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# **FAIRNESS AND PROTECTION UNDER POCSO ACT 2012 ON THE PERSPECTIVE OF CLOSE IN AGE DOCTRINE: A CRITICAL ANALYSIS**

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## **ABSTRACT**

*The Protection of Children from Sexual Offences (POCSO) Act, 2012 was enacted to provide a comprehensive legal framework for protecting children from sexual offences. However, the act has created several constitutional and practical challenges because of the absence of close-in-age exceptions under the act. While the act aims to protect child through strict liability and mandatory reporting, these rigid provisions often criminalise consensual sexual relation between the peers, leading to misuse of the law, false accusations, prolonged litigation, and deprivation of the accused's rights under Article 21 of the Indian Constitution, including the dignity, liberty, presumption of innocence and a speedy trial. A good proportion of the POCSO cases now comes from consensual sexual adolescent relationships, where they engage in the romantic intimacy without any exploitative intent by the accused. This study focuses on a doctrinal and critical analysis of the statutory provisions, judicial trends, and existing data to examine how this consensual sexual relation between the peers with minimum or no age gap has created legal imbalance. This paper proposes incorporating the close-in-age exception in the POCSO Act providing safeguard for the accused under false accusation cases, harmonising protection and fairness. A context based and age sensitive interpretation of the POCSO will help in ensuring Constitutional justice while still preserving the Act's purpose of protecting children from sexual offences.*

**KEYWORDS:** POCSO Act, 2012; Close-in-Age Doctrine; Consensual Adolescent Relationships; Article 21; Adolescent Autonomy; Statutory Rape Laws; Misuse of POCSO; Child Protection Law; Constitutional Rights; Comparative Jurisprudence

## INTRODUCTION

The main objective of the Protection of Children from Sexual Offences (POCSO) Act, 2012<sup>1</sup> was enacted with the objective of creating a strong legal framework for protecting the children from sexual abuse, exploitation and sexual harassment. By following a strict liability model, mandating reporting under Section 19 of the POCSO Act, expanding the definition of sexual offences, and establishing special courts, the Act aims to create an uncompromising system of child protection. However, 12 years of the implementation also led to a challenge emerging in the implication of the Act due to the criminalisation of consensual sexual relation between peers of minimum or no age gap. With the emerging social realities, a notable proportion of POCSO prosecutions arises not from the exploitative conduct by accused, but from the mutually consented sexual relationship between peers in which either of the peers or both have no legal capacity to give consent under the rigid framework of the Act.

Few data by the National Family Health Survey (NFHS)<sup>2</sup> and Enfold India<sup>3</sup> also indicates the growing POCSO cases involving children between the age of 15 to 18 years getting engaged in romantic intimacy without any intention of exploitation. Even a good portion of these cases were not initiated by the victim, but by their parents or families, which is done mostly to protect the family honour, this can be either due to relationships emerging from inter-cast, inter-religion or beyond class boundaries. Even though the POCSO Act was implemented with an intent to protect the children from the sexual offences or exploitation, it eventually became an instrument that is misused affecting the young boys with criminal prosecution, long periods of trial detention, ultimately disrupting their education and livelihood. These outcomes highlight the rights of these young boys being hampered under Article 21 of the Indian Constitution<sup>4</sup>, particularly concerning the liberty, dignity, presumption of innocence, privacy, and the right to a speedy trial.

The Indian judiciary has also acknowledged this in increasing tension. This can be seen in few landmark cases of Supreme Court, such as *In Re: Right to Privacy of Adolescents*<sup>5</sup> and *P.*

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<sup>1</sup> The Protection of Children from Sexual Offences Act, 2012, No. 32 of 2012, INDIA CODE (2012).

<sup>2</sup> INT'L INST. FOR POPULATION SCIS. (IIPS) & MINISTRY OF HEALTH & FAMILY WELFARE, NAT'L FAMILY HEALTH SURVEY (NFHS-5), 2019–21: INDIA (2021).

<sup>3</sup> ENFOLD INDIA & HAQ: CTR. FOR CHILD RTS., IMPLEMENTATION OF THE POCSO ACT: EXPERIENCE OF THE SPECIAL COURTS (2018).

<sup>4</sup> INDIA CONST. art. 21.

<sup>5</sup> *In re Right to Privacy of Adolescents*, (2025) 3 Manupatra 112 (Supreme Court of India).

