

THE DOCTRINE OF PROPORTIONALITY IN SENTENCING UNDER THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

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I. INTRODUCTION

The Protection of Children from Sexual Offences Act (POCSO) was passed following India signing international obligations through the UN Convention on the Rights of the Child (UNCRC), which created a gap in the law that required child sexual abuse to be addressed with particularity and severity. Before its introduction, there was no single law in the Indian criminal law that provided a complete law on sexual assault on children. POCSO was also meant to be a child-friendly, gender-neutral, and victim-sensitive legal framework. The law criminalises a broad array of sexual conducts with minors and prescribes specific investigation and trial measures. The standardized age of consent at 18 without any chances of contextual and developmental assessment has however accidentally turned the law into an instrument of punishing instead of protecting.

A child is anybody under the age of 18 years as defined by section 2(d)¹ of the Act. It is a resultant conviction that any engagement in sex with such an individual is considered non-consensual in the eyes of the law, irrespective of the actual ability or desire of the individual to engage in sex. The default position in the legislation is that every minor cannot give valid consent, and this approach is explained by the desire to avoid ambiguity and prevent grooming and manipulation of children. Nevertheless, it does not consider changing abilities and different realities of adolescence. This outright ban transforms all sexual acts involving individuals below 18 years into a criminal offence without considerations of the fact that in most instances adolescent intimacy is consensual.² It thereby invalidates the appropriateness of mens rea in these cases, and labels all such interactions as abusive *a priori*.

This paper is built on a foundational hypothesis: the rigid application of the age of consent as defined by the POCSO Act fundamentally undermines the doctrine of proportional sentencing. This is a pillar of criminal jurisprudence, which posits that a penalty should be commensurate with the gravity of the offense and the culpability of the offender. The statute's current framework subverts this logic by indiscriminately categorizing consensual relationships between adolescents and those between an adolescent and a young adult under the same legal umbrella as heinous, coercive child sexual abuse.

This critical conflation has far-reaching consequences. It leads to legal outcomes that are often perceived as unjust and disproportionate, thereby eroding public trust in the judicial system. By imposing strict liability, the Act disregards the developmental realities of adolescence, which are characterized by evolving cognitive abilities, emotional complexity, and the exploration of identity. The law's one-size-fits-all approach fails to account for the nuanced socio-cultural contexts in which these relationships occur, treating a mutually agreed-upon relationship as a criminal act regardless of the emotional maturity or agency of the

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¹ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 2(d).

² V. Anchan, N. Janardhana and J. V. S. Kommu, "POCSO Act, 2012: Consensual Sex as a Matter of Tug of War Between Developmental Need and Legal Obligation for the Adolescents in India" 43(2) *Indian Journal of Psychological Medicine* 158-162 (2021).

individuals involved.³ This not only discredits the justice system but also overlooks a vast body of psychological and sociological research that highlights the developmental normalcy of such behaviour. The central problem, therefore, is not merely a legal one but a profound social and ethical one that necessitates a re-evaluation of the statute's application and its unintended punitive consequences.

This paper is intentionally confined to a specific and critical issue: how the POCSO Act's application to consensual sexual activity between adolescents or with a young adult creates a significant legal and ethical dilemma. It addresses this problem by drawing on legal theory, case law, constitutional principles, and the latest psychological research. Our central argument is that the Act's strict, non-negotiable age of consent at 18 undermines the fundamental doctrine of proportional sentencing. By conflating consensual teen relationships with severe child sexual abuse, the law imposes a single, severe punitive outcome for two vastly different situations.

While we will use a selection of cases to illustrate our points, this paper does not undertake a detailed, factual examination of specific litigations. Our focus remains on a broader doctrinal criticism of the law, with the aim of proposing a clear reform agenda. We also explore the wider policy implications for India's criminal justice system and its child protection framework. The discussion is built around the theoretical gaps and unintended consequences of POCSO's absolutist stance, highlighting the framework's failure to account for adolescents' individual responsibility and evolving capacities. Our analysis is grounded in a contextual understanding of adolescent intimacy, supported by established psychological and sociological research. Ultimately, the paper's scope is to provide a focused critique that demonstrates how the Act's strict liability leads to excessive penalties for what can be developmentally normal, mutually agreed-upon behaviour. This is a legal and policy analysis, not a factual review of courtroom battles, with the clear goal of offering concrete, actionable recommendations for a more nuanced and just legal framework.

