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WHEN PROTECTION BECOMES PROSECUTION: RECONCILING POCSO WITH THE REHABILITATIVE PHILOSOPHY OF JUVENILE JUSTICE

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ABSTRACT

The Protection of Children from Sexual Offences Act, 2012 (POCSO) represents a significant legislative commitment towards protecting children from sexual abuse, exploitation and harassment. By adopting an age-based definition of a child and criminalising sexual conduct involving persons below eighteen years, the Act deliberately places child protection above the question of legal consent. However, the operation of this framework creates a difficult legal and policy problem where the person alleged to have committed the offence is himself or herself an adolescent, particularly in cases involving consensual or apparently consensual relationships between adolescents close in age. In such circumstances, the protective objective of POCSO may intersect with the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act), which is founded upon rehabilitation, restoration, dignity, participation, diversion and the best interests of the child.[1]

[1] Protection of Children from Sexual Offences Act, No. 32 of 2012, §§ 2(d), 3–12 (India); Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, §§ 3, 15, 18–20 (India).

This paper examines the tension between these two legislative frameworks. It argues that POCSO and juvenile justice are not inherently contradictory: POCSO determines the nature of prohibited conduct and protects the child from sexual exploitation, whereas the JJ Act determines how a child who comes into conflict with law should be treated. Nevertheless, the rigid application of POCSO to adolescent relationships may sometimes produce consequences inconsistent with the rehabilitative philosophy of juvenile justice. The paper analyses the statutory framework, constitutional principles, judicial decisions and the recommendations of the 22nd Law Commission of India in its 283rd Report.[2] It proposes a calibrated approach involving stronger prosecutorial scrutiny, age-gap and power-imbalance assessment, child-sensitive investigation, diversion wherever legally permissible, specialized judicial guidelines and limited sentencing discretion in genuinely non-exploitative cases involving adolescents aged sixteen to eighteen. The objective should not be to create a blanket exception to POCSO, but to ensure that protection does not unnecessarily become a pathway to disproportionate criminalization.

KEYWORDS: POCSO, Juvenile Justice, Adolescent Relationships, Child Protection, Rehabilitation, Age of Consent, Best Interest of Child, Diversion, Criminalization.

INTRODUCTION

“There can be no keener revelation of a society’s soul than the way in which it treats its children" is a famous say which talk about the manner in which a legal system treats children reflects the values it seeks to protect.[3] The protection of children from sexual abuse and exploitation is undoubtedly one of the most important obligations of the State. At the same time, justice for children cannot be reduced to punishment alone. A

[2] Law Comm'n of India, *Age of Consent Under the Protection of Children from Sexual Offences Act, 2012*, Report No. 283, at 1–10, 25–32 (2023).

[3] Nelson Mandela, *Long Walk to Freedom* 506 (Little, Brown & Co. 1994).

child is a developing individual whose dignity, vulnerability, capacity for reform and prospects of rehabilitation must remain central to the administration of justice. This becomes particularly significant when the protective machinery of criminal law is invoked against an adolescent who is himself or herself a child in the eyes of juvenile justice law.

The Protection of Children from Sexual Offences Act, 2012 commonly known as POCSO was enacted to safeguard children from assault, sexual harassment and pornography. It establishes a age-based definition of childhood of any person under eighteen is considered a child. The law creates a protective framework because children may be easily manipulated, coerced, groomed or exploited due to their developmental stage and dependence on adults.[4] The need for protection is undeniable especially in cases where an adult upon a child's trust or power imbalance.

But rigidly applying an age-based framework can lead to consequences when both parties involved are adolescents. A romantic or sexual relationship between two people might under current law fall within the scope of POCSO even when there is no element of coercion, exploitation or abuse. Since consent does not serve as a defence under POCSO, even a willing interaction between two teenagers could result in criminal proceedings. In cases one adolescent may find themselves prosecuted while the other, the alleged victim may have little awareness of the legal implications.[5]

This brings us to the dilemma of this paper: When can a law designed to protect children from harm inadvertently expose another child to prosecution? The question is not whether children should be protected from abuse it is clear that they must be but whether the law can do so without failing to distinguish between real danger and normal adolescent behavior.

The Juvenile Justice (Care and Protection of Children) Act, 2015 also known as the JJ Act offers a view of childhood. It does not see every child in conflict with the law as a criminal. Instead it focuses on rehabilitation, restoration, personal development and

[4] Protection of Children from Sexual Offences Act, No. 32 of 2012, pmbl., §§ 2(d), 3–12 (India).

[5] Id. § 2(d).

reintegration into society. Its philosophy is based on the idea that children are still forming their identities and must not be permanently labeled or excluded by the justice system.[6] While POCSO functions as a shield to prevent harm the JJ Act acts as a guidepost toward healing and renewal.

