**Navigating Crossroads of Consensual Adolescent Relationships And Sexual Autonomy In India: The Need For Having A Close-In-Age Exception**

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***ABSTRACT***

The Prevention of Children against Sexual Offences Act, 2012 (POCSO Act) is the premier legislation in India enacted with the objective of protecting children from sexual offences in the country. It defines a *child* as any person under the age of 18 years and criminalizes any activity with a person, thereby also penalizing consensual romantic relationships which often lead to sexual activities and provides no exception. Such a provision not only delegitimizes the consent of children and adolescents but also represses their sexual autonomy. It also disrespects their evolving capacities as human beings and tries to brush under the carpet a very different reality where such activities are very common. In a conservative society like India, sex is considered a taboo and dealt with in a paternalistic manner by parents as well as government authorities, the POCSO Act and its provisions have become a tool for guardians to punish their children for being involved in romantic relationships with the opposite sex. The judiciary on the other hand, despite the Act being a penal legislation, has interpreted the provisions of the act liberally and most romantic cases have resulted in acquittals. The primary factors in such an approach have either been the victims turning hostile or the victims getting married voluntarily to the accused during the trial and sometimes even having a child. Thus, looking at the practical realities of life, the courts have acquitted the accused. This is the dichotomy that this paper seeks to address, that while on one hand, there is a law that prohibits all consensual romantic relationships between children and adolescents, on the other hand, their occurrence is common which is backed by empirical data from government and non-government agencies and even the judiciary is willing to accept them. It also tries to address the debate around the age of consent and of the *close-in-age* exception in India, a concept prevalent in my countries across Europe and North America.

***Keywords-*** Children, Adolescent, Romantic Relationship, Close-In-Age Exception, Age of Consent, POCSO Act.

**Introduction**

The Prevention of Children from Sexual Offences Act, 2012 (POCSO Act) is a milestone legislation in India enacted with the objective of protecting children from sexual offences and abuse. It aimed to provide a robust legal frame work for the punishment, reporting along with providing child-friendly mechanism of trial for children aggrieved with sexual abuse and exploitation. The POCSO Act has been widely welcomed, not just because it has filled the void regarding children affected by sexual offences but also because of its gender neutrality. Prior to the enactment of the act, sexual abuse of children including offences like rape (section 375 & 376) and sexual assault (section 354) was governed by The Indian Penal Code (IPC).[[3]](#footnote-4) The brutal gang rape of young girl in a bus in the national capital, New Delhi (Nirbhaya gang rape case) in December 2012 brought about a major amendment to the rape laws under the IPC where the definition of the offence was widely expanded to include not just penal-vaginal penetrative intercourse but also non-penetrative, non-consensual sexual assaults such as application penis to the mouth and application of the mouth to the vagina.[[4]](#footnote-5) While both the legislations are distinct in nature, they are still used in conjunction whenever a complaint of any sexual offence is registered by a girl under eighteen years of age.The Act covers four different forms of abuse, namely- penetrative sexual assault, aggravated penetrative sexual assault, sexual assault and aggravated sexual assault making the coverage of this law very wide in its amplitude. However, the application of this act has not been without its problems. The act defines a *child* as a person below the age of eighteen years and stipulates mandatory reporting of sexual offences against children to the police.[[5]](#footnote-6) Defining a child under eighteen years of age has put the age of consent between children at eighteen yearswhich has led to criminalization of all sexual activities, including consensual non-penetrative sexual activities between children and between a child and an adolescent (persons in their teenage years).[[6]](#footnote-7) While protection of children from sexual offences is necessary, it is also important to understand that children, after puberty, tend to experiment with sexual activity with other children and adolescents. It is not an uncommon occurrence in any society, let alone India. However, in a society like India, sex and romantic relationships, especially relationships between children are considered a taboo. Most children and their families, especially girls, are subjected to stigma and secondary victimization from society if the details of their relationships are out in the open. It is seen as a dent to the honor of the family which is not taken kindly by the family members. This has led to consensual romantic relationships between children and adolescents been subjected to be reported as cases of rape, kidnapping and sexual assaults by the families under the POCSO Act.It has also proved to be a dilemma for the Special Courts enacted to adjudicate the trials under this legislation.

This paper seeks to highlight the dichotomy of the POCSO Act where on one hand, it is meant to protect the interests of children, yet it is proving to be quite the opposite by suppressing their sexual autonomy which is a natural progression post puberty. It seeks to highlight the issues regarding the age of consent in India and as to how it has not in tune with the evolving capacities of children as sexual beings. It also presents the possible changes and amendments that can be implemented under the act that will not just protect children from sexual offences but also respect their evolution and sexual autonomy.

1. **Age of Consent- A History**

A very pertinent question when it comes to adolescent sexual relationships is that of *consent*. What does consentmean when it comes to minors? Do they even have the agency to consent to a sexual relationship with a fellow minor or an adult? The answers to these questions are contentious and complicated. To answer that question, one must understand as to what constitutes a minor in the first place. Minors are also categorized as *children* due to their limited physical, mental and emotional capacity. According to the United Nations Convention on the Rights of the Child (UNCRC), a child is any human being who is below the age of eighteen years unless the domestic law sets the limit lower.[[7]](#footnote-8)To understand how consent of a child is treated in law, we must understand as to what it means, historically and in contemporary times and also as to how it varies amongst different societies. The meaning of consent is crucial in debates regarding the age of consent as there are numerous perspectives especially when we consider it in context of sexual behavior in minors.

The word consent means voluntary agreement of a person reached because of free will and agency.[[8]](#footnote-9) In western societies, a person’s capacity to firstly possess *free will* and the ability to *reason* have been the parameters on which consent has been judged. Historically in these societies this right was the privilege of white men as they were the only ones believed to possess the power of reasoning. Other groups such as women, non-white people, tribal people, children, persons with disabilities were considered mentally deficient to possess this power as it believed that they were governed with their bodies rather than their minds.[[9]](#footnote-10) The white man had to act on their behalf, a belief that became entrenched across the world due to colonization.[[10]](#footnote-11) It was only in the 20th century that these groups attained limited cultural and political rights, however, their rights are still sub-ordinate to the rights possessed by dominant social groups.[[11]](#footnote-12)While these groups have got legal recognition to consent, there is a huge difference between being permitted by law to practice it and the actual practice to consent, especially when it comes to consensual sexual activity which differs in every society. For example, in India, the legal capacity of a woman to consent for sexual activity and its societal connotations are two very different things.