II. THE DOCTRINE OF PROPORTIONAL SENTENCING: A CORNERSTONE OF CRIMINAL JUSTICE

A. Fundamental Meaning and Historical Evolution

Proportional sentencing is a fundamental doctrine of criminal jurisprudence which provides that the magnitude of punishment should be commensurate with the magnitude of the crime and the guilt of the criminal. It gives effect to the ideal that justice is computerised when sanctions are fair, not too many or too few. The concept of proportional justice has its historical roots in early legal tradition, *e.g.*, the *lex talionis*, an eye-for-an-eye law, which, although retributive in emphasis, stressed the necessity of equivalence between crime and punishment. This idea was later developed by enlightenment philosophers such as Cesare Beccaria and Jeremy Bentham who opposed the use of arbitrary or harsh punishments and penalties that had a rational and deterrent purpose that were proportional to the offense committed. Proportionality has also been seen in the context of modern legal theory as a sentencing principle, but also as a constitutional guarantee against arbitrariness. In India, this doctrine has received constitutional and jurisprudential basis, as judicial opinions interpreting articles 14 and 21 of the Constitution, which provide equality before law and protection of life and

³ Suchitra Singh, "Age of Consent under POCSO: A Need for Change?" (2022), available at: <https://ssrn.com/abstract=4470418> (last visited on Aug. 09, 2025).

personal liberty, respectively. Courts have continually ruled that the punishments should not be excessive or too disproportionate to the offence committed as it would constitute a violation of the constitutional rights to fairness and due process.

B. Key Components of Proportionality

i) Culpability

Criminal liability continues to revolve around the mental aspect or the mens rea. Determination of the blameworthiness of a person requires intent, knowledge and recklessness. A teenager who makes mutual love with his or her age-mate is not morally reprehensible to the same degree as an adult abuser of a child. But POCSO does not differentiate between these two cases and equates the gravity of both.

ii) Harm-Caused

Proportionality also looks into the severity of the injury caused to the victim or to society. Although real child sexual abuse culminates in enormous psychological and physical traumas, in numerous consensual adolescent relationships, there is actually no harm, both psychological or physical, to anyone. But the legal reaction under POCSO is identical in both the situations, unmindful of the practical effect.

iii) Aggravating and Mitigating Circumstances

Whether there were aggravating (e.g., the use of force, coercion, or trust abuse) or mitigating circumstances (e.g., young age, lack of criminal intent, or mutual consent) should preferably be used to guide sentencing. This is an essence of proportional justice. The strict liability regime and mandatory minimum penalties of POCSO undermine this discretion of the judicial process.

iv) Recidivism and Deterrence

Although deterrence is a valid goal of punishment, too much or misplaced sentencing may lead to over punishment without any deterrent value being realised. In particular, severe punishment does not prevent future behaviour and reformation in the cases of consensual adolescent relations but only estranges and harms young people.

C. Purpose and Importance in Criminal Justice

The doctrine of proportional sentencing serves multiple systemic purposes:

- i **Fairness and Legitimacy:** Ensuring that punishment reflects the gravity of the offence fosters public confidence in the criminal justice system.
- ii **Prevention of Cruel Punishment:** The principle acts as a constitutional bulwark against draconian and disproportionate penalties.
- iii **Promotion of Rehabilitation:** Especially in juvenile and young offender cases, proportionate responses enhance the likelihood of social reintegration and reduce recidivism.
- iv **Safeguard Against Arbitrary State Action:** Proportionality serves as a constitutional check on legislative and judicial excesses in sentencing.

v These objectives are sounded on the basis of the Indian Supreme Court's affirmation in *State of Punjab v. Gurmit Singh*,⁴ wherein the Court emphasised the balance between societal interests and individual rights in sentencing decisions.

D. Application in Indian Criminal Jurisprudence

Indian penal laws such as Indian Penal Code, 1860 have always provided a variety of punishments to signify different levels of guilt and severity. An example of this graded approach may be seen in the difference in murder under section 302 and culpable homicide not amounting to murder under section 304 IPC.⁵

In *Mithu v. State of Punjab*,⁶ a mandatory provision of death sentence was struck down noting that a law which deprives a court of its discretion to award suitable punishment in specific cases is contra to articles 14 and 21. The ruling highlighted the importance of proportionality in sentencing, especially where the discretionary powers of the judges are limited by the strict legislative prescriptions.

More recently, in *Vikram Singh v. Union of India*,⁷ the Court reinstated the view that a punishment must be proportionate to the offence and the offender, and it should not be stern.⁸ It is in this regard that the judiciary has time and again supported the idea of calibrated and case-sensitive punishments, which the POCSO has grossly violated through its blanket approach.

III. POCSO'S CHALLENGE TO PROPORTIONALITY: THEORETICAL GAPS AND UNINTENDED CONSEQUENCES

A. Breach of Core Principles of Proportional Sentencing

Although the POCSO Act was designed with the best intentions, as a protective law, it establishes a strict legal framework that, to a large extent, does not take into account the extent of guilt of the accused and the amount of harm caused. The idea behind proportional sentencing, *i.e.*, the necessity to match the character of the act and the character of the punishment, is simply undermined by criminalising all acts of sex between people under eighteen without differentiation.⁹

POCSO framework collapses all sexual intercourse with a "child" (any individual under 18) into one that is deemed abusive, irrespective of the circumstances or consent. Section 3 forms the definition of penetrative sexual assault in the absence of intent and the relationship between the individuals. The fact that the Act does not require the existence of *mens rea* to convict in such a case destroys the moral gradation necessary to punish fairly. The effect of this model is that a 19-year-old who is in a consensual relationship with a 17-year-old could end up being punished just like a 40-year-old sexual predator who has exploited a minor. This result cannot arise where the fundamental principle of law is that liability is to be determined with reference to both the act (*actus reus*) and the state of mind (*mens rea*).

