



Teenage Love On Trial: Consent, Crime And The Shadow Of Pocso

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Abstract: The former Chief Justice of India, D. Y. Chandrachud, heard a public interest litigation in August, 2023. It laid emphasis on the decriminalization of the consensual teenage sexual relationships, with special reference to the introduction of the “**Romeo-Juliet Law**”. Romeo and Juliet are the two main characters from William Shakespeare's “Romeo & Juliet”, which is a tragic love story between two teenage lovers. Renowned amicus curiae and senior advocate, Ms. Indira Jaisingh, who has been assisting the court in the “Nipun Saxena vs Union of India”, raised an urge that the statutory age of consent should be reduced from 18 to 16 years in order to prevent “the blanket criminalization of sexual activity pertaining to the adolescents”.¹ Also, it is pertinent to note that the Madras High Court in the year 2019 suggested that the definition of “child” under the Protection of Children from Sexual Offences Act, 2012, must be amended. The persons who are below the age of 16 years (currently being 18 years) must be brought within the ambit of the definition of “child” in order to prevent the misuse of this protective legislation and to deal with the actual rape cases rather than burdening the courts with the cases involving consensual sexual relationships. For this, the said High Court also suggested that a close-in-age exemption clause (based on the Romeo-Juliet Law) must be introduced in India which has been already introduced in many other countries since 2007.

Keywords : POCSO, consensual sexual relationships, teenage love, minor, adolescent, protective legislation, harsh penalties.

I. INTRODUCTION

*When two hearts meet with young, tender love,
An innocent love - too fragile, too raw,
But there stood the verdict from the courts above,
Blind to affection - that's our law.*

*The statute appears to condescend,
As it pays no heed to their “consent”.
The love may be intense, or just a phase,
But not to be trapped in a criminal case.*

The law is made for the protection of the civilians and more importantly, to cater to the fact that the will of the people is not curbed by any force or an unwelcomed influence. But one must ponder over the fact as to what should happen when the alleged “perpetrator” and the so-called “victim” acted together with full consent and then they have to bear the brunt of their acts, just because the law stands with a cold gaze and a deaf ear towards their mutual consent. This stands to be a main point of concern when we talk about the teenage lovers

¹ The Hindu, “Bring down age of consent from 18 to 16 years, Supreme Court told”, Available at :

<https://www.thehindu.com/news/national/bring-down-age-of-consent-from-18-to-16-years-supreme-court-told/article69850501.ece> (Last updated on July 24, 2025)

who often suffer due to the complex provisions under the special legislation called Protection of Children from Sexual Offences Act, 2012² (hereinafter mentioned as POCSO).

II. THE CONUNDRUM OF AGE

The age of consent as per POCSO is 18 years. For determining the age of the offender, Section 34 of POCSO is to be read with the Juvenile Justice (Care and Protection of Children) Act, 2015. The age of the victim is of utmost importance while dealing with the cases under POCSO. But it is pertinent to note that the age of the perpetrator cannot be neglected. Section 34 of POCSO states that where the offender is found to be a minor, then he shall be dealt with under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015³. It means that the child will not be subjected to the harsh penalties which are faced by the adult offenders and that the child offenders shall be dealt with care and protection.

Mention must be made regarding the constitution of the Special Courts under the POCSO Act. These courts are constituted to determine the age of the victim and the offender in case of sexual offences and also aim at the speedy disposal of the cases. For the purpose of determining the age of the child victim or the juvenile, the courts are required to follow the procedure given under Section 94⁴ of POCSO. Where a juvenile is brought before the Juvenile Justice Board or the where a child victim appears before the Child Welfare Committee, the Board or the Committee, upon a reasonable doubt regarding the age of victim, shall undertake the process of determining the age by seeking evidence upon obtaining the following documents⁵:

1. the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board.
2. In the absence of school certificate, the birth certificate given by a corporation or a municipal authority or a panchayat.
3. In the absence of the above two documents, the age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board.

