

Juvenile in Conflict with Law or Child in Need of Care and Protection: Victimization of Male Children in Consensual Sexual Relationship

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Abstract

India i.e. Bharat has enacted Protection of Children from Sexual Offences Act, 2012 to protect the children from sexual offences committed against them. Although the Act contains stringent provisions to deter any kind sexual offence against children yet the improper application of law in the country defeats the entire purpose of the legislation and even criminalizes the romantic relationship among adolescent and in turn deprived them from their sexual autonomy. Though the legislation is gender neutral in its spirit yet the male children are being labelled as children in conflict with law and get punished arbitrarily against the spirit of the Act. This paper looks into the improper application of law and its effect on romantic love among adolescents and the role of judicial system with suggestive course correction.

INTRODUCTION

'The Protection of Children from Sexual Offences (POCSO) Act' came into force in 2012 with comprehensive provisions for addressing the problem of sexual offences against children. However, the differentiation between the exploitative and non-exploitative sexual relations is not made while implementing the legislation.

This has led to categorization of even those cases, where both the minors are adolescents and enter into sexual relation out of love and attraction towards each other, as offence. Such cases are generally non-exploitative and made out of the free will of both the minors and terming these cases as offence is contrary to the overarching aim of the legislation i.e. Protection of Children from Sexual Offence.

The ground level report, experiences and the data depict that many adolescents are active sexually and they have made consensual sexual relations even before becoming 18 years old. The National Family Health Survey (NFHS)-5 reports that 39% women in India get exposed to their first sexual encounter, when they are less than 18 years of age¹. According to a study conducted in

¹Enfold Proactive Health Trust, "Romantic Cases under the POCSO Act: An Analysis of Judgments of Special Courts in Assam, Maharashtra & West Bengal" 1-10 (2022) available at https://www.girlsnotbrides.org/documents/1951/Romantic-cases-under-the-POCSO-Act_wUNsbKC.pdf

Delhi, Mumbai and Lucknow, during 2013-2016, it was found that 18 to 54% female children had consensual sexual relationship and the allegation of rape is levelled by their parents against adolescent boys² whereas another study has mentioned that 23.4% registered POCSO cases from Assam, Maharashtra and West Bengal were of romantic relationship³. The study conducted by Centre for Child and the Law at National Law School of India University (CCL-NLSIU), mentions that out of total number of cases reported under POCSO Act in Andhra Pradesh, Assam, Delhi, Karnataka and Maharashtra, 20%-22% were of romantic relationships whereas HAQ Centre for Child Rights and FACSE-Mumbai revealed in their study that 83 out of 231 cases reported under POCSO Act from Delhi and Mumbai were that of romantic relationship⁴. Also, several courts across India have raised concerns on the issue of criminalization of consensual sexual relations among adolescents⁵. These cases are generally registered by the family members of the girl because of the caste-class difference, elopement of girl or the girl becoming pregnant⁶.

It is yet another fact that although there are cases wherein the girl child, her family members and the special courts, which are constituted for the purpose of speedy trial, observed that the case produced before them is actually the case of romantic relationship⁷ yet the penalisation of male children continued. In many cases, adolescent boys

(Accessed on 18.09.2024).

2Amita Pitre and Lakshmi Lingam, Age of Consent: Challenges and Contradictions of Sexual Violence Laws in India, 29(2), "Sexual and Reproductive Health Matters", pp 461-474 (2022) DOI: 10.1080/26410397.2021.1878656 (accessed on 11.09.2024).

3Akchayaa Rajkumar, "Romantic cases' make up nearly 20% of POCSO cases in three states: Report", The News Minute, December 12, 2022 available at <https://www.thenewsminute.com/news/romantic-cases-make-nearly-20-pocso-cases-three-states-report-170937> (accessed on 17.07.2024).

4Id 1

5Law Commission of India, "283rd report on Age of Consent under the Protection of Children from Sexual Offences Act, 2012". 22nd Law Commission Report No.283, 101-124, (September, 2023), available at https://lawcommissionofindia.nic.in/report_twentysecond/ (Accessed on 12.12.2024).