⁴ (1996) 2 SCC 384.

⁵ The Indian Penal Code, 1860 (Act 45 of 1860), ss. 302 and 304.

⁶ AIR 1983 SC 473.

⁷ *Vikram Singh v. Union of India*, (2015) 9 SCC 502.

⁸ *Ibid.*

⁹ *Supra* note 1, ss. 2(d), 3, 4.

B. Legal Fiction v. Developmental Reality

i) The Invalidation of Consent

The fact that POCSO legally assumes that individuals below the age of 18 cannot give consistent consent overlooks the fact that adolescents are capable of volition. Although the protective logic underlying this presumption is intuitive, especially when the minor has been groomed, coerced, or exploited, this presumption does not distinguish between victimization and agency among older adolescents. This legal fiction has the impact of depriving minors of their growing autonomy. Practically, the teenagers who willingly participate in sexual relationships do not necessarily perceive themselves as victims, but the law ascribes the status of a victim to them without their appropriation, which results in institutional aggression and anguish.

ii) Adolescent Development and the Capacity for Consent

Contemporary psychological studies affirm that adolescents, and especially older teenagers, attain cognitive abilities to make decisions and a recognition of sexual consent. Although impulse control and emotional regulation will continue to develop through early adulthood, the ability to understand mutual consent is present in mid-to-late adolescence.¹⁰

UNCRC, which India has ratified, in article 5, presents the notion of “evolving capacities” and urges the state parties to remain respectful and assist a child in exercising his/her increasing capability of making informed decisions.¹¹ It is directly against this framework that the strict criminalisation of adolescent sexual expression under POCSO takes place.

iii) Sociological Realities of Adolescent Intimacy

Indian empirical research on the subject matter shows that many POCSO cases concern consensual relationships between peers.¹² Romantic and sexual involvement in adolescence is not a rare case sociologically, but also a pivotal point in identity development. The law neglects these social norms, constrains with a moralistic approach, and endangers the development of adolescents by criminalising such behaviour.

In addition, this kind of criminalisation falls more on individuals with disadvantaged socio-economic status, in which case surveillance is more and honour of the family is more bound to norms of gender and sexuality. In these circumstances, POCSO is somewhat abused by parents to regulate the dating preferences of daughters in the patriarchal agenda instead of child protection.

C. Strict Liability and Its Impact on Proportionality

¹⁰ Steinberg, Laurence, “A Social Neuroscience Perspective on Adolescent Risk-Taking” 28(1) *Developmental Review* 78–106 (2008).

¹¹ United Nations Convention on the Rights of the Child, 1989, art. 5.

¹² Centre for Child and the Law, NLSIU, *Study on the Working of the POCSO Act*, 2017, <https://www.nls.ac.in/resources/publications/> (last visited on Aug. 08, 2025).

Strict liability refers to offenses where intent or knowledge need not be established for conviction. POCSO incorporates strict liability by making age the sole determinant of offense, eliminating any requirement to prove that the accused intended to commit abuse or was even aware of the minor's age.¹³

While strict liability is appropriate for deterring clear cases of exploitation, especially involving prepubescent children or power imbalances, it becomes problematic when applied to older adolescents in consensual relationships. The indiscriminate application of this doctrine reduces nuanced legal reasoning into mechanical categorisation, rendering the justice system incapable of distinguishing harmless conduct from predatory behaviour.

D. The Conflation of Consensual Acts with Severe Exploitation

The gravest flaw in POCSO's application is the conflation of consensual peer intimacy with heinous crimes such as rape or trafficking. As per section 4, penetrative sexual assault attracts a minimum sentence of 10 years, irrespective of whether the act was forced or consensual.¹⁴ This leads to a punitive equivalence between drastically different scenarios.

For example, in *XYZ v. State of Madhya Pradesh*,¹⁵ a 19-year-old accused in a consensual relationship with a 17-year-old was convicted under POCSO despite clear evidence that the "victim" willingly eloped with him and later married him. The Court, constrained by statutory limitations, imposed a severe sentence. Such cases highlight the disproportionality at the heart of POCSO enforcement.