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

It is of grave concern that there should be no loophole in the determination of the age of the child offender. The procedure as well as the penalties for such offences are more harsh for the adult offenders. This is where the dilemma of the teenage lovers comes into picture. We cannot ignore the fact that a minor indulged with another minor in a romantic or sexual relationship is equally incapable of understanding the nature and consequences of his act, especially when the circumstances were such that the victim was a consenting individual. The juvenile may not have to undergo the harsh penalties or he may be put under rehabilitation process but it still raises a doubt as to whether his acts should have been penalized at all.

III. PERSUASIVE PRECEDENTS

In the wake of multiple incidents involving the adolescent relationships, the High Courts have given various important directions. Some of them are discussed below:

❖ **Ajay Kumar vs State Govt. Of NCT of Delhi⁶**

In this case, the Delhi High Court stated that the intention of POCSO is to protect the children who are minors below the age of 18 years from any forms of sexual exploitation. The Act was never meant to criminalize the consensual romantic relationships between the young adults. But care and caution must be there and the facts and circumstances of the case have to be taken into consideration in order to ensure that there was due consent and that the survivor of the sexual offence was not forced to settle under any form of pressure or trauma.⁷

² Protection of Children from Sexual Offences Act, 2012 (Act No. 32 of 2012)

³ Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No. 2 of 2016)

⁴ Protection of Children from Sexual Offences Act, 2012 (Act No. 32 of 2012), s. 94

⁵ Protection of Children from Sexual Offences Act, 2012 (Act No. 32 of 2012), s. 94

⁶ Ajay Kumar v State Govt. Of NCT of Delhi (Crl.A. No. 57 of 2006)

⁷ Ajay Kumar v State Govt. Of NCT of Delhi (Crl.A. No. 57 of 2006)

Available at : <https://indiankanon.org/doc/135356838/> (Last visited on August 24, 2025)

❖ **Vijayalakshmi vs State⁸**

This case was brought before the Madras High Court whereby the court vehemently held that it is imperative to draw a thin line of demarcation between the nature of the acts. Due care and attention should be given to the acts that definitely fall within the ambit of the severe penalties under POCSO. But they must be clearly distinguished with those acts that were only innocuous and were not actually meant to cause any harm. A hasty and irresponsible action may adversely affect and damage the reputation and the livelihood of the youth offender especially when the act was of such a nature as to not fall under the severity of the sentences. The court further observed that, *“What came to be a law to protect and render justice to victims and survivors of child abuse, can, become a tool in the hands of certain sections of the society to abuse the process of law”*.⁹ The Madras High Court also observed that the consensual sexual intercourse does not fulfil the requirement of “assault” under the definition of “penetrative sexual assault”.¹⁰

❖ **Shambu Thilak vs State of Kerala¹¹**

In this case, the boy was 20 years old whereas the girl was 17 years old. They were school mates and since then, they fell deeply in love. The girl went missing from her friend's house and later on eloped with the boy. The mother of the girl filed a complaint before the authorities and the girl was eventually found. It was later discovered that she had sexual intercourse with the boy and so the boy was charged under Section 3(a) and 4 of POCSO and Section 376 of the Indian Penal Code. In the course of the proceedings, the girl and the boy attained the age of consent. Their marriage was solemnized and was duly registered. The court observed that they were living together happily as husband and wife and that the acts of the boy were in no manner falling within the category of crimes that have a serious impact on the society. The court remarked that, *“The facts of the instant case when looked at dispassionately would reveal a long term love affair between two young people which weathered all storms and ended up in the altar of marriage.”*¹²

❖ **XYZ vs State of Maharashtra¹³**

The Bombay High Court observed that the provisions of POCSO are made to specifically target the sexual exploitation. But in case of a consensual adolescent sexual relationship, where one is a major and the other is an adolescent, the act of the former is criminalized and it is mostly the young boy who is castigated for committing rape on a minor girl, a stigma he has to carry for his whole life. Further, the judges remarked that a balance has to be struck between the acts of sexual abuse and distinction between the age of consent and the age of marriage as the sexual activities are not limited within the purview of marriage and may take place even without the matrimonial bond. Referring to various countries such as Japan, Germany, Italy, Hungary, Portugal, London and Wales, the court recommended that the age of consent should be reconsidered by the legislative authorities.¹⁴