Yuvaprakash v. State<sup>6</sup> highlighting the need for provisions, distinguishing the exploitative sexual offences from those of consensual sexual relationships between peers with minimum or no age gap. Yet, courts remain enticed by the statutory legal framework, offering no room for interpretation based on age gap. Unlike other jurisdictions that includes the closing age exception into their sexual offence laws, POCSO treats all sexual activity as criminal, which involves children below the age of 18 years as defined under Section 2(d) of the POCSO Act regardless of their capacity of giving consent or of their maturity or absence of harm by the accused as under this provision anyone below the age of 18 years is not eligible to give consent.

This paper critically examines the contradiction between the fairness and protection under POCSO through the close-in-age doctrine. Also through the existing data, judicial review, doctrinal analysis, the paper argues that the absence of close-in-age exception has created imbalance, ignoring the teenagers autonomy, and constitutional safeguards. Mainly the study proposes structured reforms with the target of balancing child protection with rights and developmental realities of the teenage.

## LITERATURE REVIEW

The Protection of Children from Sexual Offences (POCSO) Act, 2012 has been broadly examined in legal, sociological, and psychological ways. Previously, this discussion's primary focus was on the strength of the act, its gender neutrality, mandatory reporting obligations, broad definition of sexual offences, and establishment of child friendly procedure. Scholars such as Flavia Agnes<sup>7</sup> and Mrinal Satish<sup>8</sup> emphasised that POCSO led to a legislative advancement by creating a statutory shield for children against all forms of sexual harm. These works show the acts' nature in recognising the sexual offences that were ignored previously and were under-reported.

However, over time, the literature showcased a shift towards scholarly concern as the unintended consequences were highlighted by the implementation of POCSO. A robust body of research, including studies by Enfold India, HAQ Centre for Child Rights<sup>9</sup>, and other various

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<sup>6</sup> P. Yuvaprakash v. State Rep. by Inspector of Police, (2023) 6 Manupatra 248 (Supreme Court of India).

<sup>7</sup> Flavia Agnes, Protecting Children from Sexual Abuse: An Analysis of the POCSO Act, 47 ECON. & POL. WKLY. 15 (2012).

<sup>8</sup> Mrinal Satish, The Protection of Children from Sexual Offences Act, 2012: A Critical Appraisal, 5 NUJS L. REV. 379 (2012).

<sup>9</sup> HAQ: CTR. FOR CHILD RTS., STATUS OF CHILDREN IN INDIA (2019).

legal commentaries, emphasised on the cases involving consensual sexual relationship between peers, but was still filed under POCSO. A significant percentage of POCSO cases rising out of consensual sexual relationship between peers with minimum or no age gap, with cases initiated not by victims but by parents in order to control their daughter relationship in the namesake of protecting the family honour, was also seen in the Enfold's large scale analysis of special court judgements. These findings highlight criminalising the consensual sexual relationship between peers due to the strict liability nature of POCSO.

<sup>10</sup>Legal researchers even argued that the lack of consideration for adolescents in the statute undercuts the development realities and contradicts the international principles, recognising graduated capacities based on maturity and age.<sup>11</sup> Thus, the absence of a close-in-age exception was repeatedly identified as a key doctrinal gap. In the comparative studies, the scholarship pointed out comparison with other jurisdictions such as the United States, Canada, and few European Union countries, which adopted this exception or clause into their sexual offences act to prevent criminalisation of consensual sexual relationship between peers, balancing the protection with the autonomy.<sup>12</sup> Indian literature increasingly advocates for similar reforms, highlighting that a blanket criminalisation model fails to distinguish between a consensual sexual relationship and an exploitative sexual offence.

Several judicial commentaries analysed, and reflected the emerging tension. Judgement in the cases like *Vijayalakshmi v. State of Tamil Nadu*<sup>13</sup> as well as *Sabari v. Inspector of Police*<sup>14</sup> have been widely discussed while recognising the misuse of POCSO in consensual sexual relationships and requirement for legislative reconsideration. The suo moto case of *In Re: Right to Privacy of Adolescents* points out the judiciary's acknowledgment of adolescent privacy rights. The scholars argue the attempt for flexible interpretation by court requires explicit legislative intervention.