The tension between these two laws is not just technical rather it is deeply ethical. POCSO asks: How do we protect children from harm? Juvenile justice asks: How should the state respond when a child breaks the law? When both questions apply to the teenager the legal system faces a difficult balancing act. The law must protect the determine responsibility respect the dignity of the child accused and ensure that the goal of protection does not become disproportionate punishment.

Constitutional principles further complicate this. Articles 14 (equality) 15(3) (protection for women and children) 21 (right to life and personal liberty) and 39(e) (protection of children's health and development) together form a framework that demands fair and proportionate treatment.[7] The principle of proportionality is key here, the consequences of prosecution should not extend beyond the immediate case and threaten a young person's education family bonds, social standing or future prospects. Protection must not mean damage.

Indian courts have increasingly recognized the challenges posed by POCSO in relationships. The Law Commission of India in its 283rd Report on the Age of Consent under POCSO reviewed the effects of applying the age of eighteen to teenage interactions. Importantly the Commission did not recommend lowering the age of consent. Instead it acknowledged that there is a need for nuance in cases involving adolescents aged 16 to 18 particularly those in close-in-age relationships. This shows that the debate is not about weakening child protection rather About ensuring the law fits the facts.[8]

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[6] Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, pmbl., § 3 (India).

[7] INDIA CONST. arts. 14, 15(3), 21, 39(e).

[8] Law Comm'n of India, *Age of Consent Under the Protection of Children from Sexual Offences Act, 2012*, Report No. 283, at 25–32 (2023).

Any effort to reconcile POCSO and juvenile justice must avoid extremes. On one hand we risk criminalization where every consensual teenage relationship triggers a criminal probe. On the other we risk opening the door to abuse, where adults exploit loopholes to disguise grooming or abuse as innocent romance. The challenge lies in achieving balance, proportionality and legislative precision.

In the end the question is not whether protection or rehabilitation should win. A child-centered justice system must pursue both. Protecting children from abuse is vital. So is protecting children from the lifelong consequences of being treated as criminals for actions that reflect growing up not wrongdoing. The real test for criminal law is whether it can design a framework where protection does not turn into disproportionate prosecution and accountability does not erase the chance, for redemption.

UNDERSTANDING THE PROTECTIVE PURPOSE OF POCSO

POCSO was enacted to protect children from sexual assault, sexual harassment and exploitation. Section 2(d) defines a child as “any person below the age of eighteen years.[9] The definition is deliberately chronological rather than dependent upon individual assessments of maturity.

In Eera Through Dr. Manjula Krippendorf v. State (NCT of Delhi), the Supreme Court considered the meaning of “child” under Section 2(d). The Court rejected an interpretation that would extend the statutory definition through the concept of “mental age”. The decision reflects the legislative choice of chronological age as the governing standard.[10]

The advantage of such a bright-line rule is certainty. Police officers, courts and other authorities do not have to decide whether an individual child was sufficiently mature to

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[9] Protection of Children from Sexual Offences Act, No. 32 of 2012, § 2(d) (India).

[10] *Eera Through Dr. Manjula Krippendorf v. State (Gov't of NCT of Delhi)*, (2017) 15 SCC 133, 143–44 (India).

consent. A uniform age threshold also reduces the possibility of subjective and discriminatory determinations.

At the same time, certainty has a cost. A single chronological threshold inevitably covers different factual situations. An exploitative relationship between an adult and a young child and a relationship between two seventeen-year-olds may fall within the same statutory framework even though the social and developmental circumstances are substantially different.[11]

POCSO does not recognise the factual willingness of a child below eighteen as legal consent to sexual activity. This approach is consistent with the protective philosophy of the statute.[12]

The Supreme Court's decision in Independent Thought v. Union of India demonstrates the Court's strong commitment to maintaining eighteen as the relevant age of protection. The Court held that sexual intercourse with a wife below eighteen could not be treated differently merely because of marriage. The decision reinforced the principle that marital status cannot dilute statutory protection afforded to children.[13]

Similarly, in Attorney General for India v. Satish**,** the Supreme Court rejected an unduly narrow interpretation of sexual assault under Section 7 of POCSO. The Court made clear that the statutory requirement of sexual intent could not be reduced to a technical requirement of skin-to-skin contact. These decisions demonstrate the importance of interpreting POCSO in a manner that prevents loopholes capable of undermining child protection.[14]

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[11] Id. at 143–45.

[12] Protection of Children from Sexual Offences Act, No. 32 of 2012, § 2(d) (India).

[13] *Independent Thought v. Union of India*, (2017) 10 SCC 800, 834–35 (India).

[14] *Attorney Gen. for India v. Satish*, (2022) 1 SCC 1, 12–17 (India).

