



# Human Rights Implications Of Minimum Age For Criminal Liability Laws In Sexual Offenses: A Case Study Of India

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## ARTICLE INFO

## ABSTRACT

The abuse of children sexually is a terrible worldwide problem that leaves victims with lifelong scars. In order to ensure justice and deter similar acts, legislative frameworks are essential. Balancing this objective with the evolving rights and autonomy of teenagers poses a significant challenge. With an emphasis on India's Protection of Children from Sexual Offences Act, this study examines the human rights consequences of minimum age requirements for criminal liability laws pertaining to sexual offences. POCSO establishes 18 as the minimum age of consent for all sexual activities, which has raised concerns about the possible infringement of teenage rights, such as the freedom from unjustified arrest and imprisonment, privacy, bodily autonomy, and access to knowledge about sexual and reproductive health.

The conflict between teenage rights and child protection is examined in the paper. This study examines how teenagers' ability to give consent is developing, as well as how criminalising any sexual behaviour under the age of 18 may violate their right to autonomy. International comparisons show how different countries handle this complicated topic and how their minimum age regulations vary. A human rights-based strategy for POCSO reform is put out in this study. In order to distinguish between consensual sexual behaviour between adolescents of similar ages and exploitative abuse, this study involves investigating the possibility of a tiered age of consent system. Furthermore, it is suggested to prioritise preventive interventions through detailed sexual education programmes for setting explicit rules for assessing capacity to consent. The necessity of open communication, stakeholder participation, and ongoing legislative revision is emphasised in the conclusion of the paper. India may develop a more effective framework for preventing child sexual abuse while defending the rights and welfare of all young people by giving human rights a higher priority.

**Keywords:** Child sexual abuse, Minimum age of consent, POCSO Act, Adolescent rights, Human rights, Juvenile Justice, India.

## 1. Introduction

Across the world, safeguarding children from sexual assault is of utmost importance<sup>1</sup>. Legislative frameworks are crucial for preventing such crimes and ensuring justice for victims. The goal must be balanced with the developing rights and autonomy of teenagers, though, and this presents a significant difficulty. This paper explores the implications of minimum age regulations for criminal culpability in sexual offences for human rights, using India as a fascinating case study.

The Protection of Children from Sexual Offences Act, 2012 in India has received praise for emphasising minor protection<sup>2</sup>. Nevertheless, regardless of consent, the Act establishes 18 as the legal age of consent for all sexual behaviour<sup>3</sup>. Concerns are expressed over this provision's potential to violate adolescents' right to privacy and bodily autonomy by criminalising their consenting sexual exploration.

This study examines the human rights framework around child sexual abuse and teenage development. The analysis focuses on the possible infringement of rights under POCSO, such as the freedom from arbitrary detention and arrest, the right to privacy, and the ability to obtain information related to sexual and reproductive health. The influence of such laws on adolescents' access to the legal system and social services is further examined in this research.

## **2. The Global Fight against Child Sexual Abuse**

Child sexual abuse is a pervasive global issue that destroys lives and jeopardises essential human rights<sup>4</sup>. It is challenging to determine the actual scope of child sexual abuse because the crime is often disguised and underreported. However, available data portrays concerning reality, revealing a substantial impact on the physical and psychological well-being of countless children who experience sexual abuse annually, as indicated by estimations<sup>5</sup>. With the recognition of child sexual abuse as a grave violation of human rights, numerous international efforts have been mobilized to combat this pervasive issue such as United Nations Convention on the Rights of the Child (CRC) provide a foundation for national legislation aimed at preventing, investigating, and prosecuting cases of child sexual abuse.