6Vinayak Chawla, "De-criminalising romantic adolescent relationships under the POCSO Act", Bar & Bench, May 10, 2024, available at <https://www.barandbench.com/columns/exposing-double-standards-of-law-towards-adolescents-de-criminalising-romantic-adolescent-relationships-under-pocso> (Accessed on 14.09.2024).

7Id 3

get bail or they get acquitted after spending a few days or months in prison but there are a few cases where the male children have to fight the cases for longer duration⁸. Hence, the adolescent boys are selectively punished under the garb of stipulated age of consent under POCSO Act.

The sexual relation with minors is considered as rape under POCSO Act even if it is consensual and in case both the partners are less than 18 years of age, the males are generally tried as victimiser. However, with a population of 253 million adolescents in India, the law makers should understand that a significant population of the country must be sexually active⁹. Therefore, it is essential that the romantic sexual relations among adolescents, who fall within the definition of child, must not be seen from the binary of victim and victimiser, as it equates non-exploitative and consensual sexual relations with that of exploitative relations. The present form of legislation gives ample scope to look into the romantic cases among adolescents from the developmental perspective that warrants psychological interventions rather than putting them through legal procedures. Hence, it is argued that the romantic cases, where both the adolescents are below 18 years of age, should be dealt innovatively while keeping it within the scope of the legislation because the POCSO Act is enacted to protect the children sexual offences and not punish them.

Age of consent under the POCSO Act

The word 'consent' has not been defined anywhere either in POCSO Act or the Juvenile Justice (JJ) (Care and Protection of Children) Act instead the lawmakers have used the word 'child'. According to Section 2 (d) of the POCSO Act¹⁰ and section 2 (12) of the JJ Act¹¹ a child is any person less than eighteen years of age. Hence, anyone, who is 18

8d 2

9Sandeep Chachra, Ghasiram Panda, Joseph Mathai, "Law Commission Report on age of consent missed opportunity to de-criminalise sex between minors", Down To Earth, October 26, 2023, available at <https://www.downtoearth.org.in/blog/health/law-commission-report-on-age-of-consent-missed-opportunity-to-de-criminalise-sex-between-minors-92494> (Accessed on 27.11.2024).

10 Protection of Children from Sexual Offences Act, 2022.

11Juvenile Justice (Care and Protection of Children) Act, 2015

years and above does not come under the definition of child. Any person, who is a child as per the abovementioned definitions, cannot give consent for any act, which is sexual in nature. Hence, the implied age for consent in India is 18 years and the sexual activity with a person less than 18 years comes under the category of sexual offence. Therefore, the consent of the minor is considered as no consent at all.

It is pertinent to mention here that from 1940 onwards, anyone below the age of 16 years was considered a child under section 375 of Indian Penal Code (IPC)¹² and the first gender-based definition of the child was introduced by the Children Act, 1960, according to which boys till the age of 16 years and girls till 18 years were statutorily protected. The uniformity to the definition of child was brought in India in conformity with the United Nations Convention on the Rights of Child and the word 'child' was defined as anyone less than 18 years of age under the Juvenile Justice Act, 2000¹³. Hence, anyone less than 18 years of age is identified as a child in the country irrespective of his or her gender. Subsequently, the POCSO Act came into force in 2012 to address the problem of sexual offences with children. This was the first gender neutral law that was passed in 2012 which states that making sexual relation with anyone, who is less than 18 years of age, is a sexual offence¹⁴. The legislation contains stringent penal provisions and even the non-reporting of offence is an offence as per section 21 of POCSO. The legislation covers six major forms of sexual offences with children viz. penetrative sexual assault; aggravated penetrative sexual assault; sexual assault; aggravated sexual assault; sexual harassment and; using the child for pornographic purposes.

Essentially, the POCSO Act, is stated to be gender neutral, that is supposed to provide protection to the children irrespective of their gender. The entire legislation is meant for protection of children from sexual allurements either through deceit or manipulation or force or compulsion. But the

12Id 2

13Ved Kumari, "The juvenile justice act 2015-critical understanding", 58 (1), Journal of the Indian Law Institute, 83-103 (2016), available at <https://www.jstor.org/stable/45163062> (accessed on 12.12.2024).

