolescent development, social realities, and diverse tribal and cultural practices which recognise adolescent sexuality,²⁸ the law disproportionately affects adolescents in consensual and non-exploitative relationships and renders them vulnerable to criminal prosecution. While the law has primarily been used against adolescents in heteronormative relationships, the possibility of its use against adolescents in non-heteronormative consensual relationships remains.

By equating consensual and non-exploitative sexual acts with rape and (aggravated) penetrative sexual assault, the law undermines the bodily integrity and dignity of adolescents. In *Anoop v. State of Kerala*,²⁹ while dealing with a bail application, the Kerala High Court remarked about the faulty conflation of consensual acts involving adolescents with rape:

²⁴ AIR 2017 SC 494.

²⁵ [POCSO \(Amendment\) Bill, 2019](#), Statement of Objects and Reasons.

²⁶ Veenashree Anchan, Navaneetham Janardhana, and John Vijay Sagar Kommu, "POCSO Act, 2012: Consensual sex as a matter of tug of war between developmental need and legal obligation for the adolescents in India." *Indian J Psychol Med.* 2020;42:1–5 at 1. CRC, GC 20, para 9. Deborah L. Tolman, Sara I. McClelland, "Normative Sexuality Development in Adolescence: A Decade in Review, 2000–2009", *Journal of Research on Adolescence*, 15 February 2011; WHO Regional Office for Europe and BZgA, [Standards for Sexuality Education in Europe](#), 2010, Megan Price, et.al., "Young Love: Romantic Concerns and Associated Mental Health Issues among Adolescent Help-Seekers", *Behav Sci (Basel)*, 2016 Jun; 6(2): 9.

²⁷ Section 3(xi) of the JJ Act, 2015; Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1, Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

²⁸ M. Santhanaraman, "Branded a criminal for following custom", *The Hindu*, 13 April 2022.

²⁹ Bail Appl. No. 3273 of 2022 decided by the Kerala High Court on 08.0622.

“Unfortunately, the statute does not distinguish between the conservative concept of the term rape and the sexual interactions arising out of pure affection and biological changes. The statutes do not contemplate the biological inquisitiveness of adolescence and treat all ‘intrusions’ on bodily autonomy, whether by consent or otherwise, as rape for certain age group of victims.”

The ensuing criminal investigation and trial, and a simultaneous inquiry under the child protection system has a stigmatic and disruptive impact on their development, education, employment, as well as their self-esteem, social reputation, and family life. Long-term damaging consequences of a conviction for statutory rape are incarceration and inclusion in the Sex Offenders Registry.³⁰

The Constitutional Court of South Africa in *Teddy Bear Clinic for Abused Children & Anr. v. Minister of Justice and Constitutional Development & Anr*³¹ has held that legal provisions criminalising consensual sex amongst adolescents offended their dignity, even if they are rarely enforced. It concluded that “[i]f one’s consensual sexual choices are not respected by society, but are criminalised, one’s innate sense of self-worth will inevitably be diminished.” Further, “the existence of a statutory provision that punishes forms of sexual expression that are developmentally normal degrades and inflicts a state of disgrace on adolescents.”³²

In the Indian context, the blanket criminalisation of consensual sex among or with adolescents in gross oversight of their sexual development, bodily integrity and autonomy, and normal desires for attachments and relationships, undermines their fundamental right to life, privacy, and dignity.

Deprivation of liberty

While the ostensible objective may be to protect all children below 18 years from sexual exploitation, the law’s unintended effect has been the deprivation of liberty of young people in consensual relationships. Although convictions in “romantic” cases are an exception,³³ the accused men and boys are predominantly charged with non-bailable offences such as rape and penetrative sexual assault,³⁴ and are inevitably taken into custody.³⁵ As per an analysis based on judgments of three States, in 15.2% of romantic cases the accused remained in judicial custody till the end of the trial.³⁶ In *Rama @ Bande Rama v. State*³⁷ the 20-year-old accused in a “romantic” case was in judicial custody for 18 months. While quashing the case, the Karnataka High Court observed that the criminal process itself inflicted pain on the parties and despite an acquittal, “the sword of crime would have torn the soul of the accused.” In stray cases, a strict view that the consent of a minor is irrelevant, coupled with the lack of sentencing discretion, has resulted in the imposition of high minimum mandatory sentences such as 10 years for engaging in consensual sex.³⁸ With the amendment in 2019, such cases will attract a higher minimum sentence of 20 years if it is a case of repeated sex, or if it has resulted in a pregnancy.

The law also undermines the identity of adolescent girls by unidimensionally casting them as “victims”, rendering them voiceless, and without any agency to enter into relationships or choose their partners. Adolescent boys, on the other hand, are discriminatorily treated as children in conflict with the law,³⁹ and can even be tried as adults. The liberty of adolescent victim-girls is compromised as they are institutionalised in Children’s Homes when they refuse

³⁰ Press Trust of India, “[National Registry Of Sex Offenders Adds 5 Lakh Names To Database](#)”, 24 February 2019

³¹ [CCT 12/13 \[2013\] ZACC 35](#) decided on 3rd October 2013 by the Constitutional Court of South Africa.

³² *Ibid*, para 55.

³³ *Supra* n.8, p.28.