The first legal provision on the age of consent appeared in England in 1275 A.D. as part of a statute named Westminster 1. The statute made it illegal to *ravish a maiden within age* with or without her consent. The term *within age* was interpreted to be twelve years by Sir Edward Coke as that was the age of marriage at the time.[[12]](#footnote-13)In 1576, English colonies in North American made it a crime to *“unlawfully or carnally know and abuse any woman child under the age of 10 years*.*”*[[13]](#footnote-14)It was in the 16th century Italian and German states introduced twelve years as the age of consent.[[14]](#footnote-15) It was the renaissance period around the 18th century when other European nations also started to enact laws regarding the age of consent. It was around this time that the realization emerged that children were a distinct entity to adults and were more vulnerable to harm particularly around the age of puberty. Hence, in 1791, the Napoleonic Code in France established eleven years as the age of consent for both the genders which was later increased to thirteen years in 1863.[[15]](#footnote-16)A century later, other European nations like Spain, Portugal, Denmark and some Swiss provinces followed suit and introduced the age of consent laws that set the limit at thirteen years. It is important to note that by this time, France had further increased the age of consent to sixteen years.[[16]](#footnote-17)It was in 1875 that in England, the act of sexual intercourse with a girl less than thirteen years old was made an offence. The United States of America (US), which had attained independence from England by then, due to its federal system, allowed each of its state to enact their own criminal laws. Consequently, the age of consent ranged from ages ten to twelve years depending upon each state.[[17]](#footnote-18)

By the end of the 19th century, reformers in Britain started to campaign for raising the age of consent due to prevalence of child prostitution in the society. The primary focus of this campaign was the lack of psychological development of children at this age, rather than just physiological. This led to British legislators raising the age of consent to sixteen years which also prompted reformers in the other parts of the world such as the US. Many US states raised the age of consent to sixteen years and some even raised the age as high as eighteen years.[[18]](#footnote-19)

1. **Age of Consent in India and Romantic Relationships between Adolescents and Children**

The age of consent in India, 18 years, is presently governed by the POCSO Act, 2012. Prior to the enactment of this act, there was no statute or provision that clearly defined the age of consent. It was governed by Section 375 of the IPC that defined the offence of rape. However, due to the law on rape not being gender neutral, the age of consent for sexual intercourse was fixed only for females and not males. In fact, the term child wasn’t defined in any statute, neither the IPC nor the General Clauses Act, 1897.Moreover, the provision defining rape in the IPC has a checkered past as the first age of consent (age for consensual sexual intercourse) was fixed at ten years in 1860.[[19]](#footnote-20) It was raised to twelve years in 1891 due to the public outcry caused the judgement in the *Phulmoni*case.[[20]](#footnote-21) The case pertained to the death of an eleven-year-old girlwho died from the hemorrhage caused froma rupture of vagina by her husband who had forced sex on her.[[21]](#footnote-22) However, the husband was only convicted for the offence of causing grievous hurt and a sentence of rigorous imprisonment for one year.[[22]](#footnote-23) Thereafter, in 1925, the age was raised tofourteen years and then tosixteen years in 1940.[[23]](#footnote-24)

The age for marriage, however, was fixed ateighteen years for females and attwenty-one years for males in the Prohibition of Child Marriage Act, 2006 (PCMA). According to the PCMA, any male below the age of twenty-one years and any female below the age of eighteen years are considered children[[24]](#footnote-25) under the act and a marriage between such individuals is considered voidable at the option of either parties till two years of them attaining majority.[[25]](#footnote-26)Any male married before the age of twenty-one and a female married before the age of eighteen years can get the marriage declared void by filing a petition in the District Court, either after attaining the age of majority or up to two years after attaining it.[[26]](#footnote-27) The PCMA also laid down criminal liability for anyone performed or affiliated a child marriage. It is however important to note that the law did not make child marriages invalid *per se.* They were only voidable at the behest of the parties involved in such a marriage. Only the state of Karnataka, through an amendment in 2016 made child marriages under the PCMA *void ab initio* i.e. invalid in law.[[27]](#footnote-28) Further, this legislation conflicted with personal laws such as the Muslim personal law which provides that a female can married either at the age of fifteen or after attaining the age of puberty, whichever is lower.[[28]](#footnote-29)

It was the enactment of the POCSO Act in 2012 which raised the age of consent to 18 years. It is notable that prior to the POCSO Act, the age of consent was applicable only to females and not males. However, the POCSO uses the word *child* without mentioning the gender and defines it as ‘*any person below the age of 18 years*.’[[29]](#footnote-30) It defined sexual offences against children in six broad categories, namely, *penetrative sexual assault,[[30]](#footnote-31) aggravated penetrative sexual assault,*[[31]](#footnote-32)*sexual assault,*[[32]](#footnote-33)*aggravated sexual assault,*[[33]](#footnote-34)*sexual harassment*[[34]](#footnote-35) *and using child for pornographic purposes.*[[35]](#footnote-36)The word *penetrative* includes not only vaginal penetration but also oral, anal and penetration through urethra*.*[[36]](#footnote-37)It is broad enough to include insertion of any body part or any object into the body of the child. The penetration need not be only penile but can also be oral to be included under *penetrative sexual assault*.[[37]](#footnote-38)The punishment ranges from minimum threeyears imprisonment along with a fine (for sexual harassment and using for pornographic activity) to death penalty (for aggravated sexual assault).

It also laid down the provision for the setting up of Special Courts for providing a speedy trial for cases registered under the Act. Due to maintenance of law and order being a state (provincial) subject, the Special Courts are set up in each district by the State (provincial) government in consultation with the High Court of the state.[[38]](#footnote-39) Further, it also provides for the appointment of a Special Public Prosecutor for conducting cases under the Act.[[39]](#footnote-40)It is notable that the burden of proof under the Act has been put on the accused and not the victim.[[40]](#footnote-41)To ensure the safety of the child, the Act mandates the Special Court to keep a child friendly atmosphere during the trial *“by allowing a family member, guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court.”*[[41]](#footnote-42) Other provisions ensuring the safety of the child during trial in the Special Court include not calling the child to the court to repeatedly testify,[[42]](#footnote-43) non-disclosure of the identity of child, restraint on aggressive question and character assassination[[43]](#footnote-44) among others.

The most important provision in the Act, though, was section 42-A which provided that in case of a conflict with any other law, the provisions of this Act shall have an override the provisions of any other Act in force.[[44]](#footnote-45) Later, the provisions of the IPC and POCSO were harmonized by the Criminal Law (Amendment) Act, 2013. The definition of rape was amended and the new provision provided that sexual intercourse with any female below the 18 years was termed as rape.[[45]](#footnote-46)However, one pertinent contradiction that did remain was the marital rape exemption under clause 2 of section 375 according to which “*sexual intercourse or sexual acts by a man with his own wife not being under fifteen years of age, is not rape*.”[[46]](#footnote-47)In the same year, the Supreme Court in the case of *Independent Thought v. Union of India[[47]](#footnote-48)* held the provision to be unconstitutional to the extent when it applied to girls aged between fifteen to eighteen years. However, if the wife was above eighteen years old, i.e., of the legal age to get married, the exemption still stood. Therefore, the post the judgement, the provision was altered to *“Marital rape by a man with his wife, the wife not being less than 18 years of age, would not be rape.”[[48]](#footnote-49)*The newly enacted Bharatiya Nyaya Sanhita, 2023 (BNS) which has replaced the IPC from 1st July 2023 defines a child as a person below the age of eighteen years.[[49]](#footnote-50)

Thus, the present age for consent in India is eighteen years according to the POCSO Act, whereas the legal age for marriage is twenty-one years for males and eighteen years for females according to the PCMA. If we read the two acts in relation to each other, even if individuals are married before the age for marriageby their parents, they cannot engage in sexual intercourse before the age of eighteen years as the POCSO Act will have an overriding effect on all the provisions of the PCMA.