## **3. International Legal Framework for Child Protection:**

Due to the seriousness of this problem, a strong legislative framework to safeguard children has been built by the worldwide community. The Convention on the Rights of the Child stands out as a pivotal instrument, guaranteeing children's protection from various forms of violence, including sexual assault<sup>6</sup>. The CRC stands as a seminal document delineating the civil, political, economic, social, and cultural rights of children, serving as the bedrock for global endeavors aimed at advancing and safeguarding children's rights. Furthermore, specific acts of sexual violence against children are prohibited under protocols such as the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography<sup>7</sup>. Moreover, regional human rights instruments, such as the African Charter on the Rights and Welfare of the Child and the European Convention on Human Rights, complement the global legal framework by addressing specific regional challenges and contexts related to child protection. These instruments reinforce the principles enshrined in the CRC while tailoring legal obligations to regional needs and priorities. These international agreements not only shape national laws but also provide a framework for fostering international cooperation in combating child sexual.

## **4. India's POCSO Act:**

The Protection of Children from Sexual Offences Act was passed by India in 2012 in reaction to the rising concern over child sexual abuse<sup>8</sup>. This historic law signalled a dramatic change in the nation's strategy against criminal offences.

### **4.1 Key Provisions of POCSO:**

POCSO enacted several ground-breaking provisions, such as defining a wide spectrum of sexual offences against minors, underscoring the Act's commitment to clarity and specificity in identifying and prosecuting perpetrators, establishment of specialised courts for expediting trials, and requiring harsher punishments for offenders<sup>9</sup>. Furthermore, the Act guarantees medical attention, sets down reporting guidelines for abuse, and offers age-appropriate rehabilitative services to further prioritise victim support.

### **4.2 The Minimum Age of Consent Controversy:**

Nevertheless, the POCSO's requirement that consent for any sexual behaviour be given at least 18 years of age has sparked a contentious discussion within legal discourse<sup>10</sup>. Various legal experts, scholars and opponents contend that this strategy has unexpected repercussions, despite the evident goal of protecting minors from exploitations. They make the point that criminalising teenagers for engaging in consensual sexual exploration raises significant questions regarding possible violations of their developing autonomy and rights. This article explores the core of this controversy, over the legal minimum age of consent, which leads us to investigate the human rights consequences of POCSO in further detail.

## **5. Human Rights and Child Sexual Abuse:**

Child sexual abuse remains a grave violation of fundamental human rights, necessitating a comprehensive legal framework to safeguard children's well-being. The fundamental rights that every child is entitled to are at the heart of the battle against child sexual abuse<sup>11</sup>. The idea that safeguarding minors from sexual abuse is required by law, morality and ethics since it is founded on basic rights of humanity<sup>12</sup>. These reasons include the protection of Children's Rights as the most vulnerable members of society, children have certain rights that protect and promote their growth, safety, and well-being. The rights of children are protected against all sorts of abuse, including sexual abuse, by several international agreements, including the United Nations

Convention on the Rights of the Child<sup>13</sup>. It emphasizes the centrality of children's rights, integrity, and dignity in the fight against sexual abuse, highlighting the imperative for preventive measures, victim support, and societal awareness.

Sexual abuse severely compromises a child's physical, emotional, and psychological well-being by violating these essential elements of their humanity<sup>14</sup>. To preserve children's integrity and dignity, it is imperative to shield them against sexual assault.

Safeguarding children from injury and exploitation is part of their fundamental right to safety and security<sup>15</sup>. Sexual abuse exposes children to stress, physical and emotional injury, and long-term effects that can last until adulthood, making it a serious violation of their rights<sup>16</sup>. When making choices or doing actions involving children, the best interests of the child should always come first. To promote the best interests of the child, it is essential to prevent and manage child sexual abuse since it protects the child's safety, health, and general well-being.

Every child has the right to equal protection under the law, irrespective of their circumstances, background, or traits<sup>17</sup>. The needs and vulnerabilities of all children, especially those from marginalised or disadvantaged groups, should be addressed in the inclusive and non-discriminatory fight in legal responses against child sexual abuse. Child sexual abuse damages victims on an individual basis, but it also weakens society as a whole by perpetuating cycles of trauma, violence, and dysfunction<sup>18</sup>. Societies can foster healthier and more resilient communities for future generations by defending children's rights and prohibiting sexual abuse. To prevent and address child sexual abuse, governments, organisations, communities, and individuals all have a shared obligation. This entails passing laws and regulations that safeguard children, upholding them, offering assistance to victims and survivors, spreading awareness, and cultivating a climate in which children's rights are valued.