Section 19 of POCSO imposes a reporting obligation concerning knowledge or apprehension of an offence. Section 29 and section 30 establish important presumptions in specified circumstances. The Special Court framework under Section 28 and section 33 and the child-sensitive procedural provisions are intended to prevent secondary victimization and ensure effective adjudication for children's.[15]

However, mandatory reporting can have consequences beyond the immediate protection of the child. In adolescent relationships, disclosure to parents, teachers, hospitals or other institutions may trigger police intervention and criminal proceedings. The law may therefore become involved even where the persons concerned do not perceive themselves as having participated in an abusive relationship.[16]

THE REHABILITATIVE PHILOSOPHY OF JUVENILE JUSTICE

The Juvenile Justice Act approaches children in conflict with law differently from ordinary adult criminal law.[17]

Section 3 contains the fundamental principles governing the administration of the Act. These include presumption of innocence, dignity and worth, participation, best interests, safety, positive measures, non-stigmatizing language, privacy and confidentiality, restoration, fresh start and diversion. These principles reflect the proposition that children are developmentally different from adults and possess a greater capacity for reform.[18]

Section 3(i) embodies a presumption that a child should be treated as innocent of mala

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[15] Protection of Children from Sexual Offences Act, No. 32 of 2012, §§ 19, 28–30, 33 (India).

[16] Id. § 19.

[17] Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, pmbl., §§ 3, 4 (India).

[18] Id. § 3.

fide or criminal intent until established otherwise. This is significant in the context of adolescents accused under POCSO.[19]

An adolescent's participation in prohibited conduct does not automatically establish the same degree of criminal blameworthiness that may exist in an adult perpetrator. Developmental immaturity, peer influence, emotional attachment and inadequate understanding of long-term consequences may be relevant to the manner in which the justice system responds.

The best-interest principle requires decision-makers to priorities the child's welfare and development. The principle of dignity prevents the justice system from treating a child merely as an offender.

The Act further emphasizes participation and requires that the child's views be considered according to age and maturity. This does not mean that a child's wishes override statutory protections. Rather, it means that the child's voice forms part of a legally relevant assessment.[20]

Perhaps the strongest indication of the rehabilitative philosophy is Section 3(xv), which promotes diversion from judicial proceedings where appropriate.[21]

The objective is not to excuse wrongdoing. Instead, it recognizes that formal criminal proceedings may sometimes increase rather than reduce harm to a child. Education, counseling, family intervention, supervision and community-based measures may be more effective than punishment in preventing future offending.

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[19] Id. § 3(i).

[20] Id. §§ 3(ii), 3(iv).

[21] Id. § 3(xv).

WHEN PROTECTION BECOMES PROSECUTION

A. THE ADOLESCENT RELATIONSHIP PROBLEM

The central difficulty can be illustrated through a hypothetical example.

Suppose two adolescents, aged seventeen and sixteen, are in a relationship. Their families oppose the relationship. Following a disagreement or discovery of the relationship, the girl's family approaches the police. Because the girl is below eighteen, the sexual conduct may attract POCSO.[22] The seventeen-year-old boy may consequently enter the juvenile justice system as a child in conflict with law.

The example does not suggest that the sexual conduct becomes lawful merely because the parties describe their relationship as consensual. Under the existing statutory framework, the legal position remains different.

If the same facts are processed through the criminal justice system as though they necessarily represented the same social harm as an adult exploiting a child, the rehabilitative objective of juvenile justice may be compromised.

B. POCSO VICTIM AND JUVENILE ACCUSED

An important conceptual distinction must be maintained. POCSO and the JJ Act perform different legal functions.

POCSO answers: What conduct constitutes a sexual offence against a child?

The JJ Act answers: How should a person who was below eighteen when allegedly committing an offence be dealt with by the justice system?

Therefore, the two statutes need not be viewed as mutually exclusive. POCSO may

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[22] Protection of Children from Sexual Offences Act, No. 32 of 2012, §§ 2(d), 3–12 (India); Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, §§ 2(13), 3 (India).

establish the offence, while the JJ Act governs the treatment of an accused child.[23]

C. THE DANGER OF OVER-CRIMINALIZATION

The concern is particularly acute where the alleged accused is himself an adolescent. Criminal proceedings can affect education, family relationships, psychological well-being and social identity. Even where the child is ultimately dealt with through juvenile procedures, contact with the criminal justice system may itself produce stigma.

The JJ Act expressly recognizes the importance of avoiding stigmatization, protecting privacy and providing a fresh start. A system that unnecessarily exposes adolescents to prolonged adversarial proceedings may therefore undermine the very objectives that the juvenile justice framework seeks to achieve.