E. Unintended Consequences of the Absolutist Stance

- i. The current framework discourages adolescents from expressing affection or exploring sexuality in healthy ways. It induces fear and secrecy, undermines access to reproductive health information, and promotes a culture of shame and denial.
- ii. Police and judiciary are increasingly burdened with POCSO cases arising from consensual acts, thereby diluting the focus and resources that should be directed toward investigating and prosecuting genuine abuse cases.¹⁶
- iii. Adolescents labelled as "victims" may resist legal proceedings, feel betrayed by the system, or be retraumatised by medical examinations and court testimonies. Similarly, young accused persons are stigmatized, denied bail, and subjected to incarceration, sometimes resulting in mental health deterioration, educational disruption, or social ostracism.

IV. DISPROPORTIONATE PENAL OUTCOMES AND JURISPRUDENTIAL CHALLENGES

A. Analysis of Sentencing Disparities under POCSO

The POCSO Act prescribes strict minimum jail terms on a broad variety of offences, such as sexual assault and penetrative assault, without taking into consideration the nature of the circumstances or the kind of relationship between the offender and the victim. Part 4 of the

¹³ Gargi Sen and Alok Prasanna Kumar, "The Problem with POCSO" 52(47) *Economic and Political Weekly* 10–12 (2017).

¹⁴ *Supra* note 1, s. 4.

¹⁵ 2020 SCC OnLine MP 2183.

¹⁶ Shanta Sinha and Gita Ramaswamy, *POCSO: Impact and Implementation* (Hyderabad Book Trust, 2021).

Act offers a minimum sentence of ten years of imprisonment and a maximum of life imprisonment in case of penetrative sexual assault. The lack of judicial discretion in deciding the sentences in the mentioned cases creates disparity in sentencing which violates the principle of proportionality.

Mandatory minimums do away with the possibilities of courts looking at the matters mitigating like the age proximity between the parties, the consensual relationship, or lack of coercion. A teenager who is hardly more than eighteen years old can receive the same punishment as an adult sexual violence offender. Such a confusion directly conflicts with the graduated level of punishments which is imagined in criminal jurisprudence.

The concern about such inflexible sentencing has been reflected by the judiciary in a number of cases. In *Satheesh* case,¹⁷ Kerala High Court noted that the law could not be applied blindly and considered the mitigating circumstance of the consensual relationship in lesser sentencing by alternative legal principles. Such relief is, however, *ad-hoc* and frequently dependent on sympathetic interpretation, and cannot take the place of systemic reform.

B. Dilution of Culpability Hierarchy

One of the most important aspects of proportional justice is the fact that not every wrongdoing is equally blameworthy. The traditional categories of criminal law distinguish between offences on the basis of the offender's mental state, the character of the act, and harm caused. POCSO, in its absolutist form, ignores such hierarchy by criminalizing all acts of sexual nature with a minor, irrespective of the use of force, fraud or deception, or exploitation or lack of it. It leads to legal and ethical mischaracterisation of adolescents in consensual relationships as "predators," which consequently trivialises the moral seriousness of actually exploitative behaviour. The consequences of this breakdown of graduation in guilt are serious. It unjustly burdens the accused with lifelong consequences, *e.g.*, incarceration, criminal records, societal stigma. It also trivializes actual sexual crimes by equating them with adolescent experimentation. It sends conflicting signals to the public about the intent and purpose of child protection laws.

This trend is particularly concerning when the accused and the victim are close in age, often from the same peer group, and where neither party perceives coercion or harm.

C. Jurisprudential Challenges and Judicial Trends

Despite the legislative rigidity of POCSO, Indian courts have gradually begun to articulate the need for proportionality, albeit within limited judicial confines.

i) Judicial Frustration with the Statutory Rigidity

In *Pradeep v. State of Haryana*,¹⁸ the Punjab & Haryana High Court quashed POCSO charges against a 19-year-old, noting that the prosecutrix, aged 17, had willingly eloped and had consistently supported the accused. The Court stressed the need to "adopt a realistic and humane approach" in interpreting such cases.

¹⁷ *Satheesh v. State of Kerala*, 2020 SCC OnLine Ker 4581.

¹⁸ 2019 SCC OnLine P&H 5643.

ii) Conditional Interpretations and Relief

Courts have attempted to circumvent the harshness of mandatory minimums through conditional relief. Some High Courts have:

- a. Granted bail on the grounds of consensual intimacy and minimal age difference;
- b. Invoked *parens patriae* to suggest marriage or familial reunification as rehabilitation;
- c. Recommended legislative reconsideration of the age of consent and creation of exceptions for close-in-age partners.

However, such judgments often lack consistency and are vulnerable to being overturned, given the clear textual mandate of the Act. The Supreme Court, while sympathetic in tone, has generally refrained from overruling the statutory framework unless constitutional infirmity is established.

iii) Judicial Appeals for Legislative Reform

Judges across jurisdictions have explicitly or implicitly called for legislative reform. In *XYZ v. State of Karnataka*,¹⁹ the Karnataka High Court lamented that “the law, though well-intentioned, becomes a source of injustice when applied indiscriminately.”²⁰ The judgment recommended that Parliament consider introducing exceptions or a graded sentencing structure to accommodate consensual adolescent relationships.