³⁴ 89.2% of accused in “romantic” cases were charged with a penetrative offence under Section 4 or 6 of the POCSO Act, or under Section 376 of the IPC. *Supra* n.8, p. 25.

³⁵ *Supra* n.8, p.44.

³⁶ *Supra* n.8, p.44.

³⁷ Crim. Pet. 6214 of 2022, decided by the Karnataka High Court on 2.08.2022.

³⁸ *State of Gujarat v. Ashokbhai*, 2018 GLH 792 [Gujarat High Court].

³⁹ ICCW, Children apprehended under POCSO Act for Elopement in Tamil Nadu (2017), UNICEF, p.40.

to return to their parents and insist on being with their partner. A study on their plight reveals that “they are shamed, humiliated, and stigmatised for their acts, alienated from their partners and society, and at times not released even after they turn 18. Such institutionalisation harms their physical and mental health, as well as overall development, and they have little or no recourse to challenge or seek review of such decisions.”⁴⁰ Administrative confusion about whether the girls should be released by the court or Child Welfare Committees prolonged their detention even after many of them had attained majority.⁴¹ Girls who are pregnant or have given birth to a child are compelled to reside in a Children’s Home where access to sexual and reproductive health services and familial care is limited.⁴²

Best interests and evolving autonomy principle undermined

The POCSO Act lumps all persons below 18 years together without consideration for their developing sexuality, evolving capacity, and the impact of such criminalisation on their best interests. It fails to strike an effective balance between protecting adolescents against sexual abuse and recognising their normative sexual behaviour. The result is that a law aimed at addressing child sexual abuse, is instead being used against adolescents, especially to curtail the sexual expressions of adolescent girls to safeguard family honour.⁴³ An analysis revealed that 80.2% of the complainants in “romantic” cases were parents and relatives of adolescent girls who registered a case after she eloped or her pregnancy was discovered.⁴⁴ Pointing to the possibility of further misuse of the POCSO Act, it showed that in 21.8% of romantic cases, the girls disputed the claim by their families that they were minors.⁴⁵

The use of the law to target adolescents in romantic relationships was also evident in a study on the Prohibition of Child Marriage Act (PCMA) which revealed that “[t]he PCMA is used twice as much against elopements or self-arranged marriages, than it is used in relation to “arranged marriages”, with girls’ parents lodging the complaints in elopement cases.⁴⁶ The law also renders young couples in inter-caste and inter-faith relationships at greater risk of harm and criminalisation and becomes an oppressive tool in the hands of those against such relationships⁴⁷ to enforce patriarchal norms on the choice of a partner instead of “prosecuting arranged customary marriages”⁴⁸ or addressing the root causes of elopements. Studies explain that the primary reasons for girls leaving their homes were parental disapproval of the relationship, arrangement of a marriage against their will, unreasonable restrictions on their mobility and social life, and violence at home.⁴⁹ Structural factors such as poverty, uneven development, discriminatory treatment of girls, and the lack of meaningful educational opportunities exacerbate the situation and prompt elopements in the hope of a better future.

While all children are entitled to protection from sexual violence, such protection should “enable young people to extend their boundaries, exercise choices and engage in necessary risk-taking, while not exposing them to inappropriate responsibility, harm and danger...”⁵⁰ The POCSO Act, however, reflects a protectionist approach that pushes adolescents out of the safety net and into the criminal justice system. It erodes their best interest, reflects scant regard for their evolving autonomy, and results in their victimisation within the criminal justice system under the garb of “protection”.

⁴⁰ Raha, Mehendale, et.al., *Girls Involved in “Romantic Cases” and the Justice System: A Study Based on the Experience of Girls in Child Care Institutions in Bihar*, Enfold Proactive Health Trust (2021) 223.

⁴¹ *Ibid.*, p.224.

⁴² *Ibid.*, p.225.

⁴³ Geeta Ramaseshan, *Control & Freedom: Women & The Age of Sexual Decisions*, AALI (2012), p.32.

⁴⁴ *Supra* n.8, pp.6,7 See also, CCL-NLSIU, *Study on the Working of Special Courts under the POCSO Act, 2012 in Maharashtra*, (2017) p.76.

⁴⁵ *Supra* n.8 .p.18

⁴⁶ Partners for Law in Development, *Who uses the Prohibition of Child Marriage Act 2006 (PCMA) Most and Why?*, p.6.

⁴⁷ Vivek Kumar @ Sanju and Anjali @ Afasana v. the State, CrIMC No 3073-74/2006, decided by the Delhi High Court on 23.02.2007. The Hindu Bureau, *“Girl allegedly killed for inter-caste relationship in Mysuru”*, The Hindu, 7 June 2022.

⁴⁸ *Supra* n.67, p.7. Neetika Vishwanath, *“Ethnographic Study of Rape Adjudication in Lucknow’s Trial Court”* (2020) 16(2) *Socio-Legal Review* 55, at 66. As a part of her study, 52 out of the 95 trials that Neetika Vishwanath observed involved runaway marriages between consenting couples, which was followed by a criminal complaint against the man by the woman’s parents/guardians. Some of these cases preceded the POCSO Act.

⁴⁹ Madhu Mehra & Amrita Nandy, *Why Girls Run Away To Marry: Adolescent Realities And Socio-Legal Responses in India* (2019), p.37. *Supra* n.61, p.63.

