

Critical Analysis of PocsO: In Light of The Rights of The Adolescents

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ABSTRACT

The Indian Ministry of Child and Women Development enacted a new legislation in the year 2012 the light of the growing cases of Child Sexual abuse. The Act aimed at bringing in changes and amendments in the existing laws and thus expanding the horizon of the Laws relating to sexual assault in India whereas to include within its ambit sexual assault against children as well. In furtherance to its objective the act also brought in several child friendly mechanism of trial as a reformative measure. However, there were also certain loopholes those were present in the Act. With this paper the researchers aims to throw light on such loopholes majorly in relation to the issues relating to the age of consent in India with respect to its implications of this law on adolescents and their sexuality. One of the most troubling developments is the resulting barriers to adolescents' access to reproductive and sexual health care. This paper explores how the law (POCSO Act) devised to address harm and extend protection to children from the heinous act of sexual abuse have ended up to become a double edged sword for the children by way of making a comparative study of various jurisdictions.

Keywords: Adolescents, Children, Consensual, Sexual Activity, Psychology

INTRODUCTION

Historically and statistically, sexual abuse is a barbarous crime against any human however, it becomes even more gruesome, when it is against children which is the most refined and naive class of the human race. More than half of such cases do not get heard or even if they are, they get buried or overlooked due lack of knowledge and the ability to comprehend the nature of such inhumane acts committed against the young souls against their consent.

We've seen various Acts being modified and amended to cover these barbaric acts as can be seen in the provisions of the Indian Penal Code, 1860 which has come a long way. But these provisions were never free from the lacunas. Therefore, this necessitated for a separate and standalone statute to deal with such wrongs against the children. Apart from this India being a signatory to United Nations Conventions on the Right of Children, i.e., UNCRC, made it even more necessary for the enactment of such an act.¹ These circumstances therefore, lead to the enactment of *The Protection of Children from Sexual Offences, 2012* which is commonly known as the *POCSO Act, 2012*, enacted by the *Ministry of Women and Child Development*. POCSO is an independent Act enacted in furtherance of Article 15 of the Constitution of India and distinguishes between sexual offences against adults and children. This act came with the provisions to impede the subject of sexual assault, harassment, pornography, etc., and

¹ Evolution of POCSO Act in India: Challenges Ahead; Policy Perspective Foundation

further designating Special Courts to deal with the same by laying down amiable and a child-friendly procedures through all stages of the proceeding towards the victim.

The said act is a gender-neutral law classifies all persons under 18 years of age as "children" and raises the age of consent for consensual sexual intercourse from 16 years to 18 years. The objective of this Special Law during the time of establishment was to impede and criminalize the cases of sexual harassment and assault that lie under the category of Non-Consensual sexual contact, but, in the fold of this act, it inclusively criminalizes the act that is inherently not wrongful i.e., the de-facto consensual sexual intercourse within minors, thus holding children's consent irrelevant and creating a legal fiction that any sexual contact with and between a child is non-consensual and thus criminalizing the same which if practically thought about criminalizes the sexual contact between a couple who had consensually come into sexual contact before the age of 18 years.

This research brings light raises the questions and in detail talks about how the Landmark and Special Law that was established for the "*Best Interest of Children*" and to impede the under-reported issue in the whole of the country, due to the lack of implementation has acted as a double-edged sword for the same and made the class of "children" more vulnerable.

Literature Review:

1. Implication of the POCSO Act in India on Adolescent Sexuality: A Policy Brief, by Swagata Raha, Shruthi Ramakrishnan²

The article focuses on the legislative gaps and the lacunas those exist within the Protection of Children from Sexual offences Act (POCSO Act), 2012. The article showcases how the POCSO Act, 2012 has deviated from the objective with which it was enacted initially. It has been emphasized by the authors in the article as to how in the recent years the objective behind the enactment of the POCSO Act is questioned by various courts. The POCSO Act was introduced with the intention of providing with a structural framework and a gender neutral act to protect adolescents from instances of sexual harassments. However, currently this has become a matter of question as more than dealing with the actual cases of sexual harassments the Act seems to be regulating the adolescent sexuality. The Article therefore, points out how the act which was enacted for the protecting the adolescents is acting as a double edged sword for the adolescents engaging in consensual sexual intercourse and states the necessity of bringing in legal reforms in the existing legislations.