14 Id 2

legislation is silent on the cases where the two adolescents make their sexual relations and it seems that the law makers were oblivious to the sexual autonomy of two consenting adolescents, who might have fallen in love for each other and make sexual relations. It is important to note that the failure to make clear provisions for such category of children has given precedence to the traditional mentality over justice and as a result the victim and victimizer relationship is created even in those cases where such binary is not required as the relationship is not made out of deceit or manipulation or force or compulsion. Even while drafting some of the provisions of the legislation the traditional mentality is reflected that identify only male as the perpetrator and this mentality was passed over to the cases where minor male child is involved. The same can be observed in section 3 and section 5 of POCSO Act, where the penetrative sexual assault and the aggravated penetrative sexual assault are defined.

Section 3 of POCSO Act defines penetrative sexual assault, as

"A person is said to commit penetrative sexual assault if--

- he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
- he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
- he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or
- he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person."

The penetrative sexual assault gets converted into aggravated penetrative sexual assault, when it is committed by certain individuals like police, armed forces personnel, staff or management of a child care institution or under certain circumstances like gang penetrative sexual assault, penetrative sexual assault on a child less than 12 years of age, pregnant child or both as per section 5 of POCSO.



It is pertinent to note here that no gender-neutral terminology is used to define the perpetrators of sexual offences under section 3 and 5 of POCSO Act and the word 'he' is used to emphasis that only a male either penetrates or inserts objects or manipulates the child's body parts or apply his mouth. It is a prevalent notion in the Indian society that the male commits sexual offences against females and not vice-versa. Hence, the same popular notion has been applied in the matter of sexual relations among adolescents. It is to be noted here that no such value loaded term is used, to identify the perpetrator on the basis of gender, while defining rest of the offences under the POCSO Act.

This largely held notion and the usage of the word 'he' has its own effects in the matter of romantic cases of children in the country. Hence, the adolescent male is easily labelled as perpetrator of the crime even in those cases where both the male child and the female child have gotten into sexual relationship because of mutual love and emotion. The differentiation between romantic and non-romantic relations among adolescents is not made while implementing the legislation and as a result the sexual act between the two consenting adolescents is termed as offence.

The data on the cases registered under the POCSO Act shows continuous increase and out of which a substantial portion is that of romantic relationship. The reported incident of POCSO, in comparison to total crime against children, have been consistently increasing every year as recorded by the National Crime Record Bureau (NCRB) and the average growth rate for the last five years (i.e. 2018 to 2022) is 11.3% and a 60% increase has been observed in the sexual crimes against children in the last 5 years starting from 2018 onwards till 2022¹⁵. This is an alarming figure which shows that the sexual offence against children is increasing exorbitantly. It is pertinent to state here that the problem with the NCRB data is that it does not record romantic sexual relations between adolescents separately and the figure mentioned below also contains the cases of romantic sexual relation between the two consenting adolescents.

¹⁵National Crime Records Bureau, "Crime in India report 2017-2022", (Ministry of Home Affairs, Government of India), available at <https://ncrb.gov.in/crime-in-india-year-wise.html> (accessed on 30.01.2025)

S. No.	Year	Incident	Victim	Rate in %
1.	2022	63414	64469	14.3
2.	2021	53874	54359	12.1
3.	2020	47221	47659	10.6
4.	2019	47335	48043	10.6
5.	2018	39827	40810	8.9

Source: National Crime Record Bureau (NCRB)

Registered POCSO cases in India

As a consequence of non-differentiation, the love romantic cases among children result in persecution of the male child in furtherance of the notion that in a male dominated society the male members commit sexual offence against the females. According to several studies around 20-25% of the POCSO cases are of romantic relationship¹⁶ and categorizing them into the sexual offence not only increase the burden on the already overburdened judiciary but it compels the adolescents to go through the legal system where getting justice is cumbersome and at times painful. As per the National Crime Records Bureau report on crime in 2021 most of the victims under POCSO Act are girls between the age of 16 to 18 years and the boys are mostly charged as offenders in those cases¹⁷.