These observations reflect growing judicial awareness of the problem but also highlight the structural limitations that prevent courts from bypassing the clear language of the statute.

iv) Limits of Judicial Activism

Judicial activism, while capable of highlighting statutory inconsistencies, is constrained in the face of clear legislative intent. Courts are constitutionally bound to interpret, not amend, laws. The overreach of judicial discretion, especially in criminal statutes, could risk undermining the separation of powers. Hence, despite numerous judicial remarks on the need for reform, real change must emerge through legislative intervention.

V. IMPACT ON ADOLESCENTS, FAMILIES, AND SOCIETY

A. For the “Accused” Adolescent or Young Adult

Criminalisation of consensual relations under POCSO often exposes the young people, who are sometimes barely out of childhood themselves, to the brunt of the criminal justice system. The psychological damage caused by arrest, custodial detention, long trials and social ostracism can be devastating. Research on teenagers appearing in criminal system under POCSO have reported high rates of anxiety disorder, depression, shame, alienation, and suicidal thoughts. These consequences are particularly harsh in those cases when an accused is a first-time offender, who is not a socially deviant individual or morally blameworthy in the traditional meaning of this word. The label of a “child sexual offender” given at such a young

¹⁹ 2022 SCC OnLine Kar 3411.

²⁰ *Ibid.*

and developmental age may have an irreversible effect on the development of the identity and self-esteem.

B. For the “Victim” Adolescent

In a large number of consensual relationships, the so-called victim does not see herself or himself as a victim. But the legal system assigns a victim identity, which means that the minor is exposed to invasive medical exams, police interrogations, and judicial proceedings. Though the POCSO process is supposed to be child-friendly, it in most cases, retraumatises the adolescent, particularly when their agency is not believed or pathologized. When this happens, the law that should offer protection ends up being a trauma, particularly when the family does not support the relationship.

Psychological cost is characterized by interruption of the education process, social isolation and enforced separation with the partner. Such ramifications are not only detrimental to the person, but also corrosive to the very goals of child welfare, as well as, mental health protection as established in the Act.

C. The “Sex Offender” Label

It is a punitive process even in situations when the courts acquit the accused later or quash the FIR. Because of the stigma attached to the branding of anyone, especially a young person, as a sex offender, even temporarily, educational and employment opportunities can be ruined, as can social relations, and life paths can be changed forever. Moreover, the very fact that the charges exist in the police records, and, in some cases, even in the public discussion, bears the reputational harm with it. This is unfair punishment by process and it contravenes the idea of restorative justice subjecting the youngsters into undue stigmatization in their entire lifetime.

D. Social Ostracization and Moral Panic

The POCSO cases tend to create moral panic among the people and within the family, especially in conservative societies. Sex among adolescents themselves is viewed as a crime that needs to be punished. Families and communities commonly react by attempting to correct such behaviour through punitive means, either by forced marriage, institutionalisation, or in honour-based violence. The absence of awareness about adolescent development and sexual rights stirs this reaction and creates an unwelcoming environment to discuss the matter of sexuality or autonomy. The law, in effect, strengthens the social taboos as opposed to informed protection.

E. Impact on Family Dynamics

The families of the accused and the complainant will be under acute psychological, social and often financial stress. Family ruination, relationship denunciation and mistrust, years of alienation; these are only some of the consequences of the legal struggles over consensual adolescent relationships.

F. Financial Burden

The process of litigation under POCSO consists of several steps including a police investigation, trial in special courts, appeals, and even involvement of the Supreme Court. The legal costs, travelling, and the fact that one has to lose earnings each time he or she appears in court all add pressure on low-income families, especially when cases take years to conclude.

G. Emotional and Social Stress

The conflict that parents commonly face is the conflict between a legal system, which constructs their child as deviant, and their protective instinct. There are instances where the parents of the complainant register the case out of reluctance, social pressure and end up regretting the impacts of the case. Interfamilial tensions boil when the relationships are inter-caste, inter-religious or when the elopement is believed to be dishonourable. Other families have experienced social boycotts, threats, or loss of community status, which in effect has isolated, depressed, and even driven them out of the community. The repercussions of one complaint under POCSO therefore go well beyond the courtroom and into the entire social milieu of the adolescents.

H. Suppression of Adolescent Sexuality and Rights

The result of criminalising consensual adolescent intimacy is the inhibition of candid discussion of adolescent sexuality. Educators, councilors and health workers get scared to deal with matters touching on sexual health due to fear of involving themselves in litigation. This leaves a vacuum that is filled with misinformation, shame and silence that sabotages sexual health education as well as abuse prevention. Low sexual health literacy amongst adolescents is already a problem in India. This disparity is intensified by the application of POCSO to consensual cases, and even benign, educational conversations are discouraged.