2. Romantic Love, Commitment and Marriage in Emerging Adulthood in an Indian Context: Views of Emerging Adults and Middle Adults, by Jigisha Gala, Shagufa Kapadia³

The article focuses how, as an outcome of the global influence on the youth of India, emerging adulthood and its changes have become an important aspect of the developmental stage in the adolescents. The article further illustrates on how this global affluence resulted to the discontinuity in the traditional way people approached and deal with issues of love marriage and commitment among adolescents in modern times by referring to them as an essential component of development in this stage of transition. The article by way of its in-depth analysis and by an open-ended questionnaire conducted in order to uncover social attitudes towards the issues of romantic love, commitment, and marriage by

² <https://enfoldindia.org/wp-content/uploads/2022/12/POSCO-Act-Policy-Brief.pdf>

³ Gala, Jigisha & Kapadia, Shagufa. (2014). Romantic Love, Commitment and Marriage in Emerging Adulthood in an Indian Context: Views of Emerging Adults and Middle Adults. Psychology & Developing Societies

making a comparative study in the attitude prevalent since the ancient times and in today's time. The article concludes on its findings on how significant the concept of commitment in conceptualizing those relationships is.

Moreover, the article gives significant experiences into the effect of globalization and urbanization on the goals of young adults in India. It enlightens how openness to assorted societies, ways of life, and relationship models have affected the options and assumptions of Indians. This article delves into the fact that while customary qualities keep on holding importance, there is a developing receptiveness to alternative ways to commitment, like cohabitation and inter-caste or inter-religious relationships. The creators' capable utilization of qualitative research methods is estimable. By directing in-depth interviews and dissecting rich, nuanced information, they catch the authentic voices and encounters of their members. This approach improves the validity of their discoveries and makes the article an important asset for researchers and scientists keen on the investigation of adulthood, love, and responsibility in the Indian setting.

3. The Double-Edged Sword of Consent Law in India, by: Neha Susan Varghese⁴

This article presents a far-reaching examination of India's consent laws, including both its positive and negative viewpoints. The author meticulously stresses the principal significance of consent, especially regarding rape and harassment and advocates for a legal framework that focuses on the security of people, particularly women, and features the need for consent to be an unequivocal and informed decision.

The article also acknowledges the ongoing legal reforms. It talks about ongoing changes and drives pointed toward reinforcing legitimate assurances for people, especially survivors of rape. This acknowledgement of advancing legal landscapes highlights the article's positive commitment to the discourse on consent in India.

The article has some shortcomings despite its strengths. Consent issues are one of them as they are frequently entwined with cultural, social, and monetary factors. The article likewise inclines dominantly towards examining women as survivors, just momentarily recognizing that men can likewise be casualties of rape. The discussion would have been more balanced if the challenges faced by male survivors and the legal framework surrounding their consent had been addressed more inclusively. As far as style, the article at times dives into extended legal jargon that might present difficulties for non-expert readers. Working on simplifying complex legal language and giving clear clarifications would improve the accessibility of the content to a more extensive crowd.

Lastly, although the article discusses legal aspects, it could have ventured deeper into ethical considerations. This incorporates the job of power dynamics, coercion, and the significance of affirmative consent. The discussion would have gained more depth if these ethical dimensions had been thoroughly investigated. The article therefore, could be referred as an important commitment to the discussion on this critical issue as it also offers a complete legal analysis with a praiseworthy gender-sensitive methodology and features recent legal reforms.