JUDICIAL APPROACH: BALANCING PROTECTION AND REHABILITATION

The judicial approach to the interaction between POCSO and juvenile justice reflects a continuing attempt to balance two equally important objectives: the protection of children from sexual exploitation and the recognition of children as developing individuals capable of rehabilitation. Indian courts have generally adopted a strict approach towards the protective purpose of POCSO, particularly where there is a risk of sexual exploitation or abuse. At the same time, the jurisprudence under the Juvenile Justice Act demonstrates that an adolescent accused of an offence cannot automatically be viewed through the same lens as an adult offender.[24] The emerging difficulty is therefore not simply one of statutory interpretation, but of determining how two protective philosophies can operate together without one undermining the other.

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[23] Id. §§ 2(d), 19; Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, §§ 3, 10–20 (India).

[24] Protection of Children from Sexual Offences Act, No. 32 of 2012, §§ 2(d), 3–12 (India); Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, §§ 2(13), 3, 10–20 (India).

A. THE LIMITS OF JUDICIAL INTERPRETATION

The Supreme Court's decision in Eera Through Dr. Manjula Krippendorf v. State provides an important starting point for understanding the limits of judicial intervention under POCSO. The Court declined to expand the statutory meaning of “child” by incorporating concepts such as mental age or psychological maturity. The statutory framework was based upon chronological age, and the Court recognized that changing that threshold would effectively amount to altering the legislative scheme. This principle has considerable significance for adolescent relationships. Courts cannot simply introduce a judicial exception to POCSO by declaring that certain adolescents are sufficiently mature to consent for the purposes of the statute. The difficulty created by the rigid age threshold may therefore require legislative reconsideration rather than judicial rewriting.[25]

Courts continue to play a role in using POCSO by understanding the law in a thoughtful way especially when it comes to crimes, proof and rules to protect people.. There is a big difference, between explaining the law that is already there and making a new rule. Even though courts can help explain what the law means changing the age of consent or making an exception is something that should be done by the lawmakers.[26]

B. POCSO AND THE PRINCIPLE OF STRONG CHILD PROTECTION

The protective approach is clearly visible in Independent Thought v. Union of India. The Supreme Court refused to allow the marital exception to operate in relation to sexual intercourse with a wife below eighteen years of age. The judgment reflects a broader constitutional understanding that children are entitled to protection irrespective of the social or familial circumstances in which the conduct occurs. The existence of a

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[25] *Eera Through Dr. Manjula Krippendorf v. State (Gov't of NCT of Delhi)*, (2017) 15 SCC 133, 143–45 (India).

[26] Id. at 145–46.

marriage, relationship or other social arrangement cannot by itself remove the vulnerability associated with childhood.[27]

Similarly, in Attorney General for India v. Satish, the Supreme Court rejected the narrow "skin-to-skin" interpretation of Section 7 of POCSO. The Court recognized that an overly technical construction could defeat the protective purpose of the legislation These decisions demonstrate that courts have consistently resisted interpretations that create loopholes in child-protection law.[28]

However, the protective approach must be distinguished from the proposition that every case involving a person below eighteen is factually identical. POCSO establishes the legal protection attached to childhood, but the circumstances in which an offence occurs may vary considerably. There may be substantial differences between an adult exploiting a child, a person exercising authority over a child, and two adolescents who are close in age. The existence of these differences does not make the latter conduct automatically lawful under the present POCSO framework, but it raises a legitimate question about whether the consequences of the law should be identical in every situation.[29]

C. DEVELOPMENTAL CAPACITY AND JUVENILE JUSTICE

The Juvenile Justice Act introduces a different understanding of childhood. Its purpose is not merely to determine whether an offence has been committed but also to determine how the justice system should respond to a child who comes into conflict with law. Rehabilitation, restoration, social reintegration and the developmental needs of

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[27] *Independent Thought v. Union of India*, (2017) 10 SCC 800, 834–35 (India).

[28] *Attorney Gen. for India v. Satish*, (2022) 1 SCC 1, 12–17 (India).

[29] Protection of Children from Sexual Offences Act, No. 32 of 2012, §§ 2(d), 3–12 (India).

the child therefore assume considerable importance.[30]

The Supreme Court's decision in Shilpa Mittal v. State of NCT of Delhi illustrates the importance of adhering to the statutory framework governing children in conflict with law. The Court's interpretation of heinous offence demonstrates that the classification of an offence cannot be based merely upon the seriousness that may be perceived from its maximum punishment. Statutory requirements must be satisfied before the more serious consequences contemplated by juvenile justice legislation can follow.[31]