Hence, the application of law furthers the biasness in Indian society against male children and make them an easy victim of miscarriage of justice by declaring them victimizer even in the romantic cases, where the categorisation of children in terms of victim and victimiser is not required. Although both the male and the female children cannot give consent, because of being below 18 years of age, but the male child invariably becomes accused, and the female child a victim of crime¹⁸.

Though it is easy to identify the offender in case one of the partners is above the age of 18 years but in case where both the partners are children, the question regarding who will be an offender and who is the victim must have been decided cautiously because in such a case both are children and equally

¹⁶ Id 6

¹⁷ Id 5

¹⁸ Id 5

vulnerable. However, in routine practice, the blame is put on the male child and he is treated as the child in conflict with law.

The sexual offences cases, where both the partners are minors, are dealt according to the provision of JJ Act. In all such cases, the children are divided into two categories i.e. 'Child in Need of Care and Protection (CNCP)' and the 'Juvenile in Conflict with Law (JCL)' and they are produced before the two statutory bodies, i.e. Child Welfare Committee (CWC) and the Juvenile Justice Board (JJB), constituted under the Juvenile Justice (JJ) (Care and Protection of Children) Act. The former category children are produced before CWC and the latter category children are produced before JJB.

The absence of the specific provision to deal with the romantic cases of adolescents and improper implementation of POCSO legislation ignored the most vital developmental stage in the life of a human being i.e. adolescence. It is a time of exploration because of the rapid physiological, emotional and social changes and the adolescents will be curious to learn about new things. They are prone to get exposed to pornography, engage in sexual activities and may transmit sexually transmitted infection. During adolescence major development of sexuality starts and puberty is marked as a major landmark in the development of sexuality¹⁹. Today, adolescents constitute 18% of the total population of the world and 88% of them live in developing countries. India has the largest number of adolescents in the world i.e. 243million and 50% of which is living in urban areas²⁰.

In developing countries like India, the adolescents face multiple challenges that includes lack of information on appropriate sexual behaviours, sexual abuse, patriarchy, unplanned pregnancy and the other risks²¹. Additionally, the adolescents in India

face legal system if they engage in sexual activities.

It is interesting to note here that under section 15 and section 18 (3) of JJ Act, to try children as adults, if they are in 16-18 years of age group and accused of committing a crime. The decision regarding the same is taken after making preliminary assessment about the mental and physical capacity as well as circumstances and the understanding of the minor about the consequences of his acts. The law makers while making the amendment give precedence to the fact that the 16-18 years old children can have the mental and physical capacity to commit an offence and such children shall not be given the benefit of being a child rather justice should be supreme. But no thought about the adolescent sexuality as a stage of human development is given while dealing with the cases of consenting minors. This analogy was completely ignored that if the children in the age-group of 16-18 years can be tried as an adult based on their mental and physical capacity then why the same logic is not applied in the matter of romantic sexual relation between two consenting adolescents.

India is conservative society that limits the free expression and experience of sexuality before marriage because of which the adolescents are prone to various health risks associated with their sexual encounters. Also, the sexual health of adolescents is either overlooked or understood in a very limited way because of lack of awareness among general public and the health care professionals²². Since, it is a time period in the life of an individual to explore and understand the sexuality, it is of utmost importance that the right kind information shall be made available to them.

Perspective in Adolescents' love cases

The 22nd Law Commission in its report on POCSO has acknowledged the fact that the legislation was never meant to criminalize the consensual relationship between adolescents. The Commission stressed that the consensual sex is a complex issue because the consent of a minor is immaterial in the eyes of law. Various courts across the country have emphasized that the primary objective of the legislation is not to penalise the adolescents

22Id 21

19 Sujita Kumar Kar, Ananya Choudhury and Abhishek Pratap Singh, "Understanding Normal Development of Adolescent Sexuality: A Bumpy Ride", 8 (2) Journal of Human Reproductive Sciences, 70-74 (2015), available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC4477452/> (Accessed from 05.01.2025).