## **6. Right to Protection from All Forms of Violence:**

The right to protection from all forms of violence is a cornerstone of children's rights and is essential for their well-being and development. Article 6 of the Convention on the Rights of the Child guarantees every child the right "to life, survival, and development." Whereas Article 19 of the CRC specifically obligates states parties to take all appropriate legislative, administrative, social, and educational measures to protect children from all forms of physical or mental violence, injury, or abuse. This right includes protection against emotional, sexual, and physical abuse, among other forms of violence. Child sexual abuse, in particular, represents a severe violation of this right, inflicting enduring physical and psychological trauma that obstructs a child's development and overall well-being. By strengthening legal protections, enhancing implementation mechanisms, and promoting a culture of respect for children's rights, societies can create safer and more inclusive environments where every child can thrive free from the scourge of violence.

## **7. Right to Survival, Development, and Life:**

Child sexual abuse can affect a child's development and health, extending far beyond the initial trauma. Sexually transmitted illnesses, unintended pregnancies, and mental health conditions including anxiety and despair may all become more likely for victims<sup>19</sup>. These consequences may seriously impair their capacity to live up to their full potential. Thus, maintaining the basic tenets of the CRC requires implementing efficient policies to prevent and address child sexual abuse.

As the child grows into adolescence, their sexuality-related problems interact intricately with their physical and mental development<sup>20</sup>. The discussion around the minimum age of consent must be navigated by considering this developmental phase. Adolescence is a time of considerable physical maturation and the emergence of sexual desire and curiosity<sup>21</sup>. Adolescents have a growing sense of independence and want more control over their choices and bodies<sup>22</sup>. This includes exploring out their sexuality and forming close connections with others. International human rights instruments highlight adolescents' right to participate in decisions that impact their lives, including those about their health and well-being, and acknowledge their developing capacities<sup>23</sup>.

When thinking about adolescent relationships, the concept of consent becomes more complex<sup>24</sup>. A general prohibition of all sexual behaviour between consenting adolescents presents questions, even though the capacity to comprehend and freely give consent is crucial. Concerns regarding possible abuses of certain essential teenage rights are raised by POCSO's exclusive focus on 18 as the minimum age of consent<sup>25</sup>.

## **8. Freedom from Unlawful Arrest and Detention:**

The blanket criminalization of all sexual activities under the age of 18 could lead to the arbitrary arrest and incarceration of minors. Their right to privacy and freedom of movement may be compromised by this initiative. Just for experimenting with their sexuality, two adolescent lovers could be charged with a crime. In such scenarios, the proportionality of the approach taken by the Protection of Children from Sexual Offenses Act (POCSO) comes under scrutiny.

A violation of adolescents' right to privacy and physical autonomy could result from the criminalization of certain behaviours. As teenagers are becoming more interested in their bodies and sexuality, therefore making it illegal to explore these interests could be seen as an excessive interference with their private life.

### **9. Right to Access Sexual and Reproductive Health Information:**

Decriminalising any sexual conduct under the age of 18 may also foster a culture of fear and silence, which would deter teenagers from getting important information about their reproductive and sexual health. To protect oneself against unwanted pregnancy and STDs, people must have open conversations regarding relationships and sex. POCSO might unintentionally obstruct access to such vital information in its current form. Teenagers facing accusations of sexual offenses encounter challenges due to POCSO's application to all sexual conduct under the age of 18, irrespective of consent as its effect on justice access<sup>26</sup>.

Initially, teenagers charged under POCSO may encounter considerable difficulties in providing a defence. In addition to the difficulties of the judicial system, the stigma attached to sexual offences can make individuals feel helpless and overwhelmed<sup>27</sup>. Furthermore, the broad application of the law may result in circumstances where teenagers who are exploring consensually receive the same treatment as those who abuse their victims violently. This raises concerns about ensuring fairness and equity in the legal process for all parties involved.