The developmental approach becomes even clearer in Barun Chandra Thakur v. Master Bholu. While dealing with preliminary assessment under Section 15 of the JJ Act, the Supreme Court emphasized that the assessment of an adolescent requires consideration of mental and physical capacity, the ability to understand consequences and the circumstances surrounding the alleged offence. The Court also stressed that such assessment should not become a mechanical formality.[32]

This developmental approach has broader significance for the POCSO debate. Adolescence is a period of continuing psychological and social development. An adolescent accused of an offence cannot necessarily be presumed to possess the same decision-making capacity, understanding of consequences or degree of criminal sophistication as an adult. The juvenile justice framework therefore seeks to ensure that the response of the State remains sensitive to the developmental stage of the child.[33]

D. THE MISSING DISTINCTION BETWEEN EXPLOITATION AND PEER RELATIONSHIPS

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[30] Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, § 3 (India).

[31] *Shilpa Mittal v. State of NCT of Delhi*, (2020) 2 SCC 787, 791–94 (India).

[32] *Barun Chandra Thakur v. Master Bholu*, (2022) 2 SCC 642, 657–63 (India).

[33] Id. at 657–63.

One of the problems in the current legal system is the limited way to tell apart different types of sexual behavior involving teenagers. The POCSO law has a rule that anyone under eighteen is considered a child. This gives clarity. Stops people from saying a child was old enough to agree. This method might include situations that are very different when it comes to being forced having power or being taken advantage of. [34]

An adult and a child situation and a relationship between two teenagers who're close in age might bring up different questions, about fairness especially when the person accused is also a teenager. Understanding this difference should not lead to an excuse based on consent because someone might seem willing but still be being groomed or controlled. Any close-in-age rule should instead look at the details of the relationship, including how old the people are if there was force, threats, grooming, reliance, control, weakness and imbalance of power. This would help tell teenage interactions apart from relationships hiding exploitation.[35]

[34] Protection of Children from Sexual Offences Act, No. 32 of 2012, § 2(d) (India).

[35] Id. §§ 2(d), 3–12; Law Comm'n of India, *Age of Consent Under the Protection of Children from Sexual Offences Act, 2012*, Report No. 283, at 25–32 (2023).

E. PROPORTIONALITY AS A BRIDGE BETWEEN POCSO AND JUVENILE JUSTICE

The principle of proportionality creates a bridge between POCSO and juvenile justice. Child protection needs State action to stop exploitation. Juvenile justice needs the response to a child accused of a crime to match the Childs age, growth and situation. Proportionality does not weaken POCSO protection; proportionality is, about how legal responsibility's handled. When an allegation involves teenagers and there is no sign of coercion, exploitation, grooming or misuse of power the rehabilitative ideas of justice become more important. This method shows that different situations may need answers while keeping the protective aim of POCSO. Juvenile justice wants to make sure that children are held accountable but are not left with shame. The aim is not to remove responsibility but to achieve responsibility through steps that help the child grow heal and finally return to society.[36]

F. JUDICIAL PROTECTION AND LEGISLATIVE RESPONSIBILITY

Courts can look at laws and help protect basic rights but making a full close-in-age rule for POCSO needs bigger choices that are better handled by Parliament. The case of Eera shows that changes to the age rules in POCSO should usually come from a law-making process instead of judges making new ideas. Law changes would also let Parliament create rules, definitions and steps for close-in-age relationships.[37] The Law Commission of India in its 283rd Report took a stance by not lowering the age of consent but also saw the problems that come from young relationships and suggested a better way to handle them. This way of thinking offers a path that deals with real issues without making POCSO less effective, at protecting people.[38]

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[36] INDIA CONST. arts. 14, 21; Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, § 3 (India).

[37] *Eera Through Dr. Manjula Krippendorf v. State (Gov't of NCT of Delhi)*, (2017) 15 SCC 133, 145–46 (India).

[38] Law Comm'n of India, *Age of Consent Under the Protection of Children from Sexual Offences Act, 2012*, Report No. 283, at 25–32 (2023).

G. TOWARDS A CHILD-CENTERED INTERPRETATION

The emerging judicial approach ultimately suggests that the debate should move beyond the simple opposition between protection and consent. The more appropriate question is whether the legal system can remain uncompromising against exploitation while adopting a developmentally sensitive response towards children who themselves come into conflict with law. A child-centered approach would require courts and institutions to consider the child's age, developmental stage, circumstances and vulnerability at every appropriate stage of the proceedings. [39]

The jurisprudence therefore points towards a careful middle ground. establishes the limits of judicially altering the statutory age threshold; Independent Thought *and* Attorney General for India v. Satish reinforce the protective purpose of POCSO; while Shilpa Mittal and Barun Chandra Thakur demonstrate the importance of statutory safeguards, developmental assessment and proportionality within juvenile justice. Read together, these decisions reveal that Indian law is already balancing protection and rehabilitation in different contexts. The unresolved challenge is to develop a framework that brings these principles together when the accused and the alleged victim are both adolescents.[40]

THE LAW COMMISSION'S RESPONSE: REPORT NO. 283

The tension between POCSO and adolescent relationships received significant institutional attention through the 283rd Report of the Law Commission of India, “Age of

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[39] Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, § 3 (India).