I. Chilling Effect on Stakeholders

Teachers and social workers state that they are afraid of getting involved or dragged into the criminal procedures when trying to intervene or assist adolescents in romantic relationships. This has a chilling effect on active outreach to young people and limits the number of trusted adults that may be available in a situation where advice or protection is actually required.

J. Potential for Misuse and Coercion

There are rising cases when POCSO is applied not with a good intention of protection but to limit the autonomy of adolescents. The law is occasionally weaponised by parents who are disappointed by the love affairs their children have undertaken in the name of meting revenge or enforcing moral conformity. Moreover, the false allegation in the interpersonal or family-related conflicts is not a rare occurrence, especially when the caste, class, or gender-related issues are at play.²¹

This abuse also discredits real instances of abuse as well as overwhelming the legal system such that less resources are left to assist real victims of sexual violence.

²¹ Centre for Child and the Law, NLSIU, *A Study of False Cases under POCSO*, 2022, available at: <https://www.nls.ac.in/resources/publications/> (last visited on Aug. 08, 2025).

VI. DIVERGENT VIEWS ON CHILD PROTECTION AND ADOLESCENT RIGHTS: THE GLOBAL AND LOCAL DEBATE

A. High Age Advocacy: The Argument for a Strict Age of Consent

Proponents of a high, uniform age of consent argue that it serves as a clear, enforceable standard to protect children and adolescents from exploitation, manipulation, and grooming. The POCSO Act's adoption of 18 years aligns with India's obligations under the UN Convention on the Rights of the Child, which defines anyone below 18 as a child.²²

Child rights advocates maintain that adolescents are vulnerable to power imbalances and lack the maturity to give meaningful consent. They warn that introducing any exception or differentiation may create loopholes exploitable by perpetrators who manipulate minors into seemingly consensual relationships.²³ They also refer to the empirical evidence that most of the exploitative relationships have started under the velocity of romantic involvement.

The focused approach, in this regard, is the so-called no-exceptions policy to protect as many girls as possible, since they are the most vulnerable group with regard to sexual violence and early marriage. Such a system places its bets on legal predictability and deterrence, at the expense of case-by-case subtlety.

B. Evolving Perspectives and the Doctrine of “Evolving Capacities”

The strict protectionist approach, however, is increasingly being challenged by those advocating for a more nuanced, developmental view of adolescent agency. Rooted in the UNCRC's principle of “evolving capacities” (article 5), this framework recognises that as children grow, they acquire the ability to make informed decisions regarding their lives, including about their bodies and sexuality.²⁴

Several child rights and human rights bodies support a differentiated model, particularly in relation to older adolescents (16–17 years), arguing that blanket criminalisation of consensual sexual activity undermines adolescent rights and dignity.²⁵ Rather than treating all under-18s as incapable, this approach recommends a tiered understanding of capacity, acknowledging both the protective and participatory rights of adolescents.

C. Comparative Jurisprudence on Age of Consent

There is no global consensus on a uniform age of consent. However, a review of many legal systems reveals a widespread adoption of a more nuanced approach, often including “close-in-age” exceptions or tiered consent models. These frameworks are designed to uphold child protection while simultaneously addressing the crucial issue of proportionality in sentencing. This section examines how different jurisdictions navigate this complex legal and ethical terrain.

²² United Nations Convention on the Rights of the Child, 1989, art. 1.

²³ Human Rights Watch, “India: Protect Children from Sexual Abuse,” 2020, available at: <https://www.hrw.org/news/2020/01/27/india-protect-children-sexual-abuse> (last visited on Aug. 08, 2025).

²⁴ United Nations Committee on the Rights of the Child, General Comment No. 20 on the Implementation of the Rights of the Child During Adolescence, 2016.

²⁵ UNICEF Innocenti Research Centre, *Maturity, Consent and Criminal Law*, Innocenti Digest No. 15, 2008.

i) United Kingdom

In the United Kingdom, the age of consent is set at 16 under the Sexual Offences Act, 2003. Crucially, the law is not applied in a vacuum. The Crown Prosecution Service (CPS) has established clear guidelines that strongly advise against prosecution for consensual sexual activity between minors who are close in age, provided there are no aggravating circumstances such as coercion, abuse of trust, or a significant power imbalance. The policy is predicated on the understanding that criminalizing such peer relationships is not in the public interest. This pragmatic approach allows the legal system to differentiate between genuine child abuse and developmentally normal adolescent behaviour.

ii) Canada

Canada provides a sophisticated example of a “close-in-age” exemption model. The Criminal Code sets the age of consent at 16, but it includes a provision that decriminalizes sexual activity between 14- or 15-year-old adolescents and partners who are less than five years older. This exemption is contingent on the absence of any relationship of trust, authority, or dependency. By creating this specific legal exception, Canada’s framework offers a protective floor for younger children while simultaneously allowing for adolescent intimacy within reasonable and age-appropriate boundaries. It strikes a balance between protecting the vulnerable and avoiding the over-criminalization of youthful peer relationships.