⁵⁰ Gerison Lansdown, *The Evolving Capacities of the Child*, UNICEF (2005), p.32.

Adverse impact on the right to sexual and reproductive health

The penal approach towards adolescent sexuality has impeded adolescents' right to barrier-free access to sexual and reproductive health (SRH) services. Policy initiatives such as the Rashtriya Kishor Swasthya Karyakram (RKSK), School Health Program (SHP),⁵¹ and the Adolescence Education Program (AEP), recognise sexual and reproductive health services as an integral component of adolescent health and aim to provide confidential and barrier-free information and services.⁵² The National Policy for Children, 2013 also requires the State to "provide adolescents access to information, support and services essential for their health and development".⁵³ While the RKSK emphasizes unrestricted counseling and support to adolescents for prevention of pregnancies and safe-sex methods, the POCSO Act complicates it by obligating any person having the knowledge of commission of a sexual offence or an apprehension of the likelihood of commission of a sexual offence involving minors to report to the police.⁵⁴ The Medical Termination of Pregnancy Act, 1971 also requires authorisation by a guardian for termination of pregnancy of a minor, making it challenging for adolescents to seek these services confidentially. A Rapid Programme Review of Adolescent Reproductive and Sexual Health Program (ARSH) and RKSK by the WHO revealed that the mandatory reporting obligation and absence of an exception for consensual sexual relationships between minors, resulted in confusion among service providers who are "inclined to deny SRH services to young people in some states."⁵⁵

Mandatory reporting combined with the lack of recognition of adolescent sexuality results in insurmountable barriers and a hostile environment for adolescents seeking confidential sexual and reproductive health services.⁵⁶ The fear of their partner being reported to the police also deters girls from availing medical services from a professional and inadvertently pushes them towards unsafe abortions.⁵⁷ Evidence shows that the "risk of death from an abortion related complication in India is highest in the case of underage girls (aged 15-19)".⁵⁸ It also affects adolescents who are in need of diagnostic tests to confirm pregnancy, STIs, or HIV status. The current legal regime also contravenes the CRC's recommendation to India to "[t]ake measures to ensure that adolescent girls and boys have effective access to confidential sexual and reproductive health information and services such as modern contraception as well as girls' access to legal abortions in practice."⁵⁹

In *X v. Principal Secretary, Health & Family Welfare Department*⁶⁰, the Supreme Court observed that there is a conflict between the POCSO Act, the privacy obligation under the Medical Termination of Pregnancy Act, 1971, and the reproductive autonomy of minors. It clarified that in the case of minors below 18 years engaging in consensual sexual activity and seeking a termination of pregnancy, the registered medical practitioner (RMP) "only on request of the minor and the guardian of the minor, need not disclose the identity and other personal details of the minor in the information provided under Section 19(1) of the POCSO Act." The apex court also clarified that the RMP will be exempt from disclosing the identity of the minor in criminal proceedings which may ensue based on the RMP's report under Section 19. While this is a step towards ensuring their access to termination services, cases of adolescents in a consensual relationship who wish to retain the pregnancy will continue to be reported.

⁵¹ [Operational Guidelines on School Health Programme under Ayushman Bharat](#), April 2018, p.3.

⁵² Ministry of Health and Family Welfare, [Strategy Handbook, RKSK](#), (2014), p.40; National Aids Control Organisation, [Adolescence Education Programme & Life Skills Development - Facilitator's Guide](#), at p.viii.

⁵³ [National Policy for Children, 2013](#), para 4.4(ix).

⁵⁴ POCSO Act, 2012, Sections 19(1) and 21.

⁵⁵ Alka Barua, et.al, [Adolescent health programming in India: a rapid review](#)

CCL-NLISU, "An Analysis of Mandatory Reporting under the POCSO Act and its Implications on the Rights of Children" (2018), p.14-15; Aparna Chandra, et.al, [Legal Barriers to Accessing Safe Abortion Services in India: A Fact Finding Study](#), (2021) 140-142; Supra n.14; International Planned Parenthood Federation, "Over-protected and under-served: A multi-country study on legal barriers to young people's access to sexual and reproductive health services", (2014).

⁵⁷ Susheela Singh et al., [The incidence of abortion and unintended pregnancy in India](#), 2015, VOL. 6, ISSUE 1, PE111-E120, JANUARY 01, 2018, the Lancet Global Health. See also Vrinda Grover, "Criminalisation of even consensual sex between adolescents obstructs access to safe abortion for girls," Times of India, 19 October 2019.

⁵⁸ Aparna Chandra, et.al, 142 citing Ryo Yokeo and others, 'Unsafe abortion and abortion-related death among 1.8 million women in India' (2019) 4(3) BMJ Global Health 7

⁵⁹ Committee on the Rights of the Child, [Concluding observations on the consolidated third and fourth](#)

[periodic reports of India](#), CRC/C/IND/CO/3-4, 13 June 2014, Para 66(b). Committee on the Rights of the Child, General Comment No.3, 'HIV/AIDS and the rights of the child', CRC/GC/2003/3, [17 Mar 2003].

⁶⁰ Civil Appeal No 5802 of 2022, decided by the Supreme Court on 29.09.22.