20 Shajahan Ismail, Ashika Shajahan, T. S. Sathyanarayana Rao and Kevan Wylie, "Adolescent Sex Education in India: Current Perspective", 57(4), Indian Journal of Psychiatry, 333-337 (2015).

21 Anupama Hegde, Suhas Chandran and Jigyansa Ipsita Pattnaik, "Understanding Adolescent Sexuality: A Developmental Perspective", 4(4), Journal of Psychosexual Health (2022), available at <https://journals.sagepub.com/doi/full/10.1177/26318318221107598> (accessed on 05.01.2025)



in romantic relationships yet penalization of male children in romantic relationship is continued²³. It is essential that the sexual relation between two consenting adolescents must be seen in a holistic manner.

The sexual activity among adolescent must not be seen only from the legal perspective as Graham (2018)²⁴ states that:

- Law does not affect the sexual behaviour of minors, who are into romantic relationship and it is completely unwise if the lawmakers think that a piece of legislation can regulate their sexual behaviour.
- Girls as young as 14 years are physically and cognitively mature enough to analyse the risks involved in sexual acts and it is essential that the right kind of information is provided to them.
- It is the inexperience of the minors rather than the biological factor that increases the vulnerability of minors and stringent regulatory factors affect the learning capacity of the child about the risk behaviours.
- The minors shall be given sex education so that they will take wiser decision when it comes to making sexual relationships.
- Also, relaxing the penal provisions will encourage the minors to seek sexual health services without having fear to get into legal complexities.

The freely given consent by the adolescents for sexual relationship must not be deemed illegal as it tantamount to questioning their ability to take decision for their own good. Section 3 (iii) of JJ Act mandates that the child's view must be taken into consideration and due regard to the age and maturity of the child must be given. The children in the age of adolescence are mature enough and their views should be given due consideration. Also, Section 3 (i) of the JJ Act is about the principle of presumption of innocence, according to which the child shall be considered innocent and his act must be considered as free from any mala-fide intention or criminal intent. Article 14 of the constitution of

India guarantees equality in the matter of criminal liability within the country for all the citizens and this provision is also applicable in the context of male children. This provision does not permit class legislation and treating the children differently on the basis of gender is violation of it. Also, another constitutional provision i.e. Article 15(3) of the constitution has special provisions for the children and not against them²⁵. This shows that the makers of the constitution were knowing well enough that the children must be protected.

The POCSO Act provides for the protection of children from sexual abuse and exploitation and safeguarding their interest. The well-being of the children is of paramount importance and failure to understand the sexual behaviour of adolescents during this age, goes against the best interest of children. The Law Commission of India has recently recommended to make suitable changes in POCSO Act as well as the Indian Penal Code (IPC) for dealing with the romantic cases of two minors. The Commission has recommended to use the word 'tacit approval' in the matters of consensual relations between adolescents and the judicial officer may give lesser sentence if the girl child has given the same. Further, it is recommended that the difference of age between the accused and the child should be less than 3 years, no previous criminal record of accused, accused bear good conduct after the incident, he has not exerted undue influence on child or the accused is not in a dominant position, the social or cultural background of the child remains unaffected and the child is not used for pornographic purpose by the accused or any other person on the instance of male partner in India²⁶.

Adolescents' sexuality is a global phenomenon and the governments across the globe are conscious about it and have made suitable provisions to deal with the issues in their respective legislations that are meant to provide protection to the children from sexual offences. The following top ten countries on Human Development Index (HDI)²⁷ have made

²⁵ Id 5

²⁶ Id 5

²⁷ United Nations Development Programme (UNDP): Human Development Reports, "Human Development Insights: Access and Explore Human Development Data for 193 Countries and Territories Worldwide" (n.d.), available at <https://hdr.undp.org/data-center/country-insights#/ranks> (accessed on 07.10.2024).

²³ Id 5

²⁴ Philip Graham, "Against the Stream: lowering the age of sexual consent", 42(4), BJPsych Bulletin, 162-164 (2018), available at <https://doi.org/10.1192/bjb.2017.26> (accessed on 25.07.2024).