The provisions of the POCSO Act use the words *a person* and *whoever* while defining the offences clearly indicating that criminal liability can also be put on a child if he or she commits an act deemed so. Further, it also lays down a separate procedure for trial if the accused is a child. If the child is an accused, he/she shall be dealt according to the procedures in Juvenile Justice (Care and Protection) Act, 2015.[[50]](#footnote-51)

* 1. **Data Regarding Romantic Relationships between Children and Adolescents in India**

The presence of a law regarding age of consent means that even children or adolescents cannot indulge in any sexual activity with another such individual as it will lead to lead criminal liability. However, in contrast, there is enough data to show the prevalence of consensual sexual activity amongst children and adolescents in India.According to the National Family Health Survey-3 (NFHS-3) held in the year 2005-06, 20 percent of women interviewed aged between 25-49 years confessed to having had their first sexual encounter before they turned fifteen while 55 percent confessed to having it prior to attaining eighteen years of age.[[51]](#footnote-52) The age for giving consent for sexual intercourse in the year 2005-06 was sixteen years.[[52]](#footnote-53)Similarly The National Family Health Survey-4held in the year 2015-16 also showed that 11 percent of women between 25-49 years of age had their first sexual intercourse before the age of fifteen while 39 percent had their first sexual experience before they turned eighteen. With respect to men, only 1 percent of the men surveyed had their sexual intercourse before they turned fifteen and 7 percent had intercourse before turning eighteen years.[[53]](#footnote-54) Further, it also shed light on the fact that 7.9% of women aged 15-19 years had either become mothers or were pregnant at the time of the survey.[[54]](#footnote-55) This data is in stark contrast to the demure, virtuous and rather unrealistic portrayal of *adolescent romance[[55]](#footnote-56)* in films and media, thus hiding the darker aspects of it. Another piece of literature that shed light on the prevalence of consensual adolescent relationships in the Indian society was the Youth in India Report 2006-07. Herein , the survey conducted on young people between 15 to 24 years of age, revealed that up to 11.1% of men had their first sexual encounter between the fifteen to nineteen years of age, whereas up to 3.4% of women admitted to the same.[[56]](#footnote-57)Further, according to the report, of the total urban and rural male respondents, 5.3% and 13.4% respectively accepted to having their first consensual sexual encounter between the ages of fifteen to nineteen.[[57]](#footnote-58) The same pattern could be seen amongst women as well, however the difference between the urban and the rural wasn’t as high as the men withup to 2.3% and 3.9% of urban and rural women respondents respectively admitted to having their first consensual sexual encounter between the age of 15-19.[[58]](#footnote-59)

Thus, this report along with the NFHS-3 and NFHS-4 reports not only depicts the prevalence of pre-marital sexual relationships in adolescents in Indiabut also indicates that such sexual relations are more prevalent in the rural youth than their urban counterparts. A very clear hesitation on the part of thefemale respondents in revealing about their sexual experiences at such a young age can also be noticed on the careful perusal of the above-mentioned studies and their reports which probably maybe due to the stigma attached to their sexuality.

1. **POCSO Act and the romantic/adolescent relationships: Need to revisit Close-in-Age Exception in India**

Thedebate in favor of reducing the age of consent in India has been the subject of discussion since some time now. There have been suggestions for looking at *close-in-age exception* as a possible solution to the issue which is recognized in several European nations, South Africa, Canada and known as*Romeo-Juliet* laws in the United States of America. This exception provides immunity from criminal liability to consenting adolescents involved in sexual relationships below the age of majority provided there was not a significant age gap between the two individuals involved. We can understand this concept with the help of an example from Canada. The Age of consent, according to the Canadian Criminal Code is 16 years.[[59]](#footnote-60) The age was raised from 14 years to 16 years in the year 2008 to address the online luring away of teenagers.[[60]](#footnote-61) The Canadian law provides for a close-in-age exception under two categories, *firstly* when the age of the younger party is between 12-14 years but the accused is less than two years older.[[61]](#footnote-62) And *secondly,* when the younger party is between 14-16 years but the accused less than five years older.[[62]](#footnote-63) Even though, the legal age of consent in Canada is 16 years, the law provides an exception that where consent of a person less than 16 years old is considered legally valid. Similar provisions are present in aforementioned countries as well.

However, in context of India in view ofasymmetrical approach adopted by POCSO Special Courts in the application and interpretation of POCSO with respect to romantic Relationships and the potential misuse of the enactment in such cases, it become imperative to examine the Close-in-Age Exception in India to ensure that the application of POCSO does not inadvertently harm the very individuals it is meant to protect. There might be a suggestion from a section of society that if there is an issue regarding the age of consent, why differentiate between the age of consent with the age of marriage. However, it is contended doing so would not just be principally flawed but also but also dangerous due to weaponization of parental backlash. It is ironic that the entire discourse on child marriage wants strict action against underage marriages while disengaging completely from the criminalization against the age of consent which is as high as the minimum age of marriage.[[63]](#footnote-64) It must be understood that the UNCRC mandates the *best interest of the child*[[64]](#footnote-65) to be kept in mind while formulating laws and policies along with respecting the *evolving capacities of the child.[[65]](#footnote-66)* However, an increase in the age of consent from 16 years to 18 years is a direct contravention of the UNCRC’s mandate which characterizes adolescence as a distinct phase of development of a child into an adult.[[66]](#footnote-67)

**3.1 Implementation of POCSO to Romantic Relationships by POCSO Special Courts: A reflectiononlenient and liberal construction of the Act**

Infact, to study the implementation of the POCSO Act towards romantic relationships by the Special Courts established under the POCSO Act , a study was conducted by Centre for Child and the Law by NLSIU, Bangalore, published in February 2018,wherein the study revealed sympathetic and lenient behavior of the judges of the Special Courtstowards both the parties in such cases dealing with romantic relationships between minors especially if they had gotten married and children as a consequence.[[67]](#footnote-68)The study also showed that the accused in most of these cases end up getting acquitted, either because the primary witness, the victim refused to testify against the accused, turned hostile or denied that the acts and events ever took place.[[68]](#footnote-69) In fact, in most of the cases, it was stated that the sexual intercourse was consensual, resulting in acquittal of the accused.[[69]](#footnote-70) This was despite the fact that the POCSO Act treats the consent of minors as irrelevant.Consequently,the rate of conviction in cases related to married couples was found to be 0% in the states of Assam and Andhra Pradesh, 1% in Delhi and 3% in the state of Maharashtra.[[70]](#footnote-71)

Another study conducted in 2017by HAQ Centre for Child Rights and Forum Against Sexual Exploitation of Children (FACSE) supported by UNICEF on the implementation of the Act in Delhi and Mumbai (2012-2015) also showed that out of the total 224 POCSO cases in Delhi, 79 cases (35%) related to romantic relationships out of which in 74 cases (94%), the accused was acquitted.[[71]](#footnote-72) In Mumbai, the total number of such cases disposed were just 4 in total. However, in 3 cases (75%), the accused ended up being acquitted.[[72]](#footnote-73) This showed that not just were these cases taking up a lot of time from the Special Courts but also resulting in the victim or the primary witness turning hostile.