The Constitutional scholars further examine POCSO through the lens of Article 21 of the Indian constitution involving rights particularly related to liberty, dignity, privacy and protection

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<sup>10</sup> INT'L INST. FOR POPULATION SCIS. (IIPS) & MINISTRY OF HEALTH & FAMILY WELFARE, NAT'L FAMILY HEALTH SURVEY (NFHS-5), 2019–21: INDIA (2021).

<sup>11</sup> Aparna Chandra & Mrinal Satish, *Of Consent and Criminalisation*, 12 NUJS L. REV. 1 (2019).

<sup>12</sup> Michelle Oberman, *Regulating Consensual Sex with Minors*, 48 BUFF. L. REV. 703 (2000).

<sup>13</sup> *Vijayalakshmi v. State*, 2021 SCC OnLine Mad 315.

<sup>14</sup> *Sabari v. Inspector of Police*, 2019 SCC OnLine Mad 4006.

against arbitrary prosecution.<sup>15</sup> The commentators also highlighted that criminalising consensual sexual relations results in disproportionate state intrusion into intimate personal decisions. The presumption of innocence, speedy trial requirements and dignity of the accused are compromised especially for the accused who are young boys leading to them being stuck with the long pre-trial detention and social stigma even at times when they are innocent. These studies observed that the mandatory reporting provisions aimed at detection of the abuse, often force teachers, counselors, and medical professionals to report the consensual sexual activity that may require guidance rather than the criminal prosecution.

While a number of studies critique the misuse of POCSO, few of the papers systematically connect these trends with constitutional analysis and comparative legal framework with other jurisdictions. This research paper seeks to bridge these gaps by integrating doctrinal judicial and comparative perspective to analyse the fairness-protection tension within POCSO.

## **ANALYSIS OF SECONDARY DATA ON ADOLESCENT POCSO CASES**

Secondary empirical data drawn from national surveys and independent judicial studies reveal a significant shift in the nature of POCSO prosecutions in India. While POCSO was enacted with the aim of protecting children from sexual exploitation, a substantial portion of reported cases derives from consensual sexual relationships between peers with minimum or no age gap. This trend has overtime highlighted the gap between the legislative intent and reality. This even raises serious questions regarding the fairness, proportionality, and the effects of the strict liability nature of POCSO.

NFHS-5 (2019-21)<sup>16</sup> provides an important behavioural context for interpretation of these trends. The survey reports that 11% of the women aged between 25 to 49 at their first sexual experience before the age of 15, and 39% of them at their first sexual experience before the age of 18. Although the NFHS does not categorise the consensual acts among minors as criminal or non criminal, these statistics highlight a crucial fact i.e. a considerable portion of adolescents in India engage in early romantic or sexual behaviour, often out of curiosity, affection or peer bonding rather than any exploitative circumstances. This data reinforces the developmental

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<sup>15</sup> Gautam Bhatia, Privacy, Intimacy, and the Criminal Law, 4 INDIAN L. REV. 1 (2020).

<sup>16</sup> NAT'L FAMILY HEALTH SURVEY (NFHS-5), 2019–21: INDIA (2021).

reality regarding the adolescent consensual sexual relationships especially within the 15 to 18 years of age group which is neither uncommon nor inherently harmful.

The Enfold India's<sup>17</sup> major study of 7,064 POCSO judgements across Assam, Maharashtra, and West Bengal. The study about 24.3% of cases under POCSO was of consensual sexual relationships often between the adolescents you are close in age. It mostly occurs when a girl's family disapproves of the relationship due to caste, religion, class, or fear regarding family honour. Notably several cases also the girl testified in court that the relationship was voluntary but the strict statutory framework prevented courts from factoring in her consent.

Complementing these findings the Enfold Project-39A<sup>18</sup>, a study analysing the 264 cases under Section 6 of the POCSO Act in the same States found 25.4% of the cases involving consensual sexual relationship between peers particularly in the 16 to 18 age group. These cases were covered under most serious categories of POCSO charges meaning the adolescence in consensual sexual decisions were prosecuted under the strict provisions of the statute. The study served the majority of accused but youth aged 18 to 21 reflecting age gap that POCSO does not recognise currently.

Across both studies, a recurring pattern is shown where many cases were initiated by parents or guardians and not by the victim itself. These were acting mainly as tools for enforcing family and social control responding to allowance pre-marital intimacy, or inter-caste and inter-religious relationships. Such data demonstrates that POCSO is used not only as a child protection mechanism anymore but as an instrument for regulating the consensual sexual relationship between peers.