⁴ <https://www.ijlrs.com/papers/vol-6-issue-3/4.pdf>

Right to Sexual Autonomy of Children- Implications of the UNCRC upon the Indian Law on the Age of Consent, by: Lina Acca Mathew⁵

This article examines the effect of children's sexual autonomy under the UNCRC's international child rights regime upon Indian law. The authors have also discussed the the difference between consenting as well as non-consensual sexual activity. Although children under the age of 18 as per the provisions of law are considered to be incapable of consenting, their consent for engaging in sexual intercourse is nonetheless considered material evidence from the perspective of Social science. The article also discusses the concept of appropriate sexual exploration and how it differs from sexual harassment and emphasizes that child sexual activity can be both abusive and non-abusive, and it is necessary for law enforcement personnel to be equipped with the same and be able to identify the difference in order to uphold the child rights principles under Article 12 of the UNCRC.

Research Problem:

The POCSO Act was enacted with the aim of bringing in legislative reforms in the existing laws to deal with the cases of sexual assault against adolescents in India. However on account of the failure of the legislature to keep up with the pace of societal and psychological changes and needs of the adolescents the act seems to have deviated from their objective. In light of current scenario where the society seems to be evolving and moving away from the collectivistic approach, failure of the authorities to consider these changes has made the Act harmful for the adolescents. With this paper the researchers aims at making in depth analysis of such loopholes and the possible reforms.

Research Objective:

1. To study the impact of the POCSO Act in regulating the cases of sexual harassment after its enactment and enforcement.
2. To assess the contribution of POCSO Act in solving the cases of child sexual abuse and thereafter cull out the lacunas in the act.

Research Questions:

The fundamental question that is the concern of this research is that, whether the POCSO Act 2012 which was enacted for safeguarding the interests of adolescents from the cases of sexual harassment and abuse, after its implementation serving its purpose or has it deviated from its objective by acting as a double edged sword for them.

Research Methodology:

The research follows a doctrinal method, wherein the provisions of the domestic statute, Protection of Children from Sexual Offences Act, 2012 are examined along with judicial precedents of The Supreme Court and different High Courts. In addition to this the researchers in this research project have also referred to a number of publications, books, journals, and internet resources. The books, journals, and articles published by various governmental and non-governmental organisations are the secondary sources of information for the purpose of making an in-depth analysis.

⁵ Mathew, L. A. (2019) "Right to Sexual Autonomy of Children—Implications of the UNCRC upon the Indian Law on the Age of Consent", International Journal for Crime, Justice and Social Democracy

WHAT LED TO THE ENACTMENT OF THE POCSO ACT?

Justice is quintessence and antecedent to Human dignity.

Before proceeding with learning the challenges in detail we must first understand about the situation that led to the enactment of POCSO Act, 2012. Ever since the advent of civilised societies, administering justice to people who has at some point been the sufferers in one or the other incident has always been of paramount importance for states. However, the more important it is for the states to administer justice it is equally challenging, specifically for cases involving justice in criminal offences in nations like India where there is presumption of innocence for an accused unless the accusation is proved beyond reasonable doubt. This leads to most number of times justice being either delayed or left unheard. Historically, amongst all, women and children remain to be the most vulnerable sections of the society, who from time immemorial have witnessed extreme atrocities on themselves in the form of sexual exploitation, human trafficking, domestic violence and a series of various other issues that continue to terrify the human civilization.

Child sexual abuse, according to the World Health Organization, is the connivance of a child in sexual activity that the child does not fully understand or is unaware of, and is unable to provide informed consent for the same. Child Sexual abuse not only transgresses societal norms but also endangers our community's vitality. Child sexual abuse persisted in society since ages however; this was never considered as an issue which needed regulatory measures until it came to be recognised as an offence in the 19th century. Child Sexual abuse is something that always existed in our society however, a certain percentage of population in India consistently believed that child sexual abuse was never a problem in India and was an issue which prevailed in the west. However, this belief of people in India was shaken when, in the year 2007 there was a study undertaken by the Ministry of Women and Child Development on Child Abuse in India. There were certain startling revelations those were made in the study such as:

- *“53.22% children reported having faced one or more forms of sexual abuse.*
- *Children on street, children at work and children in institutional care reported the highest incidence of sexual assault.*
- *50% abusers are persons known to the child or in a position of trust and responsibility.*
- *Another striking factor, which was revealed in the study, was that most children did not report the sexual abuse to anyone. Fear of social stigma, a fear that they will not be treated sympathetically, an unwillingness to implicate relatives, and other factors dishearten children and their families to come forward.”⁶*

This study therefore was an eye opener regarding the condition of children in India since it clearly shown that half of the children in India were sexually exploited in one or the other form till the time they turned 18 and the most shocking fact that was revealed was that not only young girls but also young boys were victims of such abuse. This realisation led to the enactment of the Protection of Children from Sexual Offences Act, 2012 famously known as POCSO Act, 2012. This act is therefore, referred to be an umbrella legislation which aims at creating India a safer place for children by not only protecting them from sexual abuse but also providing with children friendly procedure at every stage of its application.

Apart from this the United Nations Convention on the Rights of the Child, 1989 (UNCRC), also required its member States to take all appropriate measures to prevent child sexual abuse, and since this

⁶ (2013) 5 LW (JS) 29

India has been signatory to this convention since the year 1992, it contributed as another significant factor to the passing of the POCSO act which was nearly after two decades of its ratification.⁷

FEATURES OF THE POCSO ACT:

Before POCSO came into force there were certain laws such as the Indian Penal Code which dealt with Sexual abuse in general however, law excluded several important aspects such as sexual abuse over male children. This has been recognised in the POCSO Act and is thus, termed to be a gender neutral act since it also punishes Sexual abuse on male children as the Act uses the term Minor which is inclusive of both female as well as a male child. “Child sexual abuse is a serious pattern of crime, and if it is not addressed properly, the children’s interests will be put in danger. It is therefore suggested that the judicial officials, public prosecutors, the police and Medical Forensics investigation team, the State Legal Services Authorities, and the Juvenile Justice Boards must therefore coordinate with each other”⁸. This act not only aims on protecting the children below the age of 18 years from sexual assault but also covers within its ambit other offences such as child pornography or harassment. In addition to this, POCSO U/s 5 and 9 defines the act of sexual assault committed on a child by a police officer, or by a public servant, or member of armed forces, or by a member of the management or staff of Jail or remand home to be an aggravated form of sexual assault with severe consequences.

Apart from this the Act also calls for the creation of specialised courts to deal with the offences relating to this act and provides the provisions of video tapping the recording of the statement is also present in the POCSO Act, in order to ensure that psychic trauma is not caused to a child might face on repeatedly stating the incident that they are a victim of. However, one must understand that the videotaping of the interviews must be done extremely cautiously so that there are no alternate interpretations of the statements of the child. Keeping this in mind Section 26 of the POCSO Act also provides for the appointment of a translator or an interpreter while recording of statement. Another striking feature of the POCSO Act is that this Act is the first legislation in India which defines even the non-touch behaviour such as Photographing a Child in an obscene manner or Child Sexual abuse via internet as an offence. Thus, the act can be referred as an important piece of legislation that enumerates numerous initiatives towards child protection in India and is therefore an important step towards making India a safer place for children at large. However, despite the fact that the act was enacted keeping in mind the best interest of the children there are certain lacunas that also needs immediate attention of the Law-makers.

ADOLESCENCE AND SEXUAL DEVELOPMENT:

Adolescence is an extremely crucial stage in an individual’s life since an individual undergoes rapid Physical, Psychological and Social changes at this stage. Indulging into romantic relationships at this stage is an essential part of the developmental phase of every individual. Having healthy romantic relationships largely impacts in shaping up an individual’s perspective regarding romantic relationships, sexuality and has persisting effect on person’s self-esteem. It is extremely common amongst the adolescents to engage in romantic relationship since it holds a paramount developmental significance in respect of a teenager’s social as well as psychological development. It has also been stated in the work of Dunphy (*The social structure of urban adolescent peer groups Sociometry, 1963 (2): 230-246*) that

⁷ Ministry of Women & Child Development (2000), India Report on the World Summit for Children, Ministry of Women and Child Development, Government of India, New Delhi. <http://wcd.nic.in>

⁸ *Supra* 2

“Initiation of a romantic relationship plays a vital role in ordering an individual’s developmental stage”.