* 1. **Interpretation by Special Courts with respect to Romantic Relationships: A Reflection of Blanket Approach**

There have been numerous judgements given by POCSO courts in cases related to romantic relationships cases which seem to highlight an evident lack of analysis on the part of the Special Courts to investigate the nuances of consent prevailing in each case. The Special courts have used a rather blanket approach while considering romantic cases and looked at consent one-dimensionally. In the case of *State v. Suman Dass*[[73]](#footnote-74)wherein a 15-year-old girl eloped and married a man aged 22 years. Her mother filed a complaint alleging kidnapping and sexual assault by that man. The girl though in her statement admitted to having gone with him willingly and having consensual sexual intercourse. The man was charged under s. 363 of the IPC (kidnapping) and s. 4 of the POCSO Act (aggravated sexual assault). The court on the analysis of the evidence in front it did not find the accused guilty of kidnapping as it found “*no iota of evidence that the accused enticed or took away the prosecutrix from her lawful guardian.*”[[74]](#footnote-75) The court also acquitted the accused on the charge of aggravated sexual assault under POCSO Act on the ground that the couple were married and living peacefully. It was further held that it wouldn’t be wise to punish the accused on the grounds that he had sexual intercourse with the minor, firstly because according to the court, it would neither serve the purpose of the Act nor criminal law in general and secondly because it wouldn’t be conducive for the mental and psychological health of the girl that her newly married husband was sent to jail. However, most importantly, the court commenting on the naivety of youthopined that while marriage at such a young age is filled with complications but “*Law cannot and should not prohibit teens from experimentation of such nature.*”[[75]](#footnote-76) This judgement of the special court was upheld by the High Court of Delhi as it found the opinion of trial court “*reasonable andprobable*.”[[76]](#footnote-77)

In another case,*State v. AkhileshHarichandra Mishra,*[[77]](#footnote-78)the victim, a 15-year-old girl and the accused had not just eloped and got married but also had a child during the pendency of the trial and was born before the trial was completed.The victim admitted to marrying the accused voluntarily and being happy in that marriage. Rejecting the contention of the prosecution that consent of a child/minor was irrelevant in the POCSO Act held that “*if the girl is enough mature to understand the consequences of her consensual physical relations with the partner, then the boy cannot be held alone guilty of having sex with the girl though not attained majority.*”[[78]](#footnote-79) The accused was acquitted since the Special Court in Thane found no reason to punish them as they were enjoying a happily married life with each other. Similar reasoningwas applied in *State v. SachinGotiramKedar[[79]](#footnote-80)*and *State v. Rupesh@BantiBajiraoMokal[[80]](#footnote-81)* where the victims were above 17 years but still a few months short of majority. In both the cases, the girl agreed to having sexual intercourse with the victim voluntarily and the courts held that they were old enough to understand the consequences of their action.Further, in *State v. Saidul Ali*[[81]](#footnote-82), another case dealing with elopement and marriage between two minors, the accused was acquitted as the court concluded that though the girl had not achieved the age of majority, she had achieved the age of discretion. It was held by the Special Court in the state of Assam that she had developed the capacity to understand the nature of her act. Similarly, in another case from Assam, *State v. Riki Bora[[82]](#footnote-83)*, the Special court in Assam acquitted the accused on the ground that the victim was in a relationship with the accused and that she had eloped with her voluntarily. It was held that even though she wasn’t a major, she was on the cusp of attaining it.

Thus, it can be observed that the grounds for lenient and liberal construction of the Act by the Special Courts are primarily due to practical considerations considering the society we live in where it is an established fact that institution of marriage provides legitimacy to a relationship. It provides social acceptance to a woman and her child and prevents them from secondary victimization from the society.Another important judgement in this context is that of *State v. Parhlad*[[83]](#footnote-84)from Delhi, where a 17-year-old girl had eloped with the accused and eventually got married. However, the marriage was held invalid as the essential ceremonies had not been performed.In her testimony during the trial, she confirmed that she was in a love affair with the accused and that she went with him willingly. When she attained the age of majority, she subsequently married the accused and became pregnant with his child. As the prosecution was able to conclusively prove the minority of the victim at the time of marriage, the accused was charged for aggressive penetrative sexual assault under section 5 and found guilty under section 6 of the Act. The court acknowledged that consent was immaterial according to the mandate of the POCSO Act. However, the interesting thing to note here is that while the minimum punishment under the provision is 10 years imprisonment, the court sentenced the accused only for the time served during the trial considering the mitigating factors in his favor. According to them, the conduct of the accused showed that he was interested in a long-term relationship with the victim and did not just act out of lust. Moreover, the fact that the couple got married before committing sexual intercourse and then marrying again after the victim was released from Children’s home showed that they were both serious for each other.

Thus, the above-mentionedcases portray the liberal approach that Special courts have taken across various states in India. While it is important to keep a sensitive approach to cases under the act and understand the emotional volatility and mental fragility of youth in taking decisions and acknowledging the sexuality of young adolescents, it is also important that the courts keep in mind the circumstances of consent in each case. There can be many reasons as to why a victim consents to marrying the accused like societal pressure, coercion or secondary victimization after being raped by the accused.[[84]](#footnote-85) There are some other cases which seem to highlight anevident lack of analysis on part of the Special Courts to investigate the nuances of consent prevailing in each case. The Special courts have used a rather blanket approach while considering romantic cases and looked at consent one-dimensionally. For example, where the victim had shown even an iota of feelings for the accused or had met him or had any sexual activity like kissing, the court has concluded that the victim had consented to sexual intercourse. An important case in that regard is from Guntur district in the state of Andhra Pradesh where the victim, a 16-year-old girl was pulled out of school by the accused no.1 and his two other friends on the pretext of the death of her grandfather. The accused no. 1 and his friends allegedly attempted to kidnap her because the former wanted to satisfy his sexual lust.[[85]](#footnote-86) The defense argued that the victim was in love with the accused and produced several letters between them to prove the same. The victim on the other hand refuted that argument but the Special court concluded that the victim had gone willingly with the accused. This conclusion was reached even when independent witnesses testified that they had heard the cries of the victim, they accosted the accused and then the accused fled the scene. Thus, it does seem quite bizarre as to how the court concluded that the accused and the victim had a love affair. While it might have been so the case at some point in time, it also might be the case that her feelings towards theaccused had changed. This seems to be the classic male understanding of love and consent that if a girl has feelings for you, she must be ready to have sexual intercourse as well. Similarly, in another case from Maharashtra, the court held the testimony of a victim to be unreliable on two grounds. Firstly, because she did not *act appropriately* during non-consensualforceful intercourse and secondly because she admitted to having a romantic relationship with the accused in the past.[[86]](#footnote-87) According to the Special Court, the natural conduct of a girl being subjected to rape or forceful intercourse would be cry, yell and seek help and since the girl did not, her testimony was held unreliable.