Criminalisation while accessing reproductive health services

In *State of Maharashtra v. Mohsin Basuddin Pakhali and Ors.*⁶¹, a young couple sought medical care for their pregnancy and after the girl confirmed she was 18 years, the doctors provided treatment until her delivery. Following an inspection of the records by an Officer from the Central Adoption Resource Authority and members of the Child Welfare Committee to verify pregnancy treatments sought by young women of 18-19 years, the hospital staff was directed to procure age proof of the girl. The Aadhar card revealed that she was a minor when she accessed treatment and based on the direction of the Inspection Committee, an FIR was lodged by the doctor. The case, however, ended in an acquittal as the girl did not say anything incriminating against the accused and her minority could not be established.

As per a report in *On Manorama* dated 28 October 2021, a teenager delivered her baby at home with the help of Youtube videos after being impregnated by her 21-year old partner.⁶² The matter came to light after the sounds of the baby's cries alerted others and led to the filing of a POCSO case against her partner. She eventually developed an infection necessitating medical treatment at a hospital. A 17-year-old tribal girl was hospitalised in Banswara, Rajasthan after developing complications following an illegal abortion.⁶³ After discovering her pregnancy, her 21-year-old partner took her to a hospital in Madhya Pradesh for an abortion. A POCSO case was filed against him. A 16-year old girl died in the same district after consuming abortion pills provided by an ayurvedic practitioner.⁶⁴ Her 20-year-old partner was arrested and charged under the POCSO Act and under Section 314 of the IPC (death caused by act done with intent to cause miscarriage).

These cases exemplify the impact of the POCSO Act on adolescent girls seeking reproductive health services. They point to the need for legislative reform and provision of help-oriented services to ensure adolescents can access health services without any fear or criminal consequences.

Adverse impact on justice delivery

An analysis of 1715 decisions in "romantic" cases by Special Courts from Maharashtra, West Bengal, and Assam evinces the disconnect between the law and ground realities. Acquittals were the norm and were recorded in 93.8% of such cases.⁶⁵ In 87.9% of the 1715 romantic cases, the victim herself admitted to a romantic relationship with the accused and in 81.5% cases she did not say anything incriminating against the accused. In 46.5% of the "romantic" cases, the victims were married to the accused persons⁶⁶ and in these cases, the Special Courts were reluctant in convicting the accused and disturb their marital life. Some courts were also of the view that a conviction would not be in the best interest of the victim and the acquittal rate in cases where the parties were married stood at 98.1%.⁶⁷

The accused's lack of intention to sexually assault the victim was also considered in cases that ended in acquittal. Similar trends were observed in other studies wherein the accused in "romantic" cases were acquitted as the victim was "mature enough to understand the nature and consequences of her actions";⁶⁸ the victim "was capable of consenting";⁶⁹ or due to the lack of culpable mental state of the accused person.⁷⁰ In a few romantic cases, the Special Courts

⁶¹ Special Case Pocso No. 24/2019, decided on 20/07/2019 by the Special Court in Kolhapur (Maharashtra).

⁶² Anon, "17-yr-old girl delivers baby watching YouTube videos in Kerala, lover arrested under POCSO Act," *On Manorama* [Oct 27, 2021].

⁶³ Anon, "Minor hospitalised after illegal abortion", *Times of India*, 3 June 2019.

⁶⁴ Anon, "Minor girl dies after taking abortion pills", *Times of India*, 9 June 2019.

⁶⁵ *Supra* n.8, p.28

⁶⁶ *Supra* n.8, p.12

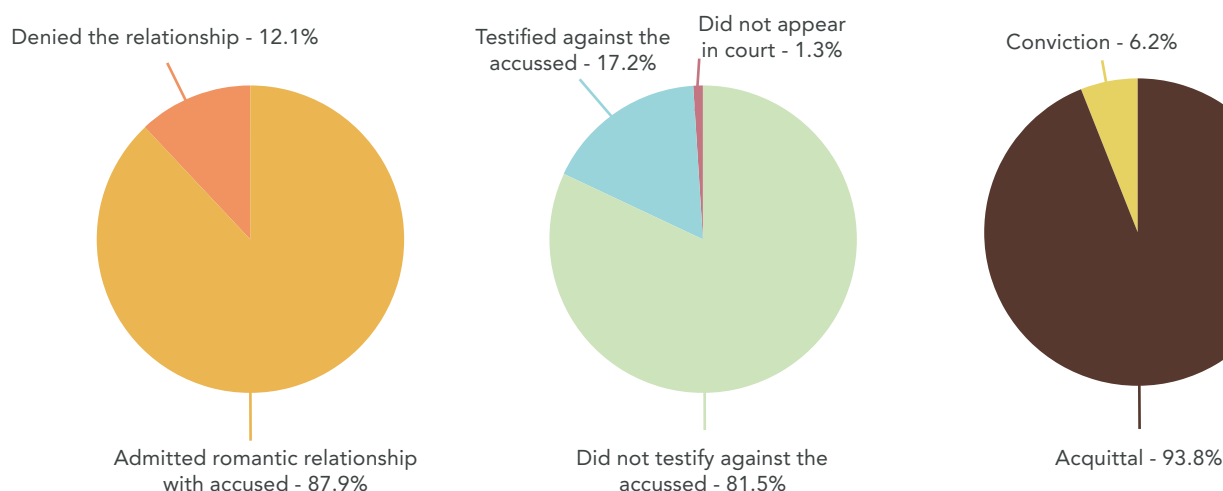
⁶⁷ *Supra* n.8, p.12

⁶⁸ CCL-NLSIU, Report of Study on the working of Special Courts under the POCSO Act, 2012 in Maharashtra (2017), 81 citing *State v. Akshay Balu Bacchav*, Sessions Case No. 338 of 2015, Decided on 03.09.2016 (Nashik).