However, when looked at it from an Indian perspective being involved in any kind of romantic association at this stage of life is considered to have been caused by a lack of self-control and poor self-discipline. People generally fails to understand that adolescence is a stage that is also referred to as emerging adulthood thus, it must be noted that at this stage forming intimate relationships is an essential part of the developmental stage⁹.

However, the POCSO Act is one such act that deals with the sexual offences against children (Less than 18 years), however fails to recognise and appreciate the distinction between consensual as well as non-consensual sexual intercourse among the adolescents. The Act does not acknowledge the consent given by the adolescents for engaging into sexual intercourse, to be a valid consent. This has resulted to the provisions of this act being completely misused, since the legislative intent behind the act is seen to have been completely diverted.

The report by the Centre for Child and the Law, National Law School of India University, Bangalore also suggests that the POCSO cases of the established consensual sexual contact with and among the minors range between 17-22 percent on average in five of the states that were surveyed.¹⁰

An intuition similar to this research was articulated in a ruling by the Hon'ble Madras High Court in the case of *Vijayalakshmi & Anr. v. State & Anr*¹¹ where a Single-judge bench of learned *Justice N. Anand Venkatesh* stated, *“Punishing an adolescent boy who enters into a relationship with a minor girl by treating him as an offender, was never the objective of the POCSO Act.”*

CHALLENGES TO THE POCSO ACT, 2012:

In a nutshell we have till now seen how the Protection of children from Sexual Offences Act, 2012 provides stringent punishments for sexual offences committed against children below 18 years of age depending upon the gravity of the act and also provides for a comprehensive procedure of law to deal with the same. However, despite all these safeguards and protective measures against sexual offences and sexual offenders there are various lacunas in the act. Since romantic relationships have a significant impact on both the social and psychological development of teenagers, they are particularly prevalent among this age group. However, in a collectivistic society like India, where it is the identity of a group rather than an individual that matters, there are long-standing social stigmas associated with the idea of adolescents engaging in romantic relationships.

However, it must be recognised that at this point, developing personal connections is a crucial element of the developmental stage and that adolescence is a stage also known as emerging adulthood. Apart from this with the changing times and increasing affluence of societies all over the world the perspective of people towards romantic relationships is seen to be changing especially among the adolescents. Precisely for this reason the adolescents now expect more autonomy for the purpose of sexual exploration by engaging in romantic relationships. However, it has been observed at various instances that the potential of the adolescents is extensively being compromised since most of the nations which

⁹ Romantic Love, Commitment and Marriage in Emerging Adulthood in an Indian Context: Views of Emerging Adults and Middle Adults, by Jignesh Gala and Shagufa Kapadia

¹⁰ CCL-NLSIU (2016), Report of Study on the Working of Special Courts under the POCSO Act, 2012 in Delhi.

¹¹ 2021 SCC OnLine Mad 317

follow a collectivistic ideology have failed to provide appropriate measures for the adolescents to be able to enjoy their rights.

“The POCSO Act is one such act that deals with the sexual offences against children (Under 18 years), however fails to recognise and appreciate the distinction between consensual as well as non-consensual sexual intercourse among the adolescents. The Act does not acknowledge the consent given by the adolescents for engaging into sexual intercourse, to be a valid consent”¹². This has resulted to the provisions of this act being completely misused, since the legislative intent behind the act is seen to have been completely diverted.

This clearly shows how the act which was enacted with the sole intent of protecting children from sexual offences have made children more vulnerable.

The report by the Committee on the Rights of the Child also defines “*adolescence as a distinct defining stage of human development that is marked by rapid brain development and physical growth, greater cognitive ability, at the onset of puberty and sexual awareness, and newly developing abilities, capabilities and skills.*”¹³

The Committee in its report also went ahead onto stating that while making law provisions in relation to “Children” states must have a Human- Rights based approach i.e., by taking into consideration adolescents developments and evolving capacities.