* 1. **Consensual sexual relationships and Misuse of POCSO Act**

There have been multiple judgements where different High Courts have expressed concerns about the misuse of the POCSO Act for settling personal scores. The Kerala High Court, in 2022, opined that the provisions of the act are too harsh and the punishments extremely severe and thus the misuse of it by falsely implicating innocent people was inevitable by ill motivated litigants.[[87]](#footnote-88)In another case, the same High Court while acknowledging the fact that the POCSO Act is a revolutionary legislation for the safety and protection of children against sexual exploitation. However, it also lamented the fact that there have been enough instances which documented the misuse of the legislation which not only undermined the intent of the legislature but also posed a threat to the justice delivery system.[[88]](#footnote-89) The present case pertained to a complaint by a 17-year girl of molestation against her cousins who had previously objected to relationship between her and her classmate. Consequently, the two accused were jailed for two months and had applied for bail. The complainant later filed an affidavit before the court informing the court that she had levelled false allegations against both the accused. The court also urged the legislature to implement necessary checks and safeguards to prevent such misuse.[[89]](#footnote-90)

In this regard, the judgement of the Allahabad High Court in *Satish alias Chand v. State of Uttar Pradesh & Ors.*[[90]](#footnote-91) where the court raised concerns regarding misuse of the act in matters pertaining to consensual romantic relationships. Justice Krishan Pahal opined that while dealing with matters under the POCSO Act, the real challenge lies in distinguishing between cases of genuine exploitation and those involving consensual romantic relationships. According to the court, doing so requires a *nuanced approach* and *careful judicial consideration* to ensure that there is no miscarriage of justice.[[91]](#footnote-92) The court has laid down four factors to consider while dealing with such cases. Firstly, each case should be evaluated by its individual facts and circumstances. The nature of the relationship and the intentions of both parties should be carefully examined. Secondly, the statement of the alleged victim should be given due consideration. If the relationship is consensual and based on mutual affection, this should be factored into decisions regarding bail and prosecution. Thirdly, ignoring the consensual nature of a relationship can lead to unjust outcomes, such as wrongful imprisonment. The court opined that the judicial system should aim to balance the protection of minors with the recognition of their autonomy in certain contexts where the age of both the parties becomes important. Fourthly, courts should use their discretion wisely, ensuring that the application of POCSO does not inadvertently harm the very individuals it is meant to protect.[[92]](#footnote-93)

1. **Need to revisit Close-in-Age Exception in India**

Absence of close-in-age exemption in India indeed greatly diminishes any autonomy that adolescents can exercise over their sexuality and therefore discussion about its introduction in India becomes imperative not only from the perspective of understanding the realities of adolescents’ lives but also for their protection from the criminalisation. It was in this context only, The NCPCR suggested the age of consent to be set at 16 years when the discussions regarding the enactment of the POCSO Act were in progress.[[93]](#footnote-94)It also suggested to include close-in-age exception in a two-fold manner. Firstly, to protect consensual non-penetrative sexual activities amongst two children above 12 years who are within two years of each other.[[94]](#footnote-95) Secondly, to protect consensual penetrative sexual activities between children above 14 years who not more than 3 years of difference between them.[[95]](#footnote-96) Over the years, similar sentiments have been echoed by higher courts as well. The High Courts of various states in India have urged for the lowering of the age of consent to decriminalize consensual sexual activities between children and adolescents. For instance, the Calcutta High Court in *ProbhatPurkait @Provat vs. State of West Bengal[[96]](#footnote-97)*echoed its concerns over the use of POCSO Act in punishing consensual sexual activities amongst adolescents. The division bench[[97]](#footnote-98) of the court comprising of Justice Chitta Ranjan Dash and Partha Sarathi Sen opined that while the aim of the act was to protect children under 18 years of age from sexual exploitation; by prohibiting all sexual activities between children, it is depriving them of the liberty to be in consensual relationships.[[98]](#footnote-99) The court stressed on the need to strike a “*balance between protection and evolving autonomy is central to ensure best interests of adolescents.*”[[99]](#footnote-100) The case was an appeal filed by the accused in the High Court, aggrieved from the decision of the Special Court which had convicted him of the offences of kidnapping, rape (IPC, 1860) and sexual assault (POCSO Act). It involved the elopement and subsequent marriage of the accused with the victim who was above 14 years of age at the time.At the time of appeal, the victim had begotten the child of the accused and was above 17 years of age. The court set aside the conviction of the accused and urged for decriminalizing consensual sexual acts for adolescents above the age of 16 years through legal amendments. It further advocated for integrating *comprehensive sexuality and life skill education* in school curriculums.[[100]](#footnote-101)

In a recent judgement pronounced by the Allahabad High Court, the hon’ble court echoed the same sentiments as that of the Calcutta High Court when it opined that the primary aim of the POCSO Act was not criminalization of consensual romantic relationships between children and adolescents.[[101]](#footnote-102) The court held that the presence of a consensual romantic relationship between the accused and the victim should be a consideration in granting of bail under the Act as denying it will “*amount toperversity of justice if the statement of victim was ignored and accused was left to suffer behind jail.*”[[102]](#footnote-103) Similar sentiments were expressed by the same court in a previous judgement where a 14 and a half year old girl eloped and married her lover and gave birth to a baby boy who was 7-8 months old at the time of the appeal.[[103]](#footnote-104)The court was of the opinion that it was not the intention of the POCSO Act to bring within ambit, cases of romantic relationships between teenagers and adolescents.[[104]](#footnote-105)The court recognized that the consent of a minor girl holds no evidentiary value in the eyes of law but also acknowledged the precariousness of the case where the accused had been in prison as a result of the decision by the Special POCSO court and the girl had refused to go to her parents’ house and residing in a Children’s home with her infant child. Referring to these facts, the court granted bail to the accused as it said that not doing so would lead to more misery for the couple when the accused was more than ready to keep his wife and child with him and take good care of them too.[[105]](#footnote-106)

The Madras High Court also in *Sabari @ Sabarinathan v. Inspector of Police & Ors.[[106]](#footnote-107)* suggested redefining the definition of *child* to 16 years under section 2(d) of the POCSO Act.[[107]](#footnote-108) It had also suggested the implementation of a close-in-age exception through an amendment to the act, to the effect that if the accused was not more than five years older than the consenting victim of girl of 16 years or more.[[108]](#footnote-109) The judgement in this case was reiterated by the same court in *Vijayalakshmi v. Inspector of Police*[[109]](#footnote-110) that the scheme of POCSO Act neither intended to include romantic relationships within its scope nor did it seek to criminalize those indulging in them. The court urged to not perceive these relationships from the point of view of adults it signifies a lack of empathy.[[110]](#footnote-111) Further, it also urged the legislature to keep in mind the changing nature of the society and the need to keep with it. Considering these arguments, the court urged the legislature to bring about necessary amendments regarding consensual romantic relationships between children and adolescents under the Act.[[111]](#footnote-112)Similarly, the Karnataka High Court[[112]](#footnote-113) and the Delhi High Court[[113]](#footnote-114) quashed proceedings under the POCSO Act of cases dealing with romantic relationships where the parties involved had got married and had a child in the process.

