



Guest Editorial

Balancing protection and autonomy: Revisiting India's age of sexual consent in the context of adolescent reproductive rights

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Abstract

The age of consent for sexual intercourse in India is 18 years as per the current laws; therefore, there is a provision of punishment for involving sexual activity with minor females under the current Indian criminal laws. In an attempt to safeguard minors, these strict provisions were introduced. Still, while they protect the minor on one hand, on the other hand, this rigid standard has led to substantial medico-legal and public health challenges, especially concerning safe abortion services for minor girls in consensual relationships. This review explores the intersection of POCSO, BNS, and the Medical Termination of Pregnancy (MTP) Act, identifying gaps that left the mature adolescent girls at risk of unsafe abortions. Comparative international legal standards are also analysed to find an alternative model that balances the protection of the minors as well as their autonomy. The article advocates for a reformatory approach by introducing close-in-age exemptions, judicial discretion, and improved sex education, aiming to guide the Indian judiciary and legislative bodies towards a more balanced, humane and legal stance.

Keywords: Criminal Law Amendment Act 2 (CLAA), Protection of Children from Sexual Offences (POCSO), Bharatiya Nyaya Sanhita (BNS)

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1. Introduction

India's legislative intent for the protection of children and adolescent females from sexual abuse was highly appreciable and remarkable. The Protection of Children from Sexual Offences (POCSO) Act 2012¹ criminalise all sexual acts done to a person of less than 18 years irrespective of their gender. The Criminal Law Amendment Act² (CLAA) 2013 and the Bharatiya Nyaya Sanhita (BNS)³ 2023, criminalise males alleged to have sexual activity with females, under the seven circumstances as pronounced in section 63 of BNS 2023. But unfortunately, this blanket cataloguing originally aimed for a protective logic, fails to distinguish between the truly exploitative acts and consensual romantic relationships among adolescents, especially of aged 16 to 18 years, lending these couples to an adverse cost. Adolescents aged 16 to 18 years in consensual sexual relationships often find themselves, as well as their partners, caught in the current Indian criminal justice system. The situation becomes even more grave when an adolescent girl becomes pregnant as a result of consensual sexual intercourse and later reaches the

healthcare setup for seeking an institutional safe abortion. But, as per the current ruling system, considering this female to be a minor, and therefore unable to consent must obtain the guardian's consent for her own health care decision and mandatorily report the act as statutory rape, putting her partner at the risk of legal prosecution and punishment, as per POCSO and section 63 of BNS. This article explores why there is a need for re-evaluation of the consent in sexual acts of partners aged 16 to 18 years, particularly in the context of reproductive health rights and access to safe abortion.

2. Current Legal Situation in India

2.1. POCSO Act

The gender-neutral POCSO Act 2012 defines any person below the age of 18 years as a child and criminalises all sexual activity done by anyone with such individuals, irrespective of their gender.¹

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2.2. BNS 2023

As per section 63 of BNS, all sexual activity done with females less than 18 years is considered as statutory rape, regardless of mutual consent of the act, and punishes the perpetrators irrespective of their age.³

2.3. MTP Act 1971 (Amended 2021)

As per the MTP Act, a female under 18 years of age requires the consent of her guardian to undergo an abortion even if the pregnancy was a result of mutual consensual sexual intercourse within adolescents. However, even the unmarried female of more than 18 years can seek an abortion resulted from unintended pregnancy, and she can go with her partner. Moreover, the healthcare providers have to mandatorily report pregnancies in minors to the concerned law authorities, treating the case as statutory rape, as per POCSO and BNS.⁴

2.5. Law commission recommendations

In September 2023, the Law Commission (Report No. 283) recommended retaining the age of consent at 18 but suggested judicial discretion in cases where de facto consent is evident among adolescents aged 16 to 18 years.

3. Difficulties and Challenges Due to the Current Scenario

3.1. Criminalisation of consensual adolescent relationships

India's "zero-tolerance" approach under the POCSO and BNS penalises all sexual acts involving minors, even if both parties are willing adolescents between 16 to 18 years, leading to the prosecution of adolescent boys under charges of rape, affecting their future in terms of education, employment, and social standing.

3.2. Interference to safe abortion

Pregnant minor females are unable to access institutional safer abortion without mandatory reporting of their partner and guardian consent. Many females fear disclosing their pregnancy resulting from consensual sexual activity to parents or healthcare providers in fear of legal prosecution of their partner, and therefore take the alternate route of unsafe abortion procedures and practices from unqualified personnel, leading to severe health complications, including infertility, or even death.

3.3. Fear among healthcare providers

Healthcare providers are compelled by the existing law to report all minor pregnancies to the police or law enforcement, leading to a collapse of trust between patients and providers.

3.4. Familial and societal stigma

The intersection of legal barriers and social stigma pushes adolescent females to hide their pregnancies, causing increasing health risks. There is no provision for confidential counselling or services.

4. Guidelines and Legal Norms in Developed Countries

4.1 France

1. Age of consent: 15 years.
2. Close-in-age exemption exists.
3. Abortion access: Minors can undergo abortion without parental consent, provided they are accompanied by an adult of their choice.

4.2. China

1. Age of consent: 14 years.
2. Abortion: Widely accessible with no mandatory parental involvement, especially in early stages.

4.3. United kingdom

1. Age of consent: 16 years.
2. Doctors can provide abortion without parental knowledge if the minor is deemed mature enough to understand the implications.

4.4 United States / Canada

1. Age of consent varies from 16 to 18 across states/provinces.
2. "Romeo and Juliet" laws protect consensual relationships within close age gaps.
3. Many states allow minors to access abortion without parental consent or notification.

These countries balance adolescent protection with patient autonomy and healthcare access, reducing unsafe abortions and criminalisation of peer relationships.

5. Recommendations to Stakeholders

5.1 To the legislature

1. Close-in-age exemption: Allow consensual sexual relationships between adolescents aged 16–18 without criminal liability.
2. Amend POCSO and BNS to recognise consensual relationships and distinguish them from truly exploitative acts.
3. Modify the MTP Act to allow confidential abortion services for adolescents aged 16–18, with or without guardian consent.

5.2, To the judiciary

1. Use judicial discretion in interpreting "consent" under POCSO when both parties are adolescents.
2. Consider age proximity and relational context while adjudicating such cases.

5.3. To medical regulatory bodies

1. Develop guidelines to ensure confidential reproductive healthcare for adolescents.

2. Train providers on ethical and legal frameworks to ensure safety while complying with reporting obligations.

5.4. To educational institutions

Implement comprehensive sex education programs to equip adolescents with knowledge of consent, contraception, and reproductive rights.

5.5. To law enforcement agencies

Prioritise cases involving coercion, exploitation, and trafficking, and avoid over-criminalising consensual adolescent relationships.

6. Conclusion

India's current legal stand on the age of consent and adolescent sexual activity, though made to protect the minor victims, has unconsciously endangered the very population it was intended to protect. The inflexible criminalisation under POCSO and BNS, coupled with mandatory reporting under MTP, pushes the adolescents into unintended consequences, leading to unsafe abortion practices and long-term health risks. International norms demonstrate that it is possible to maintain child protection parallelly recognising adolescent autonomy. By introducing close-in-age exemptions, enabling judicial discretion, and reforming healthcare access, India can take a decisive step toward safeguarding both the rights and health of its youth. Such reform is not only a legal necessity but also a moral imperative, ensuring justice,

dignity, and safe reproductive autonomy for Indian adolescents.

7. Source of Funding

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8. Conflict of Interest

None.

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