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## POCSO Act and Adolescent Relationships

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*The goal of protecting children from sexual exploitation was the driving force behind the introduction of the Protection of Children from Sexual Offences (POCSO) Act in India in 2012. Nevertheless, it has been abused recently, particularly in situations where adolescent lovers are involved voluntarily, leading to inadvertent damage. This article highlights the present problems with the POCSO Act's implementation while examining the Act's history and original intent. The study advocates for changes that are modelled after those in other countries, where age-of-consent regulations are more lenient and consider the age difference between the parties. It also talks about the proposal from the 22nd Law Commission and makes the case for the necessity for more detailed and precise rules to deal with these problems. Finding a balance between adolescent autonomy and child safety is the aim in order to guarantee that the POCSO Act achieves its original intent without endangering teens.*

**Keywords:** *poceo, adolescent relationship, sexual exploitation, legal reforms.*

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### INTRODUCTION

The Protection of Children from Sexual Offences (POCSO) Act was enacted by the Parliament of India in 2012 to address the issue of sexual exploitation of children and adolescents. It aimed to put in place a law that specifically protected children from 'offences of sexual assault, sexual

harassment and pornography and provide for the establishment of Special Courts for the trial of such offences and for matters connected therewith or incidental thereto.<sup>1</sup>

The Act regards the well-being of the child as paramount at every stage of the trial.<sup>2</sup> However, today, in many cases, the Act ceases to play that role and instead acts as a *bête noire* for adolescents who partake in consensual sexual activities. Teenagers are often forced to go through the rigorous process of prosecution simply for being sexually involved with their romantic partners. In these cases, the Act becomes a tool to punish romantic relationships rather than protecting vulnerable age groups from exploitation.

The courts have been forced to deal with cases where both partners are below the age of 18 and were consensually involved in sexual activity. The Madras High Court too has taken cognisance of this issue. In a judgment<sup>3</sup>, concerning a minor girl who had eloped with her partner, it held that such cases are an abuse of law, and ordered the police not to register cases under the POCSO Act where consensual cases of teenage love are involved. Unfortunately, this is not an isolated incident. Various High Courts have expressed their concerns about this unsettling development. It is, therefore, important to look into the purpose which the Act intends to fulfill and how it can be reformed.

## WHAT IS POCSO: A BRIEF HISTORY

For most of its independent history, India lacked a comprehensive law dedicated to protecting children from sexual protection. By the early 2000s, it was becoming increasingly clear that there was a need for special legislation that separately addresses this issue. After a child sex abuse ring was exposed in Goa in the 1990s, the state government passed a law promoting children's rights in 2003. Another significant development was the Children's Code Bill 2000, proposed by

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<sup>1</sup> The Protection of Children from Sexual Offences 2012

<sup>2</sup> *Ibid*

<sup>3</sup> Arun Janardhanan, 'Madras HC Moves to Quash Cases Against Minors in Consensual Relationships' *The Indian Express* (Chennai, 11 July 2023) <<https://indianexpress.com/article/india/madras-hc-moves-to-quash-cases-against-minors-in-consensual-relationships-8827406/#:~:text=The%20Madras%20High%20Court%20has,of%20the%20processes%20of%20law>> accessed 12 October 2023

the Special Expert Committee under Justice VR Krishna Iyer as a draft code for children's rights in India.<sup>4</sup> The foundation for specific legislation against child sexual abuse was laid by these two projects.

A draft bill to handle various crimes against children was created by the Department of Women and Child Development in 2005. The Ministry of Women and Child Development examined several types of child abuse in its 2007 study, *The Study of Child Abuse*, which included thirteen states and had a sample size of 12,447 kids, 2,324 teenagers, and 2,449 stakeholders, it further stated that 50.76% of kids who were polled said they had experienced sexual abuse in some way. Contrary to popular belief at the time, a higher percentage of boys than girls reported having experienced sexual abuse overall. The Protection of Children from Sexual Offenses Bill, 2010, which was created by the Ministry of Women and Child Development in September 2010, had numerous rounds of amendments and finally became the POCSO Act on Children's Day i.e. 14 November 2012.<sup>5</sup>

The Act provides a definite legal framework that seeks to ensure the protection of children (those below the age of 18) from sexual exploitation. This includes a wide range of offenses such as sexual assault, sexual harassment and pornography involving children. The Act prohibits every sort of sexual activity with those below the age of eighteen. The law thus acts as a strong and comprehensive tool for protecting children against sexual exploitation. It is an effective instrument for safeguarding children, and through its wide reach and stringent punishment measures, it ensures accountability for such crimes.<sup>6</sup>

## **POCSO: GAPS AND PROBLEMS**

The purpose of the POCSO Act was always the prevention of sexual exploitation of children in any shape or form. But it appears that the POCSO Act has become a dangerous tool being used

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<sup>4</sup> Esha Roy, '10 Years of POCSO: An Analysis of India's Landmark Child Abuse Law' *The Indian Express* (New Delhi, 12 November 2022) <<https://indianexpress.com/article/explained/explained-law/10-years-of-pocso-an-analysis-of-indias-landmark-child-abuse-law-8276030/>> accessed 12 October 2023