S.No.	Country	Age of consent (in years)	Close-in age or age proximity
1.	Switzerland ¹	16	Yes
2.	Norway ²	16	Yes
3.	Iceland ³	15	Yes
4.	Hongkong ⁴	16	Yes
5.	Denmark ⁵	15	Yes
6.	Sweden ⁶	15	Yes
7.	Germany ⁷	14	Yes
8.	Ireland ⁸	17	Yes
9.	Singapore ⁹	16	No
10.	Australia ¹⁰	16 or 17	Yes
11.	Netherlands ¹¹	16	Yes
12.	United States of America ¹²	16-18	Yes
13.	Canada ¹³	16	Yes

1"Swiss Criminal Code" (2017), available at <https://www.warnathgroup.com/wp-content/uploads/2017/11/Switzerland-Penal-Code-2017.pdf> (accessed on 05.09.2024)

2"General Civil Penal Code" (n.d.), available at https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/NOR_penal_code.pdf (accessed on 15.07.2024).

3"The General Penal Code 1940 No. 19, available at <https://www.government.is/lisalib/getfile.aspx?itemid=dd8240cc-c8d5-11e9-9449-005056bc530c> (accessed on 23.07.2024).

4"Crimes ordinance, 1971", available at https://www.elegislation.gov.hk/hk/cap200?xid=ID_1438402821226_001 (accessed on 14.04.2024).

5 "Danish Criminal Code 2009", available at <https://antislaverylaw.ac.uk/wp-content/uploads/2019/08/Denmark-Criminal-Code.pdf> (accessed on 18.08.2024).

6 "The Swedish Penal Code 1986", available at <https://ojp.gov/pdffiles1/Digitization/102310NCJRS.pdf> (accessed on 21.11.2024)

7Franconian International School, "Legalities Around Parenting in Germany", October 6, 2022, available at <https://the-fis.de/legalities-around-parenting-in-germany/> (accessed on 25.12.2024).

8 "Criminal Law (Sexual Offences) Act 2017, available at <https://www.irishstatutebook.ie/eli/2017/act/2/enacted/en/print.html> (accessed on 25.01.2025)

9"Singapore Women's Charter" (n.d.), available at <https://www.wcwonline.org/pdf/lawcompilation/Singapore-women's%20charter.pdf> (accessed on 28.05.2024).

10Save The Children, "UNCRC Article 1: FAQs on the definition of a child" (n.d), available at <https://www.savethechildren.org.au/about-us/save-the-childrens-charity-work/uncrc-article-1-definition-of-a-child> (accessed on 28.01.2025).

11Protection of Minors, "Children and Youth in Netherlands (n.d.)", available at <https://www.protection-of-minors.eu/en/country/NL> (accessed on 10.02.2025).

12Abby Wilson, "The Ages of Consent Around The World", The Week, March 21, 2025, available at <https://theweek.com/92121/ages-of-consent-around-the-world> (Accessed on 07.07.2024).

13 Age of Consent to Sexual Activity (2023), available at <https://www.justice.gc.ca/eng/rp-pr/other-autre/clp/faq.html> (accessed on 06.05.2024)

provisions about the age of consent and the close-in age or age proximity to deal with the cases of adolescent sexuality:

From the above table, it is cleared that except Singapore, all the other countries have age proximity clause to deal even those cases where both the children are below the age of consent or one of them is elder to the other and does not fall within the definition of child. In the matter of age proximity or close in age clause, the age gap between the

partners is 3 to 5 years and beyond this age, the relaxation under this clause cannot be claimed. All these countries have ratified the UN convention on children and defined child as anyone less than 18 years of age. The law makers in these countries have given due consideration to the changing anatomy and cognitive development of 16 to 18 years age group of children. Hence, the freedom is given to the children of this age group by these countries to take their own decision in this matter without compromising on the protection of children from

sexual offences.