[40] *Eera Through Dr. Manjula Krippendorf v. State (Gov't of NCT of Delhi)*, (2017) 15 SCC 133; *Independent Thought v. Union of India*, (2017) 10 SCC 800; *Attorney Gen. for India v. Satish*, (2022) 1 SCC 1; *Shilpa Mittal v. State of NCT of Delhi*, (2020) 2 SCC 787; *Barun Chandra Thakur v. Master Bholu*, (2022) 2 SCC 642.

Consent under the Protection of Children from Sexual Offences Act, 2012" (2023).[41]

The Law Commission considered concerns arising from cases involving adolescents above sixteen who enter relationships, elope or engage in sexual activity. It was specifically asked to reconsider the age of consent and address situations in which factual consent appears to exist even though legal consent is unavailable.[42]

The Commission ultimately rejected lowering the age of consent under POCSO. This position is understandable because reducing the age threshold could create serious risks for children and could be exploited by adults seeking to avoid liability.[43]

However, the Commission recognized that some cases involving children between sixteen and eighteen may involve what it described as tacit approval in fact, even though such approval does not constitute consent in law.[44]

The Commission therefore recommended a more nuanced approach through guided judicial discretion in sentencing, rather than changing the age of consent. This is an important middle path. It preserves eighteen as the statutory age of protection while recognizing that every case falling within POCSO may not involve the same degree of culpability or social harm.[45]

The recommendation is particularly relevant to the present paper because it

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[41] Law Comm'n of India, *Age of Consent Under the Protection of Children from Sexual Offences Act, 2012*, Report No. 283, at 1 (2023).

[42] Id. at 25–32.

[43] Id. at 25–32.

[44] Id. at 31–32.

[45] Id. at 31–32.

acknowledges the problem without dismantling the protective framework.[46]

RECONCILING POCSO WITH JUVENILE JUSTICE

The apparent conflict between the Protection of Children from Sexual Offences Act, 2012 (POCSO) and the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) does not mean that one framework must prevail over the other. Both laws are concerned with children, but they perform different legal functions. POCSO establishes substantive protection against sexual offences involving persons below eighteen years of age, whereas the JJ Act provides a child-centered framework for dealing with children alleged to have committed offences. The difficulty arises when the application of POCSO to an adolescent accused is treated as determining not only the existence of an offence but also the nature of the State's response to that child.[47]

The protective purpose of POCSO must remain intact where the circumstances disclose genuine exploitation or abuse. Coercion, violence, intimidation, grooming, trafficking, manipulation, abuse of trust or authority, and substantial power imbalances require the full operation of the protective framework. The existence of adolescent relationships cannot be used to obscure such conduct. In particular, an apparently willing relationship cannot automatically rule out grooming or manipulation, since vulnerability may arise from circumstances that are not immediately visible. Any attempt to address adolescent relationships must therefore be carefully designed so that it does not create an avenue for genuine abuse to escape legal scrutiny.[48]

At the same time, when the accused was himself or herself below eighteen at the relevant time, that status must have substantive significance. The JJ Act is not merely a

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[46] Id. at 31–32.

[47] Protection of Children from Sexual Offences Act, No. 32 of 2012, §§ 2(d), 3–12 (India); Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, §§ 2(13), 3, 10–20 (India).

[48] Protection of Children from Sexual Offences Act, No. 32 of 2012, §§ 3–12 (India).

procedural safeguard to be applied after POCSO liability has been established; it embodies a distinct philosophy based on rehabilitation, dignity, development, restoration and social reintegration. The legal system must therefore distinguish between determining whether conduct falls within POCSO and deciding how a child accused should be dealt with. This distinction becomes particularly important in cases involving adolescents who are relatively close in age and where the available circumstances do not indicate exploitation, coercion or abuse of authority.[49]

The distinction between consent as a defence and context as a factor in determining the legal response is central to this reconciliation. Under the present statutory framework, the fact that a child expressed willingness cannot operate as a general defence to POCSO liability. Importing an adult conception of consent into the legislation would undermine its age-based protective structure. However, this does not mean that every circumstance surrounding the relationship must be legally ignored once POCSO is invoked. The age and developmental position of both adolescents, the nature of their relationship and the surrounding circumstances may be relevant to determining the appropriate response to the child accused under the JJ Act.