iii) United States

In the United States, age of consent laws are determined at the state level, but many jurisdictions have incorporated “Romeo and Juliet” provisions. These laws typically provide a legal defense or lower the penalty for consensual sexual activity when both parties are minors and are within a narrow age range of each other. States like California and New York have enacted these age-gap exceptions to prevent the prosecution of peer relationships as statutory rape, acknowledging that a strict, inflexible age of consent can lead to unjust outcomes. These provisions reflect a recognition that the culpability and harm in a relationship between two 15-year-olds, for example, is profoundly different from that of an adult and a 15-year-old.

iv) European Union

Many countries within the European Union have adopted flexible and contextual legal frameworks. Germany, for instance, sets the general age of consent at 14. However, the German Criminal Code includes provisions that allow for punitive measures against an older partner (under 18) if they exploit a significant imbalance of power or authority. The key focus is on ensuring that the sexual activity is truly consensual and free from exploitation. This approach highlights a commitment to protecting adolescent well-being while recognizing their evolving autonomy and the importance of contextual factors over a rigid age limit.

D. Lessons and the Need for Critical Assessment

India’s current legal framework under the POCSO Act represents a maximalist protectionist philosophy. While this approach is well-intentioned and has significant merit in safeguarding very young children from exploitation, its application to adolescent consensual conduct creates serious justice gaps and unintended harm. A critical assessment of international practices reveals crucial insights that could inform a reform agenda for the Indian legal system:

- i **Preserving Child Protection While Recognizing Adolescent Autonomy:** International examples demonstrate that it is possible to maintain a strong child protection framework without criminalizing all adolescent sexual activity. By implementing close-in-age exemptions or tiered models, legal systems can differentiate between exploitation and consensual intimacy.
- ii **Operationalizing Contextual Elements:** The key lesson is that factors such as the age difference, the voluntariness of consent, and the absence of coercion can be operationalized through statutory safeguards. These elements provide a more nuanced legal basis for evaluation, moving beyond a single, unyielding age of consent.
- iii **Preserving Judicial Discretion:** The international models often preserve a degree of judicial discretion, ensuring that the punishment is tailored to the specific circumstances of the offense. This is essential for upholding the doctrine of proportionality and preventing a one-size-fits-all approach that can lead to unjust outcomes.

Incorporating these insights into the Indian legal framework would not only enhance the law's legitimacy but also align it more closely with constitutional mandates of fairness, equality, and natural justice. Such reforms would ensure that the law does not inadvertently harm the very population it was designed to protect.

VII. RE-EVALUATION OF POCSO AND PROPOSED ACTIONS FOR REFORM

A. Aim for Balance: Protection without Overreach

The goal of the reform of the POCSO system should be to retain the essential protective provisions of the law, but to address its excessive expansion in situations of consensual relationships between adolescents. This should not be aimed at watering down the protection against actual sexual exploitation but at guaranteeing that the law is not used inappropriately to affect ordinary adolescent behaviour.

As has been explained in this paper, the present system of harsh criminalisation contravenes the principle of proportional punishment and does not factor in the developmental, psychological, and social reality of adolescence. Instead, a differentiated legal model is required, which maintains child protection and adolescent autonomy as two values that are not necessarily opposing values, but which require careful balancing.

B. Legislative Changes

i) Introduction of a “Close-in-Age” Exception

Among the many reforms that are needed immediately, one of them is the addition of a close-in-age or Romeo and Juliet clause to the POCSO Act. This would partial decriminalisation of sexual relations between close-in-age adolescents, when there is no force, exploitation, or trust abuse involved.

A model provision might read:

“No offence under Sections 3 or 4 shall be made out if the accused is not more than three years older than the child, and the act was consensual, non-

exploitative, and did not involve any relationship of trust, authority, or dependency.”

Such a clause would:

- a. Allow legal recognition of developmental realities;
- b. Prevent the criminal justice system from entangling young people in protracted legal battles;
- c. Preserve prosecutorial and judicial focus on cases of genuine abuse.

Close-in-age provisions are used in multiple jurisdictions, including Canada, Australia, and several U.S. states, and have been effective in balancing child protection with adolescent rights.²⁶

ii) Tiered Age of Consent

A tiered approach, with age of consent kept at 18, but with no criminalisation of consensual sexual activity between in-peers aged 16–18, may also be an option in India. This would reflect the practice in most EU countries and recognise the shift between being a child and being an adult.

This model could define:

- a. Full criminal liability for acts involving children below 14;
- b. Intermediate protections for those aged 14–16;
- c. Decriminalisation of consensual acts between persons aged 16–18 with partners not more than 3–4 years older.