Despite the judiciary's consistent stance on non-criminalization of romantic relationships under POCSO, the Government of India, in December 2022, stated in the Parliament that it doesn’t intend to lower the age of consent from 18 years to 16 years.[[114]](#footnote-115)However, in 2023, two High Courts, namely the Karnataka High Court[[115]](#footnote-116) and the Madhya Pradesh High Court[[116]](#footnote-117)requested the Law Commission of India to suggest amendments to the POCSO Act regarding cases where the *de facto* consent of the minor is present. It urged the Law Commission to amend the Act to the tune that vests discretionary power on the Special Court Judge to not levy minimum sentence in cases where there was a *de facto* consent of the victim.[[117]](#footnote-118)It is pertinent to note here, that the Law Commission in its 283rdreport titled “*Age of Consent under the Protection of Children from Sexual Offences Act, 2012*” advised against reduction of the age of consent from 18 years to 16 years on grounds such as child marriage, forced prostitution, exploitation and secondary victimization.[[118]](#footnote-119)

While the report held that there cannot be an automatic decriminalization of sexual acts between individuals aged between 16 to 18 years, it did recommend “*introducing judicial discretion in sentencing to strike a delicate balance to address the issue at hand and at the same time protecting children from sexual exploitation*.”[[119]](#footnote-120) It was opined that *guided judicial discretion* during sentencing presents a more reasonable approach, exercisable at the discretion of the Special Court when there is a presence of a *de-facto* consent of the victim who is above 16 years old. Although, it was also recommended that such a discretion should be used judiciously as it should be applied only after determining that the *de-facto* consent was “*indeed free from any coercion, deception, fraud or undue influence.*”[[120]](#footnote-121) The report recommended amendments to section 4 (penetrative sexual assault) and section 8 (sexual assault) of the Act regarding the use of discretion in cases involving romantic relationships. According to it, in any case involving a child of 16 years or more, where the Special court was satisfied that there was an *intimate* relationship between the child and the accused, the court in its discretion can impose a lesser than minimum sentence in cases of tacit approval of the victim, age proximity of less than years between the victim and the accused, good conduct, no past criminal history or lack of dominating influence of the accused.[[121]](#footnote-122)

It was also recommended that considerations such as marriage, acceptability of the relationship by the families and birth of a child consequent to that relationship are also factors that may be investigated by the court before exercising discretion in such cases.[[122]](#footnote-123) Thus , it can be seen ,the recommendations of the Law Commission, to remedy the prevailing problems are in sync with current approach applied by Special Courts and High Courts across the country, while the condescending approach by the governing authorities is arbitrary in nature and strikes on the fundamental right to life & personal liberty and the right to freedom of speech and expression guaranteed under Articles 21 and 19 of the Indian Constitution. This reeks of the double standards prevalent in the criminal justice system where adolescents can be treated as adults when committing heinous crimes [[123]](#footnote-124)but not when they express their sexual autonomy .It needs to be understand , that the POCSO Act was enacted to implement the mandate of the UNCRC of which India is a signatory and therefore, not reducing the age of consent to 16 years is a violation of that mandate which envisages striking a balance between the evolving capacities of adolescents and the protection accorded to them.[[124]](#footnote-125)

**Conclusion and Suggestions**

The primary motive for the enactment of the POCSO Act was to curb sexual exploitation of children and not to punish consensual romantic relationships. Adolescence is the age where such children are most vulnerable to grooming and sexual exploitation. However, the blanket provisions of the Act criminalizing any activity between two consenting children is in direct conflict with the natural tendencies of children to explore and act upon their sexual urges post puberty. Provisions such as these lead to stigmatization of children involved in consensual adolescent relationships and subject them to moralistic sermons from society. Criminalizing all sexual activity between adolescents undermines their capacity to learn and distinguish as to what is positive, respectful and mutually desired from what is negative, abusive and risky. It leads to an association of shame and secrecy with sexand affects their mental and physical well-being by inhibiting them from visiting health service providers for any information on sexual or reproductive health. Thus, the POCSO Act in its current form doesn’t respect the mandate of UNCRC as it doesn’t consider the evolving capabilities and sexual autonomy of children and adolescents. Thus,it becomesimperative that remedial steps are taken by the legislature to not just serve the best interests of children but also to fulfill the mandate of UNCRC.Considering the arguments and evidence adduced above, the authors would like to present the following amendments to the POCSO Act, 2012-

* Amendment in section 2(d) of the Act which reduces the age of a child from eighteen to sixteen years which decriminalizes all sexual activity between the ages of 16 years to 18 years.
* Introduction of a new provision under section 2 which defines the term *“consent.”*
* Introduction of a close-in-age exception or an age proximity clause from the ages of 14 and 15 which de-criminalizes consensual sexual activities between partners who have not more than 2 year (if the younger partner is 14 years of age) or 3 years (if the younger partner is 15 years of age) of age difference between them.
* Introduction of a provision within the act which mandates the Special Court to take the help of psychologists and psycho-social workers in determining whether the child giving consent to consensual sexual activity was mentally, physically, emotionally and sexually mature enough to do that or not.

Introduction of a close-in-age exception will help in erasing the notion that all consensual adolescent sexual activity is not sexual assault or rape and offer individuals protection from criminalization. However, it is also imperative to understand that such an exception is not in line with the realities of Indian society, where subjects such as sex and sexuality are viewed with paternalistic lens. Further, the possibility of coercion, duress and undue influence cannot be discounted in relationships which will be covered under close-in-age exception. Thus, it is important that the Special courts lay primacy on the testimony of the victim.

While close-in-age exception is not the panacea to all the problem, yet it respects the evolving capacities of children and adolescents and recognizes them as sexual beings who are mature enough to form their opinion on such matters. It is of utmost importance that children be protected from sexual abuse and exploitation but prohibiting all sexual contact is not a practical solution to the problem at hand. However, legislation and strict penal provisions are mere short-term fixes and can only do as much. It must be accompanied by measures such as comprehensive sexual education, gender sensitization and access to sexual and reproductive health services along with support from families of young adolescents. The government and society must understand that sexual activities amongst teenagers does occur and will continue to do so, and it is time that they stop brushing it under the carpet. Doing so will not only enhance the stigma and the sense of shame within children but also lead them to adopt unhealthy sexual practices. What is needed is that adolescents be given proper guidance, counselling and proper sexual education to adopt safer practices and make informed decisions. The need of the hour is to accept that children are also sexual beings and help them make educated choices for their own physical and mental benefit.