Accordingly, the relevant inquiry should not be reduced to whether an adolescent "consented." Instead, authorities should examine the circumstances that may reveal vulnerability or exploitation, including the relative ages of the parties, power or authority, dependency, threats, manipulation, economic vulnerability, grooming and the manner in which the relationship developed. A close age gap should not automatically create an exemption, just as an allegation of a POCSO offence should not automatically erase every distinction between fundamentally different factual situations. The purpose of examining these factors is to identify the nature of the circumstances and guide an appropriate juvenile-justice response, rather than to establish a judicially created age of consent.[50]

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[49] Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, § 3 (India).

[50] Protection of Children from Sexual Offences Act, No. 32 of 2012, § 2(d) (India).

This approach gives effect to the principle of proportionality. The existence of statutory liability and the manner in which the State responds to a child accused are separate questions. Juvenile justice recognizes that children are developing individuals with a greater capacity for reform and therefore emphasizes responses that facilitate rehabilitation and reintegration. Where the circumstances warrant intervention, accountability can still be maintained through measures such as counseling, education, supervision, behavioral support and family interventions, subject to the statutory framework. Rehabilitation should thus be understood as a form of child-sensitive accountability rather than as an absence of responsibility.

A proportionate approach is also important because criminal proceedings may have consequences extending beyond the immediate case. For an adolescent, involvement with the criminal justice system can affect education, family relationships, social identity and future opportunities. The purpose of juvenile justice is therefore not simply to determine wrongdoing but to respond in a manner that recognizes the developmental stage of the child. Where serious exploitation is established, protection must take priority; where the circumstances are materially different, the response should reflect the rehabilitative objectives of juvenile justice.

The reconciliation can consequently be understood at two levels. At the substantive level, POCSO should continue to protect every person below eighteen from sexual exploitation without an unrestricted consent-based exception. At the responsive level, the child's age and developmental status should meaningfully influence the manner in which a child accused is dealt with under the JJ Act. This allows POCSO and juvenile justice to perform complementary functions: POCSO establishes the protective boundary, while the JJ Act determines the child-sensitive consequences within the juvenile justice system.

There remains, however, a need for greater legislative clarity. Courts should not be required to resolve every difficult adolescent relationship through fragmented case-by-case interpretation. If Parliament considers a close-in-age mechanism, it should be

narrowly defined and accompanied by safeguards relating to age difference, coercion, grooming, exploitation, authority, dependency and power imbalance. It should not function as a blanket exception or lower the statutory age of protection. Rather, its purpose should be to recognise that circumstances involving adolescents may require a differentiated legal response where the facts do not resemble the forms of exploitation that POCSO was designed to address.[51]

The objective, therefore, should not be to choose between POCSO and juvenile justice, but to ensure that each operates within its proper field. POCSO must remain a strong protective framework against sexual exploitation, while the JJ Act must ensure that a child accused is treated according to principles of dignity, rehabilitation and reintegration. A genuinely child-centered approach must account for both the vulnerability of the child who may have been subjected to sexual conduct and the developmental status of a child who comes into conflict with law. The central challenge is to ensure that protection does not become disproportionate prosecution and that accountability does not result in the abandonment of rehabilitation.

CRITICAL ANALYSIS

The principal strength of POCSO is also the source of the adolescent-relationship problem: its bright-line age threshold. A bright-line rule protects children because it eliminates uncertainty. Yet the criminal law operates through categories, while human relationships do not always fit neatly within them.[52]

An adolescent aged seventeen is legally a child under POCSO, but the same person may possess substantially different levels of maturity, autonomy and understanding compared with a much younger child. The law necessarily accepts this complexity in

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[51] Law Comm'n of India, *Age of Consent Under the Protection of Children from Sexual Offences Act, 2012*, Report No. 283, at 25–32 (2023).

[52] Protection of Children from Sexual Offences Act, No. 32 of 2012, § 2(d) (India).

other areas of juvenile justice. The JJ Act, for example, requires individualized assessment for certain adolescents aged sixteen to eighteen. This raises a significant normative question: Why should developmental context disappear completely when the alleged offence falls under POCSO?

The answer cannot be that the child becomes an adult because the allegation concerns a sexual offence. Nor can the answer be that all adolescent sexual activity should be treated as harmless. Both positions are too simplistic. The better approach is to preserve the offence definition while individualizing the consequences.

This distinction is particularly important because criminal law is not only about determining guilt. It also determines how society responds to wrongdoing. The JJ Act recognizes that rehabilitation is not an indulgence but an important component of justice for children.[53]

Another concern is the possibility of misuse of POCSO in family disputes. Where adolescents enter relationships against parental wishes, criminal proceedings may sometimes become a means of controlling the relationship. This does not mean that complaints are false merely because they arise in the context of family opposition. It means that investigative authorities must examine the facts carefully instead of assuming either that every complaint is malicious or that every adolescent relationship is abusive. The solution therefore lies in fact-sensitive investigation rather than automatic disbelief or automatic prosecution.