IV. RECOMMENDATIONS OF THE LAW COMMISSION OF INDIA

Since 1940, the age of consent in India was 16 years. It was only after the advent of the gender neutral law of POCSO, 2012 that the age of consent was raised to 18 years.¹⁵ The 22nd Law Commission of India, 2023¹⁶ (hereinafter called as the Commission), in its 283rd Report expressed concerns about the age of consent for

⁸ Vijayalakshmi v State (Crl.O.P.No.232 of 2021)

⁹ Vijayalakshmi v State (Crl.O.P.No.232 of 2021) Available at : <https://indiankanoon.org/doc/135356838/> (Last visited on August 24, 2025)

¹⁰ 2025 INSC 778, Available at : https://api.sci.gov.in/supremecourt/2023/51208/51208_2023_3_1506_62112_Judgement_23-May-2025.pdf (Last visited on August 24, 2025)

¹¹ Shambu Thilak vs State of Kerala (Crl. MC. No. 3810 of 2016)

¹² Shambu Thilak vs State of Kerala (Crl. MC. No. 3810 of 2016) Available at : <https://indiankanoon.org/doc/166451795/> (Last visited on August 25, 2025)

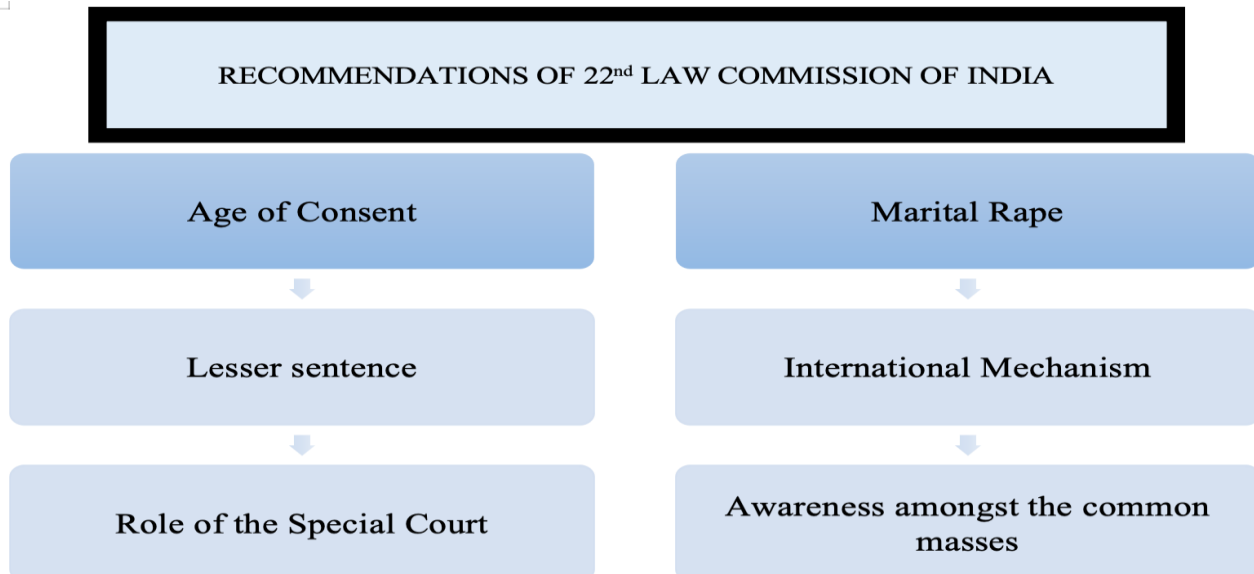
¹³ XYZ vs State of Maharashtra (Cri.Appeal No. 547 of 2020)