1. \* Assistant Professor, Amity Law School, Noida [↑](#footnote-ref-2)
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3. The Indian Penal Code, 1860 has recently been repealed and replaced by a new legislation called the Bharatiya Nyaya Sanhita, 2023 (BNS) which came into effect from 1st July, 2024. [↑](#footnote-ref-4)
4. Criminal Law (Amendment) Act, 2013 (Act 13 of 2013). [↑](#footnote-ref-5)
5. Prevention of Children Against Sexual Offences Act, 2012 (Act 32 of 2012)s.19. [↑](#footnote-ref-6)
6. An adolescent means a person in his or her teenage years. For this article, adolescent includes a person between 13-19 years of age. [↑](#footnote-ref-7)
7. United Nations Convention for The Rights of The Child, 1989,art. 1. [↑](#footnote-ref-8)
8. Matthew Waites, *The Age of Consent: Young People, Sexuality And Citizenship* 19(Palgrave Macmillan, 2005). [↑](#footnote-ref-9)
9. *Id*. [↑](#footnote-ref-10)
10. *Id*. [↑](#footnote-ref-11)
11. Shraddha Chaudhary, “Love, Consent and POCSO: Implementation of The POCSO Act, 2012”in*Special Courts: Challenges And Issues, Centre For Child And The Law* 127(National Law School of India University 2018). [↑](#footnote-ref-12)
12. Stephen Robertson, *Age of Consent Laws,* CYIH (June 21, 2024,)*available at*<https://chnm.gmu.edu/cyh/teaching-modules/230.html#:~:text=The%201860%20Indian%20Penal%20Code,likely%20to%20have%20begun%20menstruating>(Last visited on August 15, 2024) [↑](#footnote-ref-13)
13. *Ibid*. [↑](#footnote-ref-14)
14. *Ibid*. [↑](#footnote-ref-15)
15. *Ibid*. [↑](#footnote-ref-16)
16. *Ibid*. [↑](#footnote-ref-17)
17. *Ibid*. [↑](#footnote-ref-18)
18. *Ibid*. [↑](#footnote-ref-19)
19. Law Commission of India, “283rd ReportAge of Consent Under The Protection Of Children From Sexual Offences Act, 2012” (Ministry of Law and Justice, 2023). [↑](#footnote-ref-20)
20. *Ibid*. [↑](#footnote-ref-21)
21. *Ibid*. [↑](#footnote-ref-22)
22. Queen Empress v. Hurree Mohun Mythee (1891) ILR 18 Cal 49 (India). [↑](#footnote-ref-23)
23. *Supra,* note 11at 130. [↑](#footnote-ref-24)
24. The Prohibition of Child Marriage Act, 2006 (Act 6 of 2007),s. 2(a). [↑](#footnote-ref-25)
25. *Id.,* ats. 3. [↑](#footnote-ref-26)
26. *Ibid*. [↑](#footnote-ref-27)
27. The Prohibition of Child Marriage (Karnataka Amendment Act), 2016, s. 2: 2. Substitution of section 3.- In the Prohibition of Child Marriage Act, 2006 (Central Act 6 of 2007) (hereinafter referred to as the principal Act), In section 3, after sub-section (1) the following shall be inserted, namely:- “(1A) Notwithstanding anything contained in sub-section (1) every child marriage solemnized on or after the date of coming into force of the Prohibition of Child Marriage (Karnataka Amendment) Act, 2016 shall be void ab initio. [↑](#footnote-ref-28)
28. *Supra,* note 11 at 131. [↑](#footnote-ref-29)
29. S*upra,*note 5, at s. 2(d). [↑](#footnote-ref-30)
30. *Id.,* at s. 3. [↑](#footnote-ref-31)
31. *Id.,* at s. 5. [↑](#footnote-ref-32)
32. *Id.,* at s. 7. [↑](#footnote-ref-33)
33. *Id.,* at s. 9. [↑](#footnote-ref-34)
34. *Id.,* at s. 11. [↑](#footnote-ref-35)
35. *Id.,* at s. 13. [↑](#footnote-ref-36)
36. *Id.,* at s. 3. [↑](#footnote-ref-37)
37. *Id.,* at s.3(d). [↑](#footnote-ref-38)
38. *Id.,* at s. 28. [↑](#footnote-ref-39)
39. *Id.,* at s.32. [↑](#footnote-ref-40)
40. *Id.,* at s.29. [↑](#footnote-ref-41)
41. *Id.,* at s. 33(4). [↑](#footnote-ref-42)
42. *Id.,* at s.33(5). [↑](#footnote-ref-43)
43. *Id.,* at s.33(6). [↑](#footnote-ref-44)
44. *Id.,* at s.42-A. [↑](#footnote-ref-45)
45. S*upra,*note 4, atS. 9. [↑](#footnote-ref-46)
46. The Indian Penal Code, 1860 (Act 45 of 1860),s.375. [↑](#footnote-ref-47)
47. AIR 2017 SC 4904. [↑](#footnote-ref-48)
48. S*upra,* note 11 at132. [↑](#footnote-ref-49)
49. The Bharatiya Nyaya Sanhita 2023 (Act 45 of 2023),s. 2(3) [↑](#footnote-ref-50)
50. *Supra* note 5 ats. 34. [↑](#footnote-ref-51)
51. Government of India, “National Family Health Survey-3”169 (Ministry of Health and Family Welfare,2005-06). [↑](#footnote-ref-52)
52. *Ibid.* [↑](#footnote-ref-53)
53. Government of India,“National Family Health Survey-4” 158 (Ministry of Health and Family Welfare2015-16). [↑](#footnote-ref-54)
54. *Ibid.* [↑](#footnote-ref-55)
55. *Ibid.* [↑](#footnote-ref-56)
56. Government of India, “Youth in India Report: Situation and Needs” 204 (Ministry of Health and Family Welfare 2006-07). [↑](#footnote-ref-57)
57. *Id*, at 205-206. [↑](#footnote-ref-58)
58. *Ibid*. [↑](#footnote-ref-59)
59. Criminal Code of Canada, 1985, S. 150. a [↑](#footnote-ref-60)
60. *Ibid*. [↑](#footnote-ref-61)
61. *Ibid*. [↑](#footnote-ref-62)
62. *Ibid.* [↑](#footnote-ref-63)
63. Partners in Law in Development, “Why Girls Run Away to Marry: Adolescent Realities and Socio-Legal Responses in India,” 74 (2019) *available at* [*https://vmml-cwds.ac.in/sites/default/files/2024-05/Why\_Girls\_Run\_Away\_to\_Marry\_Adolescent.pdf*](https://vmml-cwds.ac.in/sites/default/files/2024-05/Why_Girls_Run_Away_to_Marry_Adolescent.pdf)(Last visited on August 20th 2024). [↑](#footnote-ref-64)