<sup>5</sup> *Ibid*

<sup>6</sup> Arnab Sarkar, 'POCSO Act with Respect to Tribal Marriage' (2023) 2(2) JLRJS <<https://jlrjs.com/wp-content/uploads/2023/03/23.-Arnab-Sarkar.pdf>> accessed 11 October 2023

for all the wrong reasons, often even acting to the detriment of these very children the Act intended to prevent. In this context, the Madras High Court, in *Vijayalakshmi v State*<sup>7</sup>, had said that the gravity of the offenses under the POCSO Act and the goal it aims to accomplish cannot be questioned. But it is also necessary for this Court to draw the fine line that separates the kinds of actions that should not be allowed to fall under the Act's purview. This is because the Act's sentences are so severe—and rightfully so—that acting hastily or carelessly could cause irreversible harm to the livelihood and reputation of young people whose actions would have only been harmless.

In another case<sup>8</sup>, the Delhi High Court observed that the purpose of POCSO was to protect minors from sexual exploitation, not to criminalize love relationships between consenting young adults.

Taking a similar approach, the Delhi High Court in *Dharmander Singh v State*<sup>9</sup> had proposed to increase the chances of bail in cases in close age exemptions to ensure that cases of consensual relationships do not become traumatising for the stakeholders involved. The Act tacitly presumes that anyone below the age of 18 is simply not in the position to get involved in any consensual sexual activity. This presumption does not reflect the social reality. Various studies have indicated that teenage sexual activities and romance are quite commonplace in India. The data from National Family Health Survey 5 (NFHS-5) shows that around 39% of women who are between the age of 25-49 had their first sexual interaction before turning eighteen.<sup>10</sup>

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<sup>7</sup> *Vijayalakshmi v State* (2021) SCC OnLine Mad 317

<sup>8</sup> Sofi Ahsan, 'POCSO Act Meant to Protect Minors from Sexual Abuse, Not Criminalize Consensual Romantic Relationships of Young Adults: Delhi High Court' *LiveLaw* (13 November 2022) <<http://www.livelaw.in/news-updates/pocso-act-not-to-criminalize-consensual-romantic-relationships-between-young-adults-delhi-hc-213995>> accessed 12 October 2023

<sup>9</sup> *Dharmander Singh v State* (2020) SCC OnLine Del 1267

<sup>10</sup> Neha Singhal and Ayushi Sharma, 'POCSO Act Must Stop Turning Consensual Relationships between Adolescents into a Crime' *Moneycontrol* (26 July 2023) <<https://www.moneycontrol.com/news/opinion/pocso-act-must-stop-turning-consensual-relationships-between-adolescents-into-a-crime-11032231.html>> accessed 12 October 2023

A study conducted in 2020 concluded that the age of first sexual activity among male adolescents is sixteen.<sup>11</sup> These reports imply that sexual activities among teenagers in India are not rare. Criminalizing sexual activity amongst teenagers, instead of focusing on disseminating sexual education and promoting safe and healthy sexual activity, has a negative impact on teenagers' health- both mental and physical. Furthermore, according to data from the National Crime Records Bureau (NCRB), POCSO arrests have been steadily rising, with boys being the most affected. A staggering 99.6% of the 2,353 adolescents who were detained in 2021 were male. Similar to 2020 and 2019, 99.8% and 99.5% of the adolescents who were apprehended were male, respectively. This shows that the strict POCSO requirements have a disproportionately negative impact on young boys.<sup>12</sup>

These cases frequently include romantic ties, and the defendant is ultimately acquitted. More than 24% of POCSO cases involve romantic ties, according to a study by Enfold conducted in Assam, Bengal, and Maharashtra. In 87.9% of these cases, the girl 'victim' admitted to having a love relationship with the accused. Unsurprisingly, the bulk of the cases were brought by parents or other family members, and 93.8% of them ended in acquittals. According to a 2018 report by the Centre for the Child and the Law at the National Law School of India University, romantic situations are involved in over 20% of the cases in Andhra Pradesh, Delhi, Maharashtra, and Karnataka.<sup>13</sup> This demonstrates how the law that is supposed to protect children imprisons boys without cause, robs them of their freedom, infantilises girls, and strips them of their rights to autonomy, choice, physical integrity, and privacy.