Taken together the NFHS data, Enfold studies, and Project 39A reveals systematic issue that is the absence of close-in-age exception under the POCSO Act that leads to criminalising the developmentally normative adolescent sexual relationship generating constitutionally questionable consequences for young boys mainly this empirical landscape supposed the need for the legislative reform and to distinguish between the exploitative acts and consensual sexual relationship between the years of minimum or no age gap.

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<sup>17</sup> JUDGMENT ANALYSIS OF CASES UNDER THE POCSO ACT, 2012 (2020).

<sup>18</sup> AN EMPIRICAL STUDY OF POCSO CASES UNDER SECTION 6 (2022).

## **JUDICIAL TRENDS IN CONSENSUAL ADOLESCENT POCSO CASES**

The judicial meaning of POCSO has markedly developed as courts increasingly address cases involving consensual adolescent interactions. The judiciary has always recognised the conflict between the rigid statutory mandates and the developmental reality of teenagers, however this is limited by the lack of legislative provisions for acknowledging consent among minors. Two remarkable judgments in *In Re: Right to Privacy of Adolescents* and *P. Yuvaprakash v. State* highlighted the increasing judicial involvement with matters of teenage privacy, autonomy and proportionality within the POCSO framework.

### **1. Concerning the Right of Privacy of Adolescents**

This case remarked a transformation in judicial perspective by recognising the teenagers having Rights as well instead of just recognising them as recipients of protection. The court also highlighted adolescence as a phase filled with exploration, emotional connection, and experiments by evaluating the legal and developmental results of criminalising consensual sexual relationships. This also stated that the criminalisation of this adolescent sexual relationship without proper justification neglects psychological growth, the right to privacy under Article 21, in accordance with Supreme Court's decision in *Justice K.S. Puttuswamy v. Union of India*.<sup>19</sup>

The Court highlighted that privacy cannot be taken from someone only on the basis of their age being under 18. Adolescents have the essential rights related to physical autonomy and decision-making privacy, and rights that are balanced with State's protective responsibilities. This judgement highlighted the need for differentiation in legal response in cases where there is consensual sexual relationship between the peers with minimum or no age gap and in the absence of coercion, and the absence of the same in the current POCSO framework.

Mainly, the court clearly underscored the requirement in close-in-age exception within the Indian Legal Framework. It emphasised that the criminal justice system will continue to be exploitative by families for relations involving issues relating to caste, religion, or social expectations. The judicial system by this action has been consequently urging legislation to revisit POCSO's strict liability mechanism to reflect the developmental concerns and preventing the law's misuse against minors engaging in consensual sexual relationships.

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<sup>19</sup> *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1 (India).

This judgement is the strongest articulation by the judiciary in favor of the teenagers' privacy, autonomy, noting that constitutional rights should be extended to minors with close-in-age relationships.

## **2. P. Yuvaprakash v. State (Madras HC)**

The Madras high court came across a factual situation in *P. Yuvaprakash v. State*<sup>20</sup>, where the girl and the boy were close in age, had been involved in a romantic relationship, and where the girl had a consistent presence of the relationship voluntarily. However, the boy was charged with unfair articles of interrogation POCSO.

The Court took a barren stand in regard to the automatic criminalisation of consensual sex involving adolescents, and POCSO was being applied in a manner that beats the odds the object of the statute as such: Household members tend to have POCSO charges brought against them as they tend to chase relationships that they frown on, particularly elopements or inter-caste relations. The complaint was filed in this case by the relatives of the girl although she clearly testified in favor of the accused. The Court emphasized that the criminal justice system was not something that could be transformed into the means of protecting family honour or instilling social values. It also emphasized the long-term effects of the experienced young suspected individuals as well as detention, stigma, interrupted education, and psychologically damage, none of which is in conformity with the Rights under Articles 21.

The court emphasized that there was a necessity of harm-based approach, the separation of exploitative adult-child relationships out of the approving teenage intimacy. The Court was of a strong indication that there is a need to legislate reform, demand urgent and practical reforms, a close-in-age exception, which would not criminalise where both the adults are adolescents or in cases where the age difference is minimal and the activity is voluntary.