64. *Supra* note 7 at art. 3. [↑](#footnote-ref-65)
65. *Id.,* at art. 5. [↑](#footnote-ref-66)
66. United Nations Convention on the Rights of the Child, Committee on the Rights of the Child, *General Comment No.20 (2016) on the Implementation of the Rights of the Child during Adolescence,* UN Doc. CRC/C/GC/20. [↑](#footnote-ref-67)
67. S*upra* note 11 at133. [↑](#footnote-ref-68)
68. *Ibid.* [↑](#footnote-ref-69)
69. *Ibid.* [↑](#footnote-ref-70)
70. *Ibid.* [↑](#footnote-ref-71)
71. HAQ CENTRE FOR CHILD RIGHTS ET ALL, *Implementation of the POCSO Act: Study of Cases of Special Courts in Delhi & Mumbai* (2012 - 2015), HAQ: Centre for Child Rights & Forum Against Sexual Exploitation of Children (FACSE) (November 2017). [↑](#footnote-ref-72)
72. *Id*., at 101. [↑](#footnote-ref-73)
73. SC No. 66/13 decided on 17.08.2013 (Delhi). [↑](#footnote-ref-74)
74. *Ibid*. [↑](#footnote-ref-75)
75. *Ibid*. [↑](#footnote-ref-76)
76. State v. Suman DassCrl L.P. 301/2014 decided by the High Court of Delhi on 03.09.2014. [↑](#footnote-ref-77)
77. Spl. C. No. 165 of 2015 decided on 28.01.2016 (Maharashtra). [↑](#footnote-ref-78)
78. *Ibid*. [↑](#footnote-ref-79)
79. SC No. 25/15 decided on 25.04.2016 (Maharashtra). [↑](#footnote-ref-80)
80. SC No. 302/15 decided on 20.10.2016 (Maharashtra). [↑](#footnote-ref-81)
81. Special (POCSO) Case No. 50/15 decided on 22.06.2016 (Assam). [↑](#footnote-ref-82)
82. POCSO Case No. 48/15 decided on 16.02.2016 (Assam). [↑](#footnote-ref-83)
83. SC No. 113/13 decided on 31.07.2014 (Delhi). [↑](#footnote-ref-84)
84. *Supra* note 11 at 135. [↑](#footnote-ref-85)
85. State v. Indla Venkatesh & Ors. S.C. No. 57/2015, decided on 04.10.2016 (Guntur). [↑](#footnote-ref-86)
86. State v. Rajendra Bhaskar Bagul, Sessions Case No. 24 of 2015, decided on 28.01.2016 (Nashik) [↑](#footnote-ref-87)
87. XX v. State of Kerala, CRL.MC NO. 714 OF 2022. [↑](#footnote-ref-88)
88. State of Kerala v. XX, BAIL APPL. NO. 5168 OF 2024. [↑](#footnote-ref-89)
89. *Ibid.* [↑](#footnote-ref-90)
90. CRIMINAL MISC. BAIL APPLICATION No. - 18596 of 2024. [↑](#footnote-ref-91)
91. *Id.,* at para 15. [↑](#footnote-ref-92)
92. *Id.,* at para 14. [↑](#footnote-ref-93)
93. S*upra,* note 11 at 140. [↑](#footnote-ref-94)
94. *Id.* [↑](#footnote-ref-95)
95. *Ibid.* [↑](#footnote-ref-96)
96. CRA (DB) 14 of 2023. [↑](#footnote-ref-97)
97. *Ibid.* [↑](#footnote-ref-98)
98. *Id*., at 23. [↑](#footnote-ref-99)
99. *Id*., at 28. [↑](#footnote-ref-100)
100. *Id*. [↑](#footnote-ref-101)
101. MrigrajGautam @ Rippu vs. State of Uttar Pradesh & Ors. Criminal Misc. Bail Application No. - 45007 of 2023. [↑](#footnote-ref-102)
102. *Id*., at 10. [↑](#footnote-ref-103)
103. Atul Mishra V. State Of Uttar Pradesh & Ors. Criminal Misc. Bail Application No.-53947 Of 2021. [↑](#footnote-ref-104)
104. *Id*., at 13. [↑](#footnote-ref-105)
105. *Id*., at 18. [↑](#footnote-ref-106)
106. Criminal Appeal No.490 of 2018. [↑](#footnote-ref-107)
107. *Ibid*., at 29. [↑](#footnote-ref-108)
108. *Ibid* [↑](#footnote-ref-109)
109. Crl.M.P.No.109 of 2021. [↑](#footnote-ref-110)
110. *Id*., at 18. [↑](#footnote-ref-111)
111. *Id*. [↑](#footnote-ref-112)
112. Rama @ Bande Rama v. State of Karnataka, CRL.P No. 6214 of 2022. [↑](#footnote-ref-113)
113. Arif Khan v. The State &Anr. W.P. (CRL) 1064/2023. [↑](#footnote-ref-114)
114. Jagriti Chandra, “No Plan to Revise the Age of Consent, Centre Tells Rajya Sabha”, *The Hindu,* (December 22, 2022)*available at* [*https://www.thehindu.com/news/national/no-plans-to-reduce-age-of-consent-for-relationships-centre/article66288969.ece*](https://www.thehindu.com/news/national/no-plans-to-reduce-age-of-consent-for-relationships-centre/article66288969.ece)(Last visited on 10th July 2024). [↑](#footnote-ref-115)
115. State of Karnataka v. Basavraj S/o YellappaMadar (2023) 1 AIR Kant R 231. [↑](#footnote-ref-116)
116. VeekeshKalawat v. State of Madhya Pradesh & Ors. [Misc. Criminal Case No. 4521 of 2023]. [↑](#footnote-ref-117)
117. *Supra* note 19 at 3. [↑](#footnote-ref-118)
118. *Ibid.* [↑](#footnote-ref-119)
119. *Id.,* at 106. [↑](#footnote-ref-120)
120. *Id.,* at 107*.* [↑](#footnote-ref-121)
121. *Id.,* at 117. [↑](#footnote-ref-122)
122. *Id.,* at 118. [↑](#footnote-ref-123)
123. The Juvenile Justice (Care and Protection of Children) Act, 2015 ensures that the children who are accused of committing heinous crimes and are between the ages of 16 to 18 years be tried as adults according to section 15 read with section 18(3) of the said act. The Juvenile Justice Board (JJB), in this regard is empowered to conduct a preliminary enquiry regarding the mental and physical capacity of the child to commit the offence along with his capability to understand the consequences of the offence. [↑](#footnote-ref-124)
124. *Supra* note 66 atart. 1. [↑](#footnote-ref-125)