JUDICIAL PRONOUNCEMENTS OF INDIAN COURTS:

This lacuna has also been pointed out by various judgments. In a very recent case of **Sabari @ Sabarinathan Vs. The Inspector of Police**¹⁴ the Madras High Court explicitly stated the fact that “*When a girl below 18 years of age is involved in a relationship with a teenage boy, such a relationship cannot be construed as an unnatural or to be an alien relationship since such a relationship is simply the result of mutual innocence and biological attraction.*” The Court also went ahead to suggest that profound consideration must be given to these ground realities and accordingly the provisions of the act must be interpreted. This was mainly due to the reason that among all the cases those are reported under the POCSO Act, most of them were reported on the pretext of teenagers engaging into consensual romantic relationships after those relationships would transcend Platonic limits. The POCSO Act has a presumption in favour of the victim which leads to the offender being easily awarded with the punishment of imprisonment of 7-10 years. Therefore, the Honourable Madras High Court has also made a suggestion to deal with this particular situation wherein it has stated that “*Any consensual sex after the age of 16 or bodily contact or allied acts can be excluded from the rigors provisions of the POCSO Act and such sexual assault, if it is so defined can be tried under more liberal provision, which can be introduced in the Act itself and in order to distinguish the cases of teen age relationship after 16 years, from the cases of sexual assault on children below 16 years.*”

This has also been reiterated in various other judgments as well such as **xxxxx v. State Rep by Inspector of Police**¹⁵ wherein the girl was considered to be the accused in the case since she was only some months elder to the boy (the petitioner).

¹² 12 RMLNLUJ (2020) 75

¹³ Convention on the Rights of the Child, CRC/GC/2003/41 July 2003

¹⁴ Criminal Appeal No.490 of 2018, Madras High Court

¹⁵ CrI.O.P.(MD)No.18064 of 2019

Further in the case of **Vijayalakshmi and Another Vs. State Rep. By The Inspector of Police and Another**¹⁶ it was held that while delving into the cases relating to POCSO it is crucial to be aware of the “*Science and psychology*” of the adolescents and take into account the biological, psychological as well as sociological changes that these young adults undergo at this stage as a developmental process. In this case the court recognised the fact of romantic relationships as being one of the important factors for the adolescents for developing their self-identity, functioning and capacity of intimacy. Therefore, the courts while dealing with cases involving teenagers who were engaged in consensual relationship must give due consideration to the social/behavioural sciences surrounding such teenagers. Thus, the courts must always have a bio social approach towards such scenarios i.e., by mutually taking into account the biological as well social factors, and not be rigid in implementing the provisions of the act so as to lead to violation of the rights of the adolescents.

Therefore, it can be inferred that the not only morally but also by way of judicial pronouncements which would hold a persuasive value, it is recognised that there are lacunas in the provisions of the POCSO Act. The provisions of the POCSO Act, are not sufficient enough to meet the needs of the emerging societies. Thus, the act must be inclusive so that there is room for the consideration of above discussed situations of the adolescents.

COMPARITIVE STUDY:

The United Nations Child Rights Commission (UNCRC) in its Article 12 has mandated every state to enact provisions ensuring Freedom of Expression to every child in accordance with their age and maturity. In addition, children should be given an opportunity to be heard in any proceeding, most specifically in cases involving romantic relationships at a specific age. In furtherance of this under Article 40, of the UNCRC the state is duty bound to treat every child (whosoever is accused of having infringed laws in place) with dignity and recognise their sense of worth. “*To reinforce the same many countries have ‘Close-in age’ or ‘age proximity’ exceptions for consensual sexual acts between adolescents close in age*”.¹⁷

Sr. No.	Country	Age of Consent	Exceptions
1.	United states of America	Lies between 16-18 Years of age. (Different for different states)	However, the Presence of Romeo-Juliet laws in some of the states of United States, provides a Close-in-Age exception , such as-
		a) Texas- 17 years.	Having not more than 3-yr age difference would not constitute as