RECOMMENDATIONS

A. Legal Reforms

The first and most important reform is to keep eighteen years as the age of protection under POCSO. The difficulties that come with relationships should not by themselves justify lowering the existing threshold. The age-based rule gives certainty. Stops subjective claims about an adolescents maturity from weakening statutory protection.

[53] Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, §§ 2(33), 15 (India).

The focus should instead be on creating a legal response within the existing framework. When a person accused under POCSO is between sixteen and eighteen years of age the law should provide an assessment of relevant circumstances. This assessment may look at the age difference between the parties, the nature of the relationship, power imbalance, dependency, coercion, threats, grooming, manipulation and other relevant circumstances. Such assessment should not decide whether POCSO applies or create a defence of consent. Its purpose should be to help the competent juvenile-justice authorities decide the response to the child accused.[54]

B. Institutional Reforms

Legal reform alone will not solve the difficulties created by the intersection of POCSO and juvenile justice. Institutional capacity must also be strengthened. Police officers, prosecutors, members of Juvenile Justice Boards and judges dealing with POCSO cases should receive training in adolescent development, child psychology, trauma, grooming, power dynamics and the rehabilitative principles of juvenile justice. Such training can help decision-makers spot vulnerability and exploitation while avoiding simplistic assumptions about adolescent relationships.[55]

The confidentiality and dignity of children must also be strictly protected during investigation and judicial proceedings. The safeguards in POCSO and the JJ Act should be effectively implemented so that an adolescent is not permanently defined by an allegation or juvenile proceeding. Protection from publicity and stigma is especially important because the consequences of criminal proceedings may reach beyond the case itself and affect education, family relationships and future social reintegration.

Finally reform should be supported by evidence-based policymaking. Government

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[54] Protection of Children from Sexual Offences Act, No. 32 of 2012, § 2(d) (India); Law Comm'n of India, *Age of Consent Under the Protection of Children from Sexual Offences Act, 2012*, Report No. 283, at 25–32 (2023).

[55] Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, § 3 (India); Protection of Children from Sexual Offences Act, No. 32 of 2012, §§ 24–27, 33 (India).

institutions and research bodies should collect data on POCSO cases involving adolescents, including the age of the accused the age difference between the parties the relationship circumstances, prosecution outcomes, acquittals, quashing of proceedings and rehabilitative measures. Such evidence would let policymakers know whether existing mechanisms are adequately distinguishing cases of exploitation from peer relationships.[56]

A balanced reform strategy should therefore combine safeguards with institutional competence. POCSO should continue to give protection to children while the Juvenile Justice framework should make sure that an adolescent accused receives a developmentally appropriate and rehabilitative response.[57] The objective is not to weaken child protection but to make sure that protection, accountability and rehabilitation work together than at the expense of one another.

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CONCLUSION

POCSO came from an urgent need: children must be kept safe from sexual exploitation. Its rule that eighteen is the age of protection gives a legal shield against abuse, pressure and manipulation. The answer to problems with relationships cannot be to weaken that shield.

At the time protection should not always mean punishment. When the person accused of a POCSO offence is also a child the law faces a situation where one child can be protected as a victim while another child is put into the juvenile justice system as a child who has broken the law.[58]

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[56] Protection of Children from Sexual Offences Act, No. 32 of 2012, § 24 (India); Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, § 3(xi), (xii), (xvii) (India).

[57] Law Comm'n of India, *Age of Consent Under the Protection of Children from Sexual Offences Act, 2012*, Report No. 283, at 25–32 (2023).

[58] Protection of Children from Sexual Offences Act, No. 32 of 2012, pmbl., § 2(d) (India).

POCSO should set the boundary while the Juvenile Justice Act should decide how to respond to an accused adolescent in a child sensitive way. Having an offence under POCSO does not mean the juvenile justice system must is giving up rehabilitation, dignity, diversion, privacy or the best interests of the child.[59]

The emerging legal view says that the best reform is not to lower the age of consent or to give a judicial exception for love relationships. Instead India should keeping the age of eighteen while making regulated rules that separate exploitative actions from genuine no exploitative adolescent peer relationships during investigation, juvenile justice assessment and sentencing.

The main idea should be simple: the law must be hard against exploitation but fair to adolescents. A child protection system that ignores exploitation hurts children.. A system that treats every adolescent relationship with the same harsh penalty also hurts children. The challenge, for Indian child rights law is to making sure that protection stays protection and does not turn into prosecution.

[59] Id. at 25–32; Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, § 3 (India).