## **3. Judicial Trends that occurred in the two cases.**

The recent legal decisions show that there is a clear tendency of how interactions between adolescents are treated based on the POCSO Act. The autonomy and developing abilities of the teens are acknowledged more by the courts which observe that teenagers and underage boys and girls have the emotional and sexual agency entitling constitutional protection. This

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<sup>20</sup> *P. Yuvaprakash v. State* Rep. by Inspector of Police,(2023) 6 Manupatra 248 (Mad. H.C.).

represents wisdom that the adolescent phase of development is a unique period of growth, protection, as well as respect for individual choice making.

The privateness and physical autonomy have also been pointed out by the courts under Article 21, through the use of the Puttaswamy paradigm in order to expand the fundamental rights to teenagers in intimate situations. At the same time, they have also found the abuse of POCSO by parents or guardians, who want to forbid against assenting adolescent sexual connections and emphasizing those considerations. Family honour, caste or religion, etc. cannot be used to justify the interference of crime.

Another trend is the court support of a close-in-age exception of the legislation. While courts cannot construct this through interpretation, they realize its significance. To this, complementing, harm-based use of reasoning is being made and relationships which include force or exploitation are different founded on mutual agreement and teenage intimacy.

Collectively, these tendencies suggest that, as it is currently formulated, the POCSO Act improperly equalizes protection and equity. The need to develop jurisprudence on an urgent basis reformation of legislation based on the proximity of age, developmental issues, and the rights described under Article 21. Such amendments would secure the children against actual exploitation as well as eliminate an accusation of the consensual peer relationships, which would ensure a more equal rights and development sensitive, and rights respecting approach without sacrificing the original child-protection goals of the Act.

## CONSTITUTIONAL ANALYSIS UNDER ARTICLE 21

Article 21 of the Indian Constitution states that “no person shall be deprived of his life or personal liberty except according to procedure established by law.”<sup>21</sup> Over the years, constitutional jurisprudence has broadened this to cover a range of substantive rights: dignity, bodily integrity, decisional autonomy,<sup>22</sup> privacy, and protection against arbitrary State action<sup>23</sup>. When POCSO is applied to consensual sexual relationships between minors close in age,

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<sup>21</sup> Maneka Gandhi v. Union of India, (1978) 1 SCC 248. (Established substantive due process: law must be fair, just, and reasonable.)

<sup>22</sup> Common Cause v. Union of India, (2018) 5 SCC 1. (Affirmed decisional autonomy and dignity as core components of Article 21.)

<sup>23</sup> Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608. (Expanded Article 21 to include dignity and meaningful personal liberty.)

several of these rights come under strain.

The first constitutional tension stems from bodily autonomy and decisional privacy, notably after the Supreme Court's judgment in Justice K.S. Puttaswamy v. Union of India (2017)<sup>24</sup>. The Court decided that privacy involves sensitive decisions relating to one's body and relationships.<sup>25</sup><sup>26</sup> In In Re: Right to Privacy of teenagers, the Madras High Court extended this principle to minors, acknowledging that teenagers possess changing capacities and are not bereft of autonomy only due to age. The Court emphasised that adolescents have a right to explore emotional and sexual development within appropriate boundaries, and that an overbroad criminal law framework cannot extinguish this right. Criminalising consensual sexual intercourse, therefore, amounts to <sup>27</sup>unconstitutional intervention into the private domain of minors.

Second, the absence of a close-in-age exception harms the right to dignity. Dignity necessitates that individuals be recognised as persons capable of reasonable decisions. Criminalising consensual adolescent intimacy stigmatizes young persons and reduces them to objects of moral regulation rather than rights-bearing individuals.<sup>28</sup> As observed in P. Yuvaprakash v. State, this leads to circumstances where a girl's voluntary participation is judicially acknowledged, while the boy remains criminally culpable only because of statutory age limitations. Courts have often warned that such stringent interpretation harms the dignity of both adolescents by denying the girl's agency and by stigmatizing the boy as a sexual offender.

Third, criminal prosecution in consensual adolescent situations harms the right to personal liberty through unwarranted arrests, extended pre-trial imprisonment, and bail delays. Young boys often spend months in custody before the case is accepted as consenting. This punishing impact on liberty, without injury or exploitative purpose, raises problems of substantive due process: whether the law's implementation is fair, just, and reasonable. A number of decisions

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<sup>24</sup> Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1 (India).

<sup>25</sup> Shafin Jahan v. Asokan K.M., (2018) 16 SCC 368. (Held that choice of partner is part of individual autonomy and privacy.)