Another issue related to the Act is mandatory reporting of cases. Section 21 of the POCSO Act<sup>14</sup> states that if an individual fails to report a case under the POCSO shall be punished with either 6 months of imprisonment or with a fine or both. This section mandates the reporting of cases

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<sup>11</sup> Santosh Kumar Sharma and Deepanjali Vishwakarma, 'Transitions in Adolescent Boys and Young Men's High-risk Sexual Behavior in India' (2020) 20 BMC Public Health <<https://bmcpublihealth.biomedcentral.com/articles/10.1186/s12889-020-09191-6>> accessed 12 October 2023

<sup>12</sup> Singhal (n 10)

<sup>13</sup> Shyma Rauf, 'Enfold Study Reveals Impact of POCSO Act on Adolescent Romantic Relationships' *The Indian Express* (Bengaluru, 14 January 2023) <<https://indianexpress.com/article/cities/bangalore/enfold-study-reveals-impact-of-pocso-act-on-adolescent-romantic-relationships-8381956/>> accessed 12 October 2023

<sup>14</sup> The Protection of Children from Sexual Offences, 2012, s 2

and imposes an obligation on medical professionals who come across any issues that may indicate towards sexual involvement of the minor to report the same. This provision in particular affects girls more, impeding safe access to healthcare in matters such as pregnancies, abortions, or sexually transmitted diseases. Fear of getting involved in legal proceedings may deter them from seeking help, even if they decide to do many times healthcare professionals themselves could be reluctant to treat them out of the same fear of getting involved in criminal proceedings.

The Act further seems to be in contradiction with the Government schemes, such as Rashtriya Kishor Swasthya Karyakram (RKSK), that intend to address the issues about the sexual and reproductive health of adolescent girls. On one hand, POCSO demands mandatory reporting of sexual interaction between minors, while on the other, the RKSK focuses on unrestricted counselling and support to adolescents for the prevention of pregnancies and safe-sex approaches. This shows a lack of clarity in the government's approach towards sexual activity amongst adolescents. Schemes such as RKSK imply a cognisance on the part of the government about the existence of sexual activity amongst adolescents. These two contradictory approaches create an air of confusion regarding how the government intends to deal with the matter.

Moreover, the infernally long trials in India can drag on for years. In such a situation, charging youths under the stringent provisions of POCSO leads them into frightfully long and tedious legal battles that gravely impact their mental health. Not only that, as cited above, the Act, it appears, is being used more by disgruntled parents to prevent their children from being in consensual romantic relationships rather than protecting children from sexual exploitation. Furthermore, Indian courts are already deeply troubled with overflowing. More cases are being filed than the judicial system can handle. Though this altogether is a different issue, cases filed under POCSO in cases of consensual romantic relationships can be a waste of the courts' time.

## **SPACE FOR REFORMS**

A good way to start would be to look at the laws of other countries in this respect. The age of consent in India compared to other countries remains high. Most countries' age of consent is

between 14 and 16 years old, including Germany (14), Italy (14), England (16), Bangladesh (16), and Sri Lanka (16). Though it might be difficult to reduce the age of consent entirely, the law be liberalised so that those involved in consensual romantic relationships are not negatively affected. In the countries stated above, the example of Germany stands out, where the law seeks to balance the reality of consensual relationships with the problem of sexual exploitation.

In Germany, the age of consent is 14 as long as one is not older than 21 and does not take advantage of the incapacity of a 14 to 15-year-old to make their own sexual decisions. In this scenario, a conviction of an older person needs a complaint from the younger person; however, being older than 21 and having sex with a minor does not automatically make one guilty. In all other cases, the age of consent is 16, however, there exist clauses safeguarding children from abuse until they are 18 and making it unlawful to have intercourse with someone under the age of 18 by taking advantage of an exploitative circumstance.<sup>15</sup> The Madras High Court, too, has given a similar opinion and has suggested taking into consideration the age difference between the two parties involved.<sup>16</sup> Implementing this suggestion would be a good first step. The 22<sup>nd</sup> Law Commission also took cognizance of the problem in its recent report. Appreciating the calls made by several High Courts, the Commission has recommended guided judicial discretion regarding sentencing in these cases so as to ensure that the law remains balanced and in the best interest of the child, however, it has rejected the idea of reducing the age of consent.<sup>17</sup> Although the acknowledgment of the issue by the commission is noteworthy and welcoming, the proposal is laced with ambiguity and it is desirable that a clear-cut and comprehensive approach be worked out. In the context of Section 21 of the Act, it can be said that the provision mandating reporting of cases is not necessarily troublesome on its own, but perhaps a few safeguards can be provided that ensure that medical professionals, or any other person, reporting such cases is not harried by the law.

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<sup>15</sup> Strafgesetzbuch German Penal Code, s 182

<sup>16</sup> Meera Emmanuel, 'Redefine Child, Exclude Consensual Sex after Age of 16 from POCSO, Madras HC' *Bar & Bench* (27 April 2019) <<https://www.barandbench.com/news/madras-high-court-consensual-sex-16-years-pocso>> accessed 13 October 2023

<sup>17</sup> Law Commission, *Age of Consent under the Protection of Children from Sexual Offences Act, 2012* (Law Com No 22, 2023)

## CONCLUSION

In conclusion, the POCSO Act, initially designed to protect children from sexual exploitation, now inadvertently criminalizes consensual teenage romantic relationships. Various high courts and the Chief Justice have recognized the pressing need for reform. Learning from countries like Germany, where the age of consent laws are more flexible, can guide necessary changes. Reforms should consider factors like the age gap between individuals involved, ensuring that consensual teenage relationships are not unfairly penalized. To strike a balance between child protection and adolescent autonomy, the POCSO Act should be reformed to better serve its original purpose while preventing harm to teenagers.