

PROTECTION AGAINST MISUSE - POLITY

NEWS: The **Protection of Children from Sexual Offences (POCSO) Act, 2012**, is primarily designed for the protection of children from sexual abuse.

- However, noticing a trend that **adolescents, above 15 years but under 18, in voluntary relationships and having consensual sex were often being persecuted**, the courts sought a review.

WHAT'S IN THE NEWS?

Legal Framework and Current Age of Consent

- **Age of Consent Defined:**
Under the current legal framework in India, the **age of consent for sexual activity is 18 years**. Any physical relationship with a person below this age is **legally prohibited**, regardless of the person's consent.
- **Consent Considered Invalid Below 18:**
Even if a person below the age of 18 **willingly agrees** to a sexual act, the law does **not recognise this as valid consent**. The act is automatically classified as **sexual abuse or statutory rape**.
- **Strict Penal Provisions Apply:**
Engaging in such acts attracts **severe legal penalties** under various laws like the **POCSO Act, Prohibition of Child Marriage Act, 2006**, and the **Bharatiya Nyaya Sanhita (BNS)**, which now includes enhanced child protection measures.
- **Uniform Definition of a Child:**
Indian law consistently defines a child as anyone **under the age of 18**, as per **Section 2(d) of the POCSO Act**. This definition leaves **no room for subjective interpretation based on maturity or capacity to consent**.

The Dilemma: Adolescents and Consensual Relationships

- **Early Exposure Due to Digitalisation:**
In the digital era, adolescents are becoming **more socially and emotionally aware at a younger age**, often engaging in consensual physical relationships, especially in the **16–17 age group**.
- **Conflict Between Law and Adolescent Behaviour:**
Despite being **mutual and non-exploitative**, these relationships are criminalised under existing law due to the **strict age limit**, leading to **legal consequences for both individuals**, often including arrest, FIRs, or judicial custody.
- **Judicial Observations on the Disconnect:**
Various courts have acknowledged that there exists a **disconnect between current legal provisions and evolving social realities**, often noting that **blanket criminalisation may not be appropriate** in consensual adolescent relationships.

Proposals for Legal Reform

- **Petition for Lowering the Age of Consent:**
A petition has been filed seeking to **reduce the age of consent from 18 to 16 years**, with the aim of making the law **more aligned with adolescent behaviour and mental development**.
- **Amicus Curiae Suggestion – Indira Jaising’s Viewpoint:**
Noted legal expert and Amicus Curiae **Indira Jaising** has suggested that **consensual sexual relations between individuals aged 16 to 18** should **not be punishable**, provided they are non-exploitative.
She advocates for an **exception clause** that would retain the protective spirit of the POCSO Act without penalising normal adolescent relationships.
- **Law Commission’s 2023 Recommendation:**
The **Law Commission of India**, however, opposed reducing the age of consent in its 2023 report. It proposed the use of **"guided judicial discretion"** in cases involving consensual relationships among adolescents aged 16 to 18 during sentencing, rather than blanket decriminalisation.
- **Concerns of Manipulation and Maturity:**
Critics of lowering the age of consent argue that **many adolescents lack the emotional and psychological maturity** to fully understand the implications of sexual acts, making them **vulnerable to coercion and exploitation**.

Madras High Court’s Nuanced View

- **Vijayalakshmi vs. State Representative (2021):**
The **Madras High Court** proposed a **graded legal approach** where consensual sex involving a person aged 16 to 18 should not be punishable **if the age difference between partners is less than 5 years**.
- **Differentiated Punishment Based on Age Gap:**
However, if the **age difference exceeds 5 years**, the act should be **deemed punishable**, recognising the **increased potential for exploitation or manipulation** in such cases.

Implications and the Way Forward

- **Need for Adolescent Legal Education:**
There is an urgent need to **educate adolescents** on the legal aspects of sexual consent, its age threshold, and the serious **consequences of violating the law**, even in consensual settings.

- **Reforming Without Diluting Protection:**

While there is merit in re-evaluating existing laws, it is equally important to **retain strong legal safeguards** against truly exploitative or abusive conduct involving minors.

- **Avoiding Criminalisation of Normal Adolescent Behaviour:**

Blanket criminalisation may not serve the intended purpose of child protection. **A more nuanced legal and social approach** is essential to ensure that **non-coercive adolescent relationships are not punished**, while still protecting minors from genuine abuse.

Source: <https://www.thehindu.com/opinion/editorial/protection-against-misuse-on-pocso-act-adolescent-sex/article69861932.ece>