¹⁶ *Supra* 4

¹⁷ Right to Sexual Autonomy of Children—Implications of the UNCRC upon the Indian Law on the Age of Consent by Lina Acca Mathew

			Statutory rape.
		b) Hawaii- 16 years.	Having not more than 5-yr age difference would not constitute as Statutory rape.
2.	Austria Bolivia Croatia Sweden	14 Years	Close-in-Age exception for sexual act between partners not having more than 3-yr age difference.
3.	Hungary	14 Years	Close-in-Age exception for children aged 12 yrs and the other partner being under 18 yrs of age.

RECOMMENDATIONS AND SUGGESTIONS:

By now we have understood how the enactment of the POCSO Act, 2012, a landmark law has acted as an effective step undertaken by the legislature towards creating a protective environment for adolescents against the heinous act of sexual crime. However, after critically analysing the abovementioned facts, it could be also reasonably inferred that under the POCSO Act, 2012, the consideration of consent in order to indulge in sexual intercourse remains at the forefront. Exploring the depths of sexual needs and wants alongside a companion has proved to be a most natural occurrence in the development of adolescents. Whereas in India, there exists a traditionally reserved society, where discussions over exploring one’s sexuality and embracing the concept of love are considered taboo and are actively discouraged. Therefore, the consent of the adolescents in romantic relationships is generally not taken into consideration in POCSO related matters. This has unfortunately resulted in the real cases of child sexual abuse getting overshadowed amidst all this debate. Therefore, the foregoing discussion suggests an urgent need to grapple with this issue and confront it in order to ensure protection to children against all shapes and forms of sexual exploitation and stimulating a healthy development as was the intent of the Legislature behind enacting this particular piece of legislation.

According to Article 8 of the European Convention on Human Rights, 1953, among many other agreements, the idea of the Right to a Private Life encompasses the Right to have a Sexual Life without Unnecessary and Unreasonable Interference. Recent judicial decisions in India, as has been discussed earlier, show how judges are trying to liberally interpret the law alongside changing times in favour of non-criminalisation of sexual activity when the child is mature and responsible enough to understand the implications of his or her inclination towards indulging in sexual act(s). This is a welcome measure, which will hopefully direct laws regarding the sexual consent of children, in consonance with juvenile

rights and principles. These judicial conventions accentuate the voids in the law that ought to be addressed by legislation.

One of the measures that could prove to be recourse to this issue is the introduction of the concept of “Close-in-Age” or an “Age-proximity” exception to the laws that would serve as a guiding factor in such matters revolving around consensual sexual intercourse. As it will allow the courts to be able to narrow down the cases on the grounds that where a person who makes sexual contact with an underage person is exempted from being prosecuted if they are no more than 3 years older than the underage person. This will also ensure timely access healthcare and legal assistance to the adolescents in case of need. Given that including parents and teachers into such awareness programmes is essential since they are frequently the first people with whom a child in distress makes contact. The state's duty to safeguard children from harmful sexual behaviour must be balanced with the law's need to uphold children's right to sexual autonomy and their developing sexual prowess. In this sense, judicial activism also is of importance as it lays down the ground for reforms in the law and civil society. Legislators, judges, and politicians might look into other options to increase accountability and transparency to international standards for children's rights.

To conclude one can say that the POCSO Act aims to address the critical issues of sexual abuse against children however at the same time it has entrenched a protectionist approach to adolescent sexuality. This negates the intent behind the enactment of the POCSO Act. Therefore, the Act in our opinion needs to be amendments to also address to the issues of teenagers who engage in consensual sexual intercourse with other adolescents at least between the ages of 14 and 18 as a close in age exception in light of the circumstances those prevail. As a result, the adolescents will be safeguarded of their rights of having their sexual liberty being respected. Additionally, India is required to decriminalise adolescent sexuality as a signatory to the UNCRC. It, consequently, demands to amend the POCSO Act to cater to adolescents who commit in consensual exchange with different adolescents.

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