<sup>26</sup> Suchita Srivastava v. Chandigarh Administration, (2009) 9 SCC 1. (Recognised bodily integrity and reproductive choice as personal liberty.)

<sup>27</sup> Convention on the Rights of the Child art. 5, Nov. 20, 1989, 1577 U.N.T.S. 3. (Doctrine of evolving capacities of the child.)

<sup>28</sup> Navtej Singh Johar v. Union of India, (2018) 10 SCC 1. (Condemned criminal laws that stigmatise consensual intimate conduct and violate dignity.)

such as Sabari v. Inspector of Police, have reiterated that the mechanical application of POCSO to romantic situations led to its outcome in unfair and unreasonable loss of freedom.

Fourth, these cases involve the presumption of innocence which is an essential aspect of Article 21 guarantee of a fair trial.<sup>29</sup> Though this research does not deal specifically with Section 19, it is relevant because POCSO prosecutions impose an excessive evidentiary burden on the accused, in any case of stated mutual consent. When the criminal or rather the act is a constitutional issue in such examples, switching the burdens of proof deteriorates injustice.

Lastly, the right to a speedy trial is usually violated in such situations.<sup>30</sup> Empirical research by Enfold and others show the trial delays due to high rate of consensual adolescent cases which are diversion of real cases of child sexual abuse. This not only burdens the accused but it is also impover the protective use of the Act.<sup>31</sup>

In general, POCSO to consensual teenage relations conflicts with Article 21 substantive guarantees.<sup>32</sup> The constitutional jurisprudence requires an elaborating frame of reference, which is more specifically identified between exploitation and autonomy. The close-in-age exception would be more appropriate to relate the Act to the constitutional requirement of equality, dignity and freedom.<sup>33</sup>

### **COMPARATIVE ANALYSIS: Close-in-Age Doctrines in OTHER JURISDICTIONS (US, Canada, EU)**

The absence of a close-in-age framework under the POCSO Act stands in sharp contrast to numerous developed nations that have introduced calibrated legislative measures to ensure that consenting teenage sexual conduct is not handled on par with exploitative acts. Among the most instructive instances are the United States, Canada, and numerous nations within the European Union (EU), each of which has incorporated age-proximity concerns or adolescent

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<sup>29</sup> Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248 (India). (Article 21 includes fairness, reasonableness, and just procedure.)

<sup>30</sup> Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 S.C.C. 225 (India). (Delay in criminal trials violates Article 21.)

<sup>31</sup> ENFOLD INDIA, JUDGMENT ANALYSIS OF CASES UNDER THE POCSO ACT, 2012 (2020).

<sup>32</sup> Hussainara Khatoon v. State of Bihar, (1980) 1 S.C.C. 81 (India). (Right to speedy trial is an essential part of Article 21.)

<sup>33</sup> Nikesh Tarachand Shah v. Union of India, (2018) 11 S.C.C. 1 (India). (Presumption of innocence is a human right and part of Article 21.)

autonomy concepts into their statute or judicial methods.

<sup>34</sup>The United States pioneered the current close-in-age exception through the establishment of “Romeo and Juliet” legislation in the late nineteenth and early twentieth centuries. Over time, most U.S. states enacted clear statutory provisions that protect juveniles within an age difference of around two to four years from prosecution under statutory rape laws, providing their conduct was consensual.<sup>35</sup> These regulations were prompted by the harms observed when consensual youth activity resulted in severe and excessive criminal consequences, including unneeded detention and mandatory sex-offender registration. <sup>36</sup>The U.S. experience indicated that broad criminalisation of peer contact produced severe long-term harm to kids and was often utilized by families to regulate relationships across caste, class, or ethnic lines.<sup>37</sup> The success of these reforms, particularly in lowering wrongful convictions and directing enforcement against adult predators, impacted following developments in Canada and portions of Europe.

Canada’s close-in-age framework represents one of the most developmentally nuanced models and was consolidated through amendments to the Criminal Code in 2008.<sup>38</sup> The law adopts a tiered approach, permitting consensual sexual activity between 12–13 year olds and partners less than two years older, and between 14–15 year olds and partners less than five years older, while maintaining strict prohibitions against adult exploitation.<sup>39</sup> Canadian scholarship highlights that this model aligns criminal law with adolescent psychological development, providing clarity for law enforcement while avoiding over-criminalisation of normative behaviour.<sup>40</sup>

Within the European Union, despite disparities in national consent laws, several countries effectively include close-in-age principles even without overtly naming them as such. Countries such as Germany, the Netherlands, Austria, Spain, and Sweden utilise frameworks that combine comparatively lower ages of consent with strong safeguards against

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<sup>34</sup> John Eekelaar, *Children, Autonomy and the Courts*, 24 *Fam. L.Q.* 381 (1990).