Further, Principle 16 of the 8th March “Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty”, emphasised on application of prescribed minimum age of consent for sex in a non-discriminatory manner including without making any distinction on the basis of gender of the participants. It recognises the fact that even the individuals below the legal age of consent can engage into sexual activities and such consensual relation must be given due regard while taking decision in such matter. Hence, it is essential that the criminal liability shall not be fixed only on the basis of gender and the minors involved in romantic relationship shall not be punished²⁸. The report lays emphasis on the fact that sexual offence with the children may not be decriminalised but the cases of consenting minors shall be dealt in correct perspective²⁹.

CONCLUSION

The right to privacy as well as getting involved in sexual activities with consent are ingrained in right to personal development³⁰. The mutually agreed sexual exploration among the minor of same or similar age group, without coercion and equal position in terms of controlling the behaviour of others is an appropriate sexual exploration³¹. If the

objective of the legislative provisions is to prevent the victimisation of minors, then changes in legal framework is required to protect the unwarranted sexual advances simultaneously recognising the sexual rights of the young generation³². O’Sullivan and Hearn (2008) found that the minors engage in sexual activities without bothering about the detrimental consequences of it³³. Also, numerous studies have found that the children get sexually active before attaining the age of maturity i.e. before 18 years³⁴. Further, the question of sexual relationships among minors must be seen from the prism of adolescent sexuality as a stage of human development³⁵.

The basic premise of the POCSO legislation is the protection of children from sexual exploitation. The child in India is defined in consonance with the definition of child as given under Article 1 of UNCRC and the rest of the provisions for the children are also made in consonance with the provisions as given under UNCRC. Article 34 of UNCRC requires that the child is getting protection from all forms of offences including sexual offences. The Article states that the countries signatory to the convention undertake all measures to prevent inducement or coercion or exploitation of children in any form. The POCSO Act made in light of this provision, which clearly lay emphasis that the children must be protected from sexual exploitation and not for punishing them. In case of love relations, the elements of exploitation and abuse as defined in

28 International Commission of Jurists, “The 8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty”, 2023, available at https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://share-netinternational.org/wp-content/uploads/2023/03/8-MARCH-Principles-FINAL-printer-version-1-MARCH-2023.pdf&ved=2ahUKEwjoczno0oJ6FAxVm7zgGHUFnC-CMQFnoECBMQAw&usg=AOvVaw0b_RFxxaywa-36ODhVKAHBq (Accessed on 31.05.2024).

29 Reuters Fact Check, “UN is not calling for decriminalization of sex with children”, May 9, 2023, available at <https://www.reuters.com/article/idUSL1N3762CR/> (accessed on 31.05.2024).

30 Helmut Graupner and Vern L. Bullough, (eds.), *Adolescence, Sexuality, and the Criminal Law: Multidisciplinary Perspectives*, 1–5 (Routledge, New York, 2012)

31 Howard E. Barbaree and William L. (eds.), *The Juvenile Sex Offender*, 1–18 (Guilford Publications, New York, 2006).

32 Peter Tatchell, Consent at 16: Protection or Persecution, *Centre for Crime and Justice Studies*, (n.d.), available at <https://www.crimeandjustice.org.uk/publications/cjm/article/consent-16-protection-or-persecution> (accessed on 19.12.2024).

33 Lucia F. O’Sullivan and Kimberly D. Hearn, “Predicting First Intercourse Among Urban Early Adolescent Girls: The Role of Emotions”, 22(1), *Cognition and Emotion*, 68-179 (2007), available at <https://doi.org/10.1080/02699930701298465> (accessed on 17.01.2025).

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the United Nations Convention as well as POCSO Act are missing. Therefore, the relationship between two consenting adolescents is not that of exploitation and dealing them as a matter of exploitation and invoking penal provision is not only against the spirit of law but also against the commitments that India has given on international platform.

The absence of any specific provision in the legislation for dealing with the cases of romantic cases among adolescents give ample scope and opportunity to make best use of the legislative provision in the interest of children rather than putting them through unwarranted hardships. They should be provided appropriate education instead of categorising them either a victim or a victimiser. Let the male children do not become victim of miscarriage of justice because of improper implementation of the provisions of legislation.

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