⁶⁹ *Ibid* citing *State v. Rupesh @ Banti Bajirao Mokal*, Sessions Case No. 302 of 2015, decided 20.10.2016 (Nashik).

⁷⁰ CCL-NLSIU, Report of Study on the working of Special Courts under the POCSO Act, 2012 in Assam (2017), 67 citing *State v. Geenya Gupta*, Special (POCSO) Case No. 41 of 2015

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noted elements of exploitation and misrepresentation, particularly where the victim was under 16 years, taking into account the possibility of exploitation and grooming, and convicted the accused. Overall, the evidence categorically points to the consideration of social realities of teenage sexuality by Special Courts.

“Romantic” cases are thus overburdening an already-strained criminal justice system by consuming significant time of the judiciary, police, child protection system, forensic science laboratories, and medical practitioners. In 2021, for instance, 92.6% of POCSO cases were pending disposal by the courts.⁷¹ The futility of using criminal law to regulate adolescent sexuality is evinced by the abnormally high acquittal rates in such cases. An analysis reveals that only 11.4% of such cases were disposed of within a year of the FIR, while the large majority i.e., 60.7% cases took between one to four years to be disposed of.⁷²

These cases have also consumed the time of the higher judiciary which has been flooded with appeals and petitions to quash criminal proceedings; habeas corpus petitions; bail applications; and petitions from couples seeking protection from their families in the context of romantic cases. Finally, the inclusion of factually consensual and non-exploitative acts involving adolescents is detracting from the purpose of the POCSO Act and is diverting time, resources, and energy away from the investigation and trial of actual cases of sexual violence and exploitation.

4. NORMATIVE BASIS FOR DECRIMINALIZATION OF ADOLESCENT SEXUALITY

The Indian Constitution recognises that children deserve special protection and the State has an obligation to ensure that children are protected from exploitation and are given the opportunity to develop in a healthy manner.⁷³ Pursuant to these constitutional obligations, the POCSO Act was enacted to fill the legislative lacunae in addressing child sexual abuse. All children in India are entitled to fundamental rights such as the right to equality, right against discrimination, right to freedom of speech and expression, right to life and personal liberty, among others.⁷⁴ The National Policy for Children, 2013 recognises that “children are not a homogenous group and their different needs need different responses.”⁷⁵

⁷¹ NCRB, *Crime in India 2021*, Table 4A.5, Court Disposal of Crime against Children (Crime Head-wise) 2021, p.357.

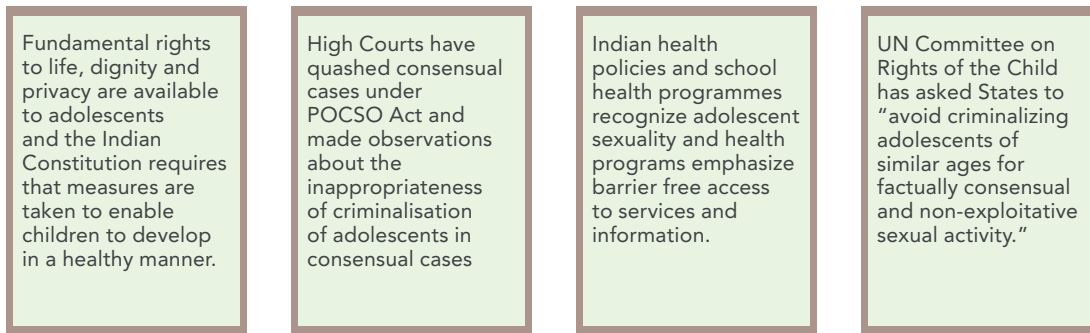
⁷² *Supra* n.8, pp.27, 28.

⁷³ *The Constitution of India 1950*, Articles 15(3) and 39(e).

⁷⁴ *The Constitution of India 1950*, Articles 14, 15, 19, 21, 21A, 23, and 24.

⁷⁵ *National Policy for Children, 2013*, para 2.1.

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UN treaty bodies and special mechanisms, as well as the World Health Organisation have consistently recognised the unique nature of adolescence as a development phase that entails physical, behavioural, emotional, and neurological changes and the need to balance protection needs with their evolving capacity.⁷⁶ Emphasising the need for comprehensive sexuality education, the WHO and several UN agencies have underlined that “[a] lack of high-quality, age- and developmentally-appropriate sexuality and relationship education may leave children and young people vulnerable to harmful sexual behaviours and sexual exploitation.”⁷⁷

With respect to the minimum age of consent for sexual intercourse, the UN Committee on the Rights of the Child (CRC) in General Comment No. 20 on the implementation of the rights of the child during adolescence, has urged States to strike a balance between protection of children from sexual exploitation and abuse and respect for their evolving autonomy. It has recommended that:

“States parties should take into account the need to balance protection and evolving capacities, and define an acceptable minimum age when determining the legal age for sexual consent. States should avoid criminalizing adolescents of similar ages for factually consensual and non-exploitative sexual activity.”⁷⁸ [emphasis added]

In 2016, the CRC expressly recognised that adolescence is a distinct developmental stage, and urged States to ensure that “[a]pproaches adopted to ensure the realization of the rights of adolescents differ significantly from those adopted for younger children.”⁷⁹ It also cautioned that “generic policies designed for children or young people often fail to address adolescents in all their diversity and are inadequate to guarantee the realization of their rights.”⁸⁰ In 2019, in General Comment No. 24 on Children in the Justice System, the CRC urged States to remove status offences, which criminalize adolescents who engage in consensual sexual acts with one another.⁸¹

The international human rights law framework thus acknowledges adolescents’ sexuality and encourages States to strike a balance between protection and evolving autonomy by ensuring that consensual sexual activity among adolescents is not criminalized.

Several High Courts have recognised that adolescent relationships are normal and criminalisation of such acts affects both parties and is not in keeping with the objectives of the POCSO Act.⁸² In

⁷⁶ Committee on the Rights of the Child, [General comment No. 20 \(2016\) on the implementation of the rights of the child during adolescence](#), CRC/C/GC/20, 6 December 2016, paras 3, 9, 20 (GC 20). [Youth and human rights: Report of the United Nations High Commissioner for Human Rights](#), A/HRC/39/33, Para 31 (28 June 2018). Human Rights Council, [Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health](#), A/HRC/32/32, paras 9, 11 (4 April 2016). WHO, [Assessing and supporting adolescents’ capacity for autonomous decision-making in health-care settings](#) (2021), pp.5-6. Gerison Lansdown, [The Evolving Capacities of the Child](#), UNICEF (2005), p.39.

⁷⁷ UNESCO, UNAIDS, UNFPA, UNICEF, UN-Women, & WHO, [International technical guidance on sexuality education- An evidence-informed approach](#) (2018), p.18.

⁷⁸ GC 20, para 40

⁷⁹ GC 20, para 1.

⁸⁰ GC 20, para 3.

⁸¹ CRC, [General Comment No. 24 \(2019\) on children’s rights in the child justice system](#), CRC/C/GC/24, 18 September 2019, para 12.

⁸² *Kajal v State of Uttar Pradesh* 2019 SCC OnLine All 3909; *Atul Mishra v. State of UP*, Criminal Misc. Bail Application No. 53947 of 2021 decided by the Allahabad High Court on 25.01.22; *Sunil Mahadev Patil v. State of Maharashtra*, Bail Application No. 1036 of 2015 decided by the Bombay High Court on 03.08.15; *Sabari @ Sabarinathan v. The Inspector of Police*, 2019 (3) MLJ (CrI) 110; *Vijayalakshmi v. State Rep, The Inspector of Police*, CrI.O.P.No.232 of 2021 decided by the Madras High Court on 27.01.21; *Xxxxxxx v. The State*, CrI.O.P.(MD)No.18064 of 2019 decided by the Madras High Court on 05.12.2019, *Kuldeep v. State of Himachal Pradesh* 2019 SCC OnLine HP 2659, *Chander Vir Kaundal v. State of H.P.*, 2017 SCC OnLine HP 95, *Aarti v. State of U.P.*, Misc. Bench No. 5503 of 2018, decided by the High Court of Allahabad on 30.05.2018;; *Sunilkumar Dilipbhai Patel v. State of Gujarat*, R/CR.MA/19567/2020 decided by Gujarat High Court on 22.12.20; *Shembhalang Rynghang v. State of Meghalaya*, CrI. Petn. No. 64 of 2021 decided by Meghalaya High Court on 23.03.22; *Skhemborlang Suting v. State of Meghalaya*, CrI. Petn. No. 63 of 2021 decided by Meghalaya High Court on 23.03.22.

Vijayalakshmi v. State Rep, The Inspector of Police⁸³; the Madras High Court quashed proceedings of kidnapping, penetrative sexual assault, and child marriage against a man in his early 20s, observing that the POCSO Act did not intend to punish “an adolescent boy who enters into a relationship with a minor girl by treating him as an offender” . It cited evidence that “adolescent romance is an important developmental marker for adolescents’ self-identity, functioning and capacity for intimacy” and concluded that criminalisation would be counterproductive.⁸⁴ It drew attention to the persecution that would result from incarceration and emphasised the need for support and guidance instead.⁸⁵ Similarly, in Agavai v. the State,⁸⁶ the petitioner child in conflict with the law was 15 years old and the victim girl was 17 years old when they entered into a sexual relationship. The Madras High Court observed that the issue of consensual sex between minors is a legal grey area in India and concluded that, “punishing the minor boy who enters into a relationship with a minor girl who were in the grips of their hormones and biological changes which is otherwise normative development in the children, is against the principles of the best interest of the child.” In Skhemborlang Suting v. State of Meghalaya,⁸⁷ the petitioners were a married couple and a case was lodged after a medical check-up when the wife became pregnant. The High Court of Meghalaya quashed the proceedings reasoning that the act could not be termed an “assault”, as no threat or attempt to inflict offensive physical or bodily harm on the minor wife had been made out.