<sup>35</sup> Catherine L. Carpenter, *Against Juvenile Sex Offender Registration*, 82 *U. CIN. L. REV.* 747 (2014).

<sup>36</sup> Human Rights Watch, *RAISED ON THE REGISTRY: THE IRREPARABLE HARM OF PLACING CHILDREN ON SEX OFFENDER REGISTRIES IN THE UNITED STATES* (2013).

<sup>37</sup> *Tex. Penal Code Ann. § 22.011(e)* (West 2023).

<sup>38</sup> Department of Justice Canada, *AGE OF CONSENT TO SEXUAL ACTIVITY* (2019).

<sup>39</sup> Nicholas Bala, *Adolescent Sexual Decision-Making and the Criminal Law*, 19 *CAN. J. FAM. L.* 1 (2002).

<sup>40</sup> *R. v. Mabior*, 2012 SCC 47 (Can.).

exploitation.<sup>41</sup> For instance, German legislation enables sexual intercourse between adolescents aged 14–15 and partners up to 21 years old, unless proof of exploitation is present.<sup>42</sup> The Netherlands has historically employed a flexible harm-based strategy, while Spain and Austria use contextual evaluation to avoid prosecuting consensual peer relationships.<sup>43</sup> A crucial unifying characteristic throughout many EU states is the emphasis on injury, coercion, and misuse of authority rather than age alone. The approach in which human rights have been strengthened by the influence of the European Court of Human Rights, strikes a balance between child protection and the independence rights of adolescents to dignity, privacy and sexual self-determination.<sup>444546</sup>

In these three jurisdictions, a number of common themes can be identified, protective advantageous laws can co-exist with measures to stop the over-criminalization of youths; age-proximity exceptions are not undermining controls against exploitation, but instead assist in narrowing down enforcement efforts focus on genuine predatory behaviour; and there is efficiency in the criminal justice system when consensual teenage cases are not handled as sexual crimes of seriousness.<sup>4748</sup> In this comparison, there is a strong implication on the need in which India needs to re-examine the rigidity of the POCSO and develop one organized close-in-age idea that facilitates not only justice to teenagers but also the relevance of the Act protective objective.<sup>49</sup>

## RECOMMENDATIONS

Based on the secondary empirical data analysis, evolutions in the judicial interpretations in various case laws, and even with such other jurisdictions as the US, Canada and few European Union Countries refers to the fact that India requires a standardising reform of the POCSO Act

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<sup>41</sup> Strafgesetzbuch [StGB] [Criminal Code], § 182 (Ger.).

<sup>42</sup> Spanish Penal Code, Organic Act No. 10/1995, art. 183 bis (Spain).

<sup>43</sup> Netherlands Ministry of Justice, SEXUAL OFFENCES AND YOUTH POLICY IN THE NETHERLANDS (2016).

<sup>44</sup> Dudgeon v. United Kingdom, App. No. 7525/76, Eur. Ct. H.R. (1981).

<sup>45</sup> European Convention on Human Rights, art. 8, Nov. 4, 1950, 213 U.N.T.S. 221.

<sup>46</sup> K.A. v. Belgium, App. Nos. 42758/98 & 45558/99, Eur. Ct. H.R. (2005). (Balancing criminalisation of sexual conduct with dignity, consent, and proportionality.)

<sup>47</sup> UNICEF, ADOLESCENT DEVELOPMENT AND PARTICIPATION: PROTECTING RIGHTS WHILE PROMOTING AUTONOMY (2019).

<sup>48</sup> Melissa Hamilton, The Efficacy of Severe Child Pornography Sentencing: Empirical Validity or Political Rhetoric?, 22 STAN. L. & POL'Y REV. 545 (2011).