Such an approach can be tailored with safeguards to prevent misuse and ensure that exploitative conduct is still prosecutable.

iii) Differentiated Offences and Sentencing

Amendments to POCSO could also introduce a graded framework of offences, distinguishing:

- a. Consensual non-exploitative adolescent acts (low culpability, rehabilitative response);
- b. Coercive acts without physical force (medium culpability);
- c. Acts involving force, penetration, or adult–minor power dynamics (high culpability).

This would restore the doctrine of proportional sentencing within the Act, allowing courts to impose punishments aligned with the nature and context of the offence.

C. Judicial Training and Sensitisation

The implementation of proportionate and rights-based reform depends significantly on judicial interpretation. Accordingly, it is imperative to:

²⁶ Criminal Code of Canada, R.S.C., 1985, s. 150.1; Elizabeth Scott *et.al.*, *Journal of Law and Human Behaviour*, 2009.

- i Train judges, prosecutors, and law enforcement personnel on adolescent psychology, sexual development, and evolving capacities;
- ii Develop judicial guidelines for evaluating consent, age difference, and non-exploitative relationships;
- iii Encourage child-friendly procedures without presuming victimhood in all under-18 sexual activity.

Judicial academies can collaborate with psychologists and child rights experts to create tailored curricula and continuous legal education modules on these issues.²⁷

D. Public Awareness and Educational Campaigns

Reform of the law must be accompanied by comprehensive social awareness strategies to:

- i Clarify the distinction between consensual adolescent sexuality and child sexual abuse;
- ii Encourage informed dialogue about sex, consent, and relationships in schools and communities;
- iii Reduce stigma associated with adolescent romantic and sexual exploration.

Sexuality education in schools should be enhanced and apposite to child rights and developmental science. In addition, the current messages in the public domain should no longer focus on the fear-based stories but rather reaffirm the value of the informed and respectful relationships during adolescence.

Parents, educators, health workers, and law enforcement officers have to be taught to see the difference between the sincere interest in the well-being of a child and the moralistic intrusion into the sphere of individual self-development. The media also has a very big role to play. The media coverage of POCSO cases with adolescents is usually sensationalist, inaccurate, and leads to moral panic. The media workers should be sensitized to cover the stories with sensitivity and accuracy without pre-judging or shaming the parties concerned.

E. Role of Civil Society and Advocacy Networks

Non-governmental organisations (NGOs), legal aid providers, and child rights groups must actively:

- i Document and disseminate data on misuse of POCSO in consensual cases;
- ii Provide legal counselling and psychosocial support to adolescents and families affected by such cases;
- iii Act as intermediaries in situations of familial conflict and social backlash.

Civil society could also enable participatory consultations among stakeholders-legislators, youth, parents and experts- in co- producing rights respecting and practically viable reform strategies.

²⁷ National Judicial Academy, Bhopal, *Manual on Adjudication under POCSO Act*, 2020.

Strategic litigation can also be used to directly attack the constitutionality of blanket criminalisation by POCSO in particular situations. On the basis of articles 14, 19, and 21, public interest petitions can urge judicial guidelines on the necessity of reform.

VIII. CONCLUSION

The paper has aimed at critically discussing the doctrine of proportional sentencing in light of the POCSO Act, 2012, specifically so in case of consensual adolescent sexual relationship. Although POCSO was created with a noble goal of saving children in the realm of sexual exploitation, its absolutist formulation, which equates any sexual contact with a minor to an abusive act, has resulted in the unintentional criminalisation of teenage intimacy.

The main thesis to be argued in this context is that POCSO with its inflexible age of consent restricts the principle of proportionality that serves as the basis of criminal law. By not taking into consideration the contextual factors like consent, age proximity, intent, and lack of exploitation, the law is unnecessarily providing extremely severe punishment to adolescents who are not predators or perpetrators in the real sense. Such legal confusion of abuse with intimacy is not only unfair but also harmful to the healthy development of adolescents, the peace of families, and the confidence of the population in the legal system.

The current practice as per POCSO requires an immediate and institutional reconsideration. The unequal penal consequences that it produces, especially when consensual relationship is involved, offend the constitutional provisions of articles 14 and 21 that require state action to be fair, equal, and non-arbitrary. As it stands, the law does not distinguish between guilty and innocent behaviour and thereby distorts the very concept of justice it is meant to support. The reform of POCSO is not the appeal to weaken its protective role it is the appeal to perfect it. The presented reforms such as the introduction of a close-in-age exemption, a layered age of consent system, and the creation of differentiated offences will allow achieving the balance between the protection of children and the rights of adolescents. They put back the discretion that courts happen to have, they make sure that the punishment fits the blameworthiness of the act, and they enhance the legitimacy of the law.

This calibrated approach will allow the legal system to:

- i Identify and prosecute genuine cases of abuse effectively;
- ii Avoid criminalising consensual, non-exploitative adolescent relationships;
- iii Support victims without pathologizing agency;
- iv Educate families and communities on adolescent development and consent.