While marriage between the parties appears to have influenced several High Courts and resulted in the quashing of romantic cases under the POCSO Act, sexual behaviour is normative during adolescence, and relationships may not always end in marriage. Thus, this calls for a reconsideration of the age of consent.⁸⁸

5. WAY FORWARD: LEGAL, EDUCATIONAL, AND POLICY REFORMS

“Life is precious in itself. But life is worth living because of the freedoms which enable each individual to live life as it should be lived. The best decisions on how life should be lived are entrusted to the individual. They are continuously shaped by the social milieu in which individuals exist. The duty of the state is to safeguard the ability to take decisions – the autonomy of the individual – and not to dictate those decisions.”

Justice D.Y.Chandrachud in Justice K.S.Puttaswamy v. Union of India, AIR 2017 SC 4161

1. Comprehensive sexuality education

Concerns that adolescents are predisposed to making impulsive and poor decisions can be effectively mitigated through the provision of age-appropriate, evidence-informed, comprehensive, and rights-based sexuality education.⁸⁹ Comprehensive sexuality education will help bridge knowledge gaps, build positive skills and attitudes needed to make informed decisions and navigate through interpersonal relationships, and empower children and adolescents to “realize their health, well-being and dignity; develop respectful social and sexual relationships; consider how their choices affect their own well-being and that of others; and, understand and ensure the protection of their rights throughout their lives.”⁹⁰ Contrary to the belief that such education will trigger sexual behaviour among minors, evidence supports that it actually delays sexual activity and promotes responsible sexual behaviour.⁹¹

⁸³ Crl.O.P.No.232 of 2021 decided by the Madras High Court on 27.01.2021.

⁸⁴ Ibid, paras 15-16.

⁸⁵ Ibid, para 18.

⁸⁶ Criminal Revision Case No. 877 of 2021, Decided by the Madras High Court on 29.04.2022. ⁸⁷ Crl. Petn. No. 63 of 2021, decided by the High Court of Meghalaya on 23.03.2022

⁸⁸ Swagata Raha & Shruthi Ramakrishnan, “Changing the age of consent”, The Hindu, 5 October 2022.

⁸⁹ GC 20, para 61. Committee on Economic Social and Cultural Rights, [General comment No. 22 \(2016\) on the right to sexual and reproductive health](#) (article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/22, 2 May 2016, para 49(f).

⁹⁰ Supra n.77, p.16.

⁹¹ Dolores Ramirez-Villalobos, et al., “Delaying sexual onset: outcome of a comprehensive sexuality education initiative for adolescents in public schools”, BMC Public Health volume 21, Article number: 1439 (2021). Laura Duberstein Lindberg and Isaac Maddow-Zimet, “Consequences of Sex Education on Teen and Young Adult Sexual Behaviors and Outcomes”, Journal of Adolescent Health, Vol.51, Issue 4, October 2012, pp. 332–338.

There is an obligation to create awareness and inculcate gender sensitivity and gender equality under the POCSO Act and Rules,⁹² and based on the recommendation by the CRC to India to ensure that “sexual and reproductive health education is part of the mandatory school curriculum”.⁹³ The government’s initiative to develop a curriculum on health and wellness of school-going adolescents is a step towards “inculcat[ing] positive and progressive attitudes and enhanc[ing] life skills to promote informed, responsible and healthy behaviors among school going children.”⁹⁴ Concerted efforts are needed to monitor its implementation in schools across India and ensure that the content pertaining to sexual and reproductive health is comprehensive and rights-based, and also include appropriate inputs on the legal framework. Equal efforts need to be directed towards imparting knowledge, skills and attitudes to vulnerable groups such as children with disabilities, children out of schools, and children in tribal or conflict-affected areas, with the support of grassroot workers, local authorities, and civil society organisations, so that all children and adolescents are equipped to make “free, informed and positive decisions and life choices, and successfully navigate the transition into adulthood.”⁹⁵

2. Resolving of the dichotomy between health programs and the legal regime

Government health programs such as the RKSK stress on the provision of accessible SRH information and services⁹⁶ and the need to educate adolescents on contraception and safe sex methods, while requiring their clinics to provide adolescents with emergency contraceptives.⁹⁷ Efforts need to be directed towards ensuring that the Adolescent Friendly Health Clinics (AFHCs) are accessible and functional, and that the provision of information and services such as pregnancy care and abortion, as well as diagnostic services for HIV, STIs, and pregnancy are not hindered by the mandatory reporting obligation under the POCSO Act. Suitable legal reforms have to be initiated to ensure that service providers are not constrained and adolescents’ access to such information and services is confidential and unrestricted. An amendment may also be required for the operationalisation of the clarification given by the Supreme Court on mandatory reporting in the context of termination of pregnancies in consensual cases,⁹⁸ while ensuring protection of children against sexual exploitation.

3. Decriminalization of adolescent sexuality

The current legal regime disregards the evolving capacity of adolescents and their normative sexual behaviour. While the age of consent varies across jurisdictions, the age of 16 appears to be the common threshold across different countries.⁹⁹ In addition to several western countries, South Asian countries like Sri Lanka,¹⁰⁰ Bangladesh,¹⁰¹ and Bhutan¹⁰² have also set their age of consent at 16 years. It must be considered that the age of consent was 16 years from 1940 to November 2012, till the POCSO Act came into force. The Justice Verma Committee and the Madras High Court have also recommended that the age of consent under the POCSO Act be lowered to 16 years. The age of consent should also be distinguished from the age of marriage, as the latter entails responsibilities, expectations, implications and legal liabilities, and sexual acts do not occur only within the confines of marriage.