<sup>49</sup> UNICEF, ADOLESCENT DEVELOPMENT AND PARTICIPATION: PROTECTING RIGHTS WHILE PROMOTING AUTONOMY (2019).

in order to maintain its protecting objective and manage the abuse in the instances involving the consensual sexual intercourse between minor adolescents or those minor and other adolescents with minimum or no age gap. The goal of this is not to liberalise this sexual relationships but to help in differentiating between the voluntary sexual relations with that of the offences involving genuine exploitation. This will ensure protection of minors rights without hampering the child-protection aim of the Act. This analysis also reflects the need of an approach necessary for preventing criminalisation of adolescent behaviour lacking coercion, manipulation or power imbalance.

A key reform acts as an introduction of statutory close-in-age exceptions with strict safeguards. This should apply only to children,

- i. within the age of 16-18 years, their age difference to be of 2 years or less;
- ii. the relationship is voluntary;and
- iii. no position of authority exists;

Such a framework will help in preventing the young boys from severe criminal liability in cases of consensual sexual relationship while holding the adults,groomers, and those in positions of power fully accountable for their actions.

Another reform is pre-FIR screening in the adolescent cases. Given frequent parental-driven complaints influenced by caste, religion, or family honour, a preliminary assessment by a Child Welfare Committee or specialised POCSO Protection Officer would determine whether coercion or exploitation exists. Where relationships are consensual the matter can be diverted towards counselling, while the genuine exploitations can be covered under POCSO.

A “Harm and Prevention test” can prevent misuse by adults. Any sort of manipulation, grooming, emotional inducement, or abuse of socio-economic power would nullify the exception. National Prosecutorial Policies have the capability of standardising the charging principles, demystify the requirement of evidence and require the advice of child psychologists in uncertain circumstances. Complementary educational and social programs such as sex education, digital safety program and family counseling is also vital in controlling such children and their families through knowledge and solving disputes by not appealing to the just laws.

The protection of these children is considered not even without all of these provisions in mind in relation to the Act of pedophilia, grooming and abusing of authority is not a adjustable

matter. Evidence from the US, Canada, and the EU demonstrates formulated close-in-age exceptions lessens wrongful prosecutions and meanwhile increases the capability of the system to identify veritable predatory behaviour. For India, such reforms bring the POCSO Act into accord with constitutional values, international principles on child-rights, and the realities of life of adolescents that guarantee fairness, protection and justice equally.

## CONCLUSION

With the Protection of Children from Sexual Offences (POCSO) Act, 2012 came into action a convincing and significant goal to protect children against sexual exploitation in every form. But it is, in effect, the close-in age exception coupled with the strict-liability form of the Act, that has produced a significant case law on consensual adolescence relationships that get prosecuted as sexual offences. The empirical data provided by the NFHS data and the Enfold study brings out clearly that quite a significant percentage of POCSO cases electronically tend to 20-25% at least, not cases of abuse but the consensual romantic relationships between adolescents of close in age. Such an ongoing expansion of the act of criminalising peer intimacy evidences an institutional imbalance between the legal structure and the experienced realities of adolescent life.

Such prosecutions are also highlighted by the constitutional examination under Article 21 as an infringement on the rights of adolescents to dignity, privacy, decisional autonomy, personal liberty, and a reasonable and just criminal procedure. Judicial interferences especially *Re: Right to Privacy of Adolescents* and *P. Yuvaprakash v. States* manifest a changing perception of the fact that the distinction between exploitation and voluntary adolescence activity should be made in criminal law. Courts have always pointed out that mechanical application of POCSO to consensual relationships weakens the spirit of the Act and has effects that are essentially incompatible with constitutional morality.

The comparative results in the United States, Canada, and jurisdictions in Europe highlight the importance of the same feasibility and legality of pursuing a close-in in age strategy. These nations denote that tested reforms will ensure the safety of children against predatory activity and at the same time prevent the harmful and unnecessary teen criminalisation. The international decline of distance the same issues that we can see today in India have been a catalyst to exceptions, social control by parents, over punishment of the youths,

misappropriation of resources of the justice system, and corroding does not protect the child systems.

The suggestions presented in this article provide a moderate direction in future. A well-designed statutory close-in-age exception under strong protective measures, initial scrutinizing measures. The prosecutorial policies, and harmonic evaluations can serve to make sure that India does not unwillingly punish teenagers because of behaviour that is developmentally normal yet still remain strong in preventing against pedophilia, grooming, coercion, and authority abuse. It is not just consistent with such reform but also with the international best practice but also with the Constitutional mandate of fairness, proportionality, and taking into account the evolving abilities of the child.