¹⁴ Swati Deshpande, *“Age of consent under POCSO perhaps highest globally; high time India takes note of global scenario : Bombay HC”* Available at : <https://timesofindia.indiatimes.com/india/age-of-consent-under-pocso-perhaps-highest-globally-high-time-india-takes-note-of-global-scenario-bombay-hc/articleshow/101729154.cms> (Last visited on August 24, 2025)

¹⁵ Amita Pitre, Sunita Sheel Bandewar, *“Law Commission of India report on the age of consent: Denying justice and autonomy to adolescents”* Available at : <https://ijme.in/articles/law-commission-of-india-report-on-the-age-of-consent-denying-justice-and-autonomy-to-adolescents/?galley=html> (Last visited on August 24, 2025)

¹⁶ Ministry of Law and Justice, Govt of India. 22nd Law Commission of India. Report No 283. *“Age of consent under the Protection of Children from Sexual Offences Act, 2012”*. 2023 Sep, Available at : <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2023/09/20230929466194485.pdf> (Last visited on August 22, 2025)

the purpose of engaging in sexual activities. The recommendations of the Commission can be summarized as given below:



- The Commission recommended to retain the age of 18 years as the age of consent, whether the sexual activity took place in the form of sexual abuse or consensual sexual intercourse.
- On the other hand, the Commission laid emphasis on lowering the harsh penalty laid down in POCSO. Where the Special Courts are satisfied that in case of a child of 16 years of age or above, the relationship between the child and the alleged perpetrator was intimate and consensual, then such court can impose a sentence lesser than 10 years in its “guided judicial discretion”.

The determination of the quantum of sentence is based on the following factors to be taken into consideration by the court:

- That for such a sexual relationship, there was a tacit approval of the child who is between 16 to 18 years of age (the literal meaning of tacit being understood or implied without being stated)
- The age gap between the child and the accused does not exceed 3 years.
- Past antecedents of the accused which means that the accused must not have a previous criminal record and that he is maintaining a good conduct after the occurrence of the event.
- The accused has entered into a matrimonial relationship with the child upon attaining majority and that they both are leading a happy married life.
- Where, as a result of the sexual relationship, a child was born to the accused and the child.
- The Commission also laid emphasis on the fact that it is necessary to amend The age of consent because according to Section 375 and Section 376 of the Indian Penal Code, where a husband forms a sexual relationship with a wife below the age of 18 years, it would still amount to rape, even though it was consensual.
- The Report of the Commission also outlined the system followed in other countries, in order to denote the lower age for consent so that the adolescents do not have to live with the shame or stigma for indulging in a consensual sexual activity.¹⁷
- Also, it was proposed that the adolescents deserve clear, honest, and age-appropriate sex education as a regular part of what they learn in school. Along with this, programs like the **Rashtriya Kishor Swasthya Karyakram** can play a big role in giving teenagers the right information and confidence to make healthy and safe choices for themselves.¹⁸

¹⁷ Shankar IAS Academy, “Age of consent in POCSO”, Available at : <https://www.shankariasparliament.com/current-affairs/gs-i/age-of-consent-in-pocso-act> (Last visited on August 24, 2025)

¹⁸ *ibidem*

V. THE OPINION OF THE APEX COURT

Given below are the various judgements which narrate the observations of the Hon'ble Supreme Court of India pertaining to the teenage romantic relationship vis-a-vis the rigid penal provisions of POCSO:

❖ **Maruthupandi v State Represented by Inspector of Police**¹⁹

In this case, a young boy (minor) was involved in a romantic relationship with a minor, that included the consensual sexual relationship. He was charged with Section 5(1) read with Section 6 of the POCSO Act pertaining to the aggravated penetrative sexual assault and the trial court sentenced him for 10 years of imprisonment. The defence contended that the objective of the POCSO Act was not intended to criminalize the consensual sexual relationship between the minors rather it was protect the children from the sexual offences. The issue was taken to the Supreme Court, and the defense pointed out that the couple had married since then and were living together peacefully. The Court ordered the victim's statement to be recorded once again to determine the present status of their relationship and the conditions of their marriage. The approach of the Supreme Court showed that it was open to looking into the complexities of teenager relationships in the context of the POCSO Act.