While countries such as the USA, South Africa, and Canada have incorporated close-in-age exceptions which prescribe proximate age gaps within which consent is recognised,¹⁰³

⁹² POCSO Act, 2012, Section 43 and POCSO Rules, 2020, Rule 3.

⁹³ Committee on the Rights of the Child, [Concluding observations on the consolidated third and fourth periodic reports of India](#), CRC/C/IND/CO/3-4, 13 June 2014, para 66.

⁹⁴ NCERT, [Curriculum on Health and Wellness of School-going Adolescents](#), under the aegis of School Health Programme of Ayushman Bharat, p.6.

⁹⁵ GC 20, para 16.

⁹⁶ Strategy Handbook, RKSK, p.40.

⁹⁷ Implementation Guidelines, RCH-II ARSH strategy at pg 12-13

⁹⁸ X v. Principal Secretary, Health & Family Welfare Department, Civil Appeal No 5802 of 2022, decided by the Supreme Court on 29.09.22.

⁹⁹ [Legal Ages of Consent by Country](#). The age of consent is 16 years in the United Kingdom, Norway, Canada, South Africa and Spain, as well as several States in Australia and the USA.

¹⁰⁰ Sri Lankan Penal Code 1883, Section 363(e).

¹⁰¹ Bangladesh Penal Code 1860, Section 375.

arbitrariness is inherent in determining the suitable age gap. Such an approach may also not be viable as relationships with significant age gaps are socially acceptable in India. The introduction of a close-in-age exception will also increase the likelihood of age-related litigation, which in turn will protract trials and result in an enhanced period of incarceration for the accused. More significantly, a close-in-age exception will not spare the parties in a consensual and non-exploitative relationship the humiliation and trauma of a criminal investigation and trial.

An amendment to the POCSO Act and the IPC is needed to decriminalize consensual acts involving adolescents above 16 years, while also ensuring that those above 16 years and below 18 years are protected against non-consensual acts under the POCSO Act. A distinct provision recognising consent by those above 16 years may be considered, while criminalising acts against them if it is against their will, without their consent, or where their consent has been obtained through fear of death or hurt, intoxication, or if the accused is in position of authority such as a public servant, staff of a Child Care Institution or educational institution in which the adolescent is placed or is accessing education. Till such time as the law is amended, law enforcement agencies,¹⁰⁴ Child Welfare Committees¹⁰⁵ and Juvenile Justice Boards¹⁰⁶ may consider exercising the discretion available under existing legal provisions, in the best interest of children, so as to avoid or minimise the harm caused by arrest, apprehension, and institutionalisation of adolescents and young persons in consensual cases.

6. CONCLUSION

The balance between protection and evolving autonomy is central to ensuring the best interests of adolescents,¹⁰⁷ but the current legal framework fails to do so and unjustly conflates normative consensual acts among adolescents with sexual abuse. Instead of protecting adolescents from abuse, the law exposes those in factually consensual and non-exploitative relationships to the risk of a criminal prosecution and compromises the child protection mandate. The significant proportion of romantic cases in the criminal justice system also raises concerns about overcriminalization and overburdening of the criminal justice and child protection systems with cases that do not include any elements of “rape” or exploitation.

A legal amendment is, therefore necessary to decriminalise consensual sexual acts involving adolescents above 16 years, while also ensuring that all children below 18 years are protected from sexual offences under the POCSO Act. All children and adolescents need to be provided rights-based comprehensive sexuality education. Legal and policy reforms are also needed to ensure confidential and barrier-free access of adolescents to sexual and reproductive health services. Comprehensive sexuality and life skills education should also be integrated into the school curriculum. This would be an essential step towards safeguarding the rights and interests of adolescents and ensuring that their health, dignity, and overall developmental potential are advanced.

¹⁰² Penal Code (Amendment) Act of Bhutan of 2021, Section 183 <https://www.nab.gov.bt/assets/uploads/docs/acts/2021/Penal_Code_Amendment_Act_of_Bhutan_2021.pdf> accessed 27 October 2022.

¹⁰³ [South African Criminal Law \(Sexual Offences and Related Matters\) Amendment Act 2015](#), Sections. 15 & 16. [Canadian Criminal Code](#) (R.S.C., 1985) Section 150.1(2.1).

¹⁰⁴ The Hindu Bureau, “[Police should exercise restraint, while arresting young people in cases of love marriage, under POCSO: Judge](#)”, The Hindu, 19 November 2022. Cr.P.C, 1973, Section 41-A.

¹⁰⁵ JJ Act, 2015, Sections 3(xii), 37, and 39.

¹⁰⁶ JJ Act, 2015, Sections 3(xii), 3(xv), 12,

¹⁰⁷ Committee on the Rights of the Child, [General comment No. 14 \(2013\) on the right of the child to have his or her best interests taken as a primary consideration \(art. 3, para. 1\)](#), CRC/C/GC/14, 29 May 2013, para 84.