❖ **In Re Right to Privacy of Adolescents**²⁰

In this case, the Special Judge appointed under the POCSO Act convicted the accused under Section 6 (aggravated penetrative sexual assault) of the POCSO Act and under Sections 363 (kidnapping), 366 (kidnapping with intent to compel marriage or illicit intercourse), 376 (2)(n) (committing rape repeatedly on the same woman) and 376 (3) (committing rape on a woman under 16 years of age) of the Indian Penal Code (IPC, 1860). He was ordered to pay a fine of Rs. 10,000 along-with undergoing a rigorous imprisonment of 20 years. He filed an appeal against the conviction in Calcutta High Court.

Eventually, the Calcutta High Court set aside the conviction and the impugned judgement. A suo motu writ petition was initiated and the State Government preferred a criminal appeal to challenge the order of acquittal. The Supreme Court observed the basic facts of the case under para 2 and 3 of the judgement which can be stated as follows:

The victim was a minor (14 years old) at the time of the incident. She has escaped from her own house and went to the house of the accused as he had enticed her to do so with the help of his two sisters. The mother of the victim lodged an FIR and also tried to facilitate her daughter's return. A female child was born to the victim of which the accused was the biological father. The High Court of Calcutta had acquitted the accused because it noted that the victim had been disowned by her own mother, and therefore, she was continuously residing with the accused along with their minor child. A committee was set up to assess the mental state of the victim and consequently two reports were submitted by the said committee, namely, a Preliminary report submitted in October 2024, and a Final report submitted in January 2025.²¹

The report made a crucial conclusion: it was not the legal crime, but the subsequent legal battle that traumatized the victim.²² The report recommended:

- that the family unit—consisting of the convict, victim and their child—remain intact for the best interest of the victim and her child.
- that the state should provide financial, legal, and educational support to the family.

Justice A.S. Oka wrote:

*“Now, she is at a stage where she is desperate to save her husband. Now, she is emotionally committed to the accused and has become very possessive of her small family.”*²³

- The Bench recognised that the girl (now an adult) had chosen to live with the accused, and respected her decision.

¹⁹ Maruthupandi v State Represented by Inspector of Police SLP(Crl.) No(s). 2782/2021

²⁰ In Re Right to Privacy of Adolescents 2025 INSC 778

²¹ 2025 INSC 778, Available at : https://api.sci.gov.in/supremecourt/2023/51208/51208_2023_3_1506_62112_Judgement_23-May-2025.pdf (Last visited on August 24, 2025)

²² Gauri Kashyap, “Not a Precedent : Supreme Court holds back from sentencing POCSO convict” Available at : <https://www.scobserver.in/journal/in-re-right-to-privacy-of-adolescents-not-a-precedent-supreme-court-holds-back-from-sentencing-pocso-convict/> (Last updated on May 29, 2025)

²³ *ibidem*

- The judges felt that putting the man in jail would hurt not only her but also their child, making life harder for both.
- Using its extraordinary powers under Article 142 of the Constitution, the Court chose not to impose the strict 20-year jail sentence that the law normally requires.
- The Court asked the State of West Bengal to act as her guardian, ensuring she has support and security.
- The judges made it clear that this ruling is only for this particular case and should not be treated as a rule for future cases (not to be used as a precedent)²⁴

VI. CONCLUSION

Thus, to conclude, we can say that teenage love caught in the harsh prism of the POCSO Act ultimately represents a painful conflict between the law and actual life. The Act's strict application frequently criminalizes consenting adolescent relationships, making young lovers into criminals overnight, despite its justifiable goal of protecting children from exploitation. At this point, a "Romeo-Juliet clause"—a protection that separates sincere adolescent romances from predatory abuse—becomes imperative. The law can preserve its protective nature without endangering the lives of children by making room for such a clause, guaranteeing that love is not viewed as a crime but rather as something that should be treated with empathy and understanding.

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²⁴ *ibidem*