Preserving the right to due process and fair trials is paramount, especially for teenagers who may lack the legal expertise to navigate the intricacies of the court system. Ensuring age-appropriate processes and providing access to qualified legal representation become essential components of protecting their rights. This could entail setting up courts that are specifically designed to handle trials involving teenagers, complete with judges and solicitors who have received the necessary training, as well as processes that take into account their developmental stage and ability to comprehend the charges brought against them.

The minimum age of consent debate may have unforeseen repercussions for teenage victims of sexual assault, even though POCSO places a high priority on victim care. First, teenage victims may experience dread and silence as a result of the prohibition of all sexual behaviour under the age of 18. Even in situations when the abuse was voluntary, they could be reluctant to report it for fear that their partner will be charged with a crime. They might be unable to get the necessary support services or pursue legal action for the abuse they suffered because of this fear. Teenagers who engage in sexual activity have additional challenges due to the stigma attached to it, which prevents them from coming forward and could postpone their rehabilitation<sup>28</sup>.

Moreover, the existing structure does not sufficiently attend to the unique requirements of victims who are adolescents. A safe place where teenagers may report abuse, get emotional support, and receive developmental-stage-appropriate counselling is what age-appropriate support systems must provide. This could involve setting up specialist support facilities with staff members who are qualified to recognise and address the particular difficulties faced by young people who have experienced sexual assault.

### **10. Differences in the age of Consent among Nations:**

The legal minimum age of consent is not established by consensus<sup>29</sup>. Between 13 and 18 years old is the age range that differs the most between countries<sup>30</sup>. While some jurisdictions have a single, set age, others use a tiered system that takes into account the age difference between partners and the existence of intimidation<sup>31</sup>. Through an analysis of these differences, we may investigate various strategies for striking a balance between protecting children and upholding the rights of adolescents.

In other jurisdictions, such as the UK and Canada, a tiered system has been implemented to distinguish between consenting sexual behaviour and exploitative abuse<sup>32</sup>. This method strikes a balance between protection and the rights of adolescents. This strategy permits a more nuanced reaction to minors engaging in sexual behaviour while acknowledging the developmental trajectory of teenagers. Reforming POCSO legislation in India can benefit greatly from an examination of how these jurisdictions manage the minimal age of consent while maintaining child protection. In addition, a closer look at the educational initiatives and support networks put in place in these nations can offer insights into how to develop a more all-encompassing framework that respects the developing rights of teenagers while shielding children from maltreatment.

Critics of the existing legislation contend that it ignores adolescents' developing capacity for consent. The comprehension of sexuality and decision-making skills of teenagers evolve with age. This developing capacity is ignored when sexual conduct is criminalised outright. They also voice worry that POCSO may violate adolescents' right to privacy and physical autonomy by making consenting sexual exploration of that nature illegal<sup>33</sup>. The law as it stands now may be viewed as unduly restrictive by adolescents who may be interested in developing close relationships and exploring their sexuality.

Enforcing laws against sexual activity involving minors under 18 could deter teenagers from reporting abuse. Even in situations when the conduct was consensual, they may be reluctant to seek assistance and justice out of concern that their spouse would be criminalised. Reform proponents recommend taking into account instances of progressive consent laws from other countries. These methods distinguish voluntary

interactions between teenagers who are closer in age from abusive exploitation. By studying these models, India could develop a legal framework that respects adolescent rights while effectively protecting children.

### 11. Re-evaluating POCSO with Human Rights Principles:

Age-appropriate, comprehensive sexuality education programmes must be implemented in schools, as was previously mentioned. Human development, relationships, sexual health, and consent should all be covered in these programmes. Teenagers who are open about their sexuality are more equipped to make decisions and handle relationships responsibly.

Teenagers must be made aware of their rights, encouraged to ask for assistance, and encouraged to report abuse without fear of facing legal repercussions. Adolescent-focused information campaigns and helplines can establish secure environments where young people can express their worries and obtain assistance.

It is equally crucial to educate parents, educators, and communities on open communication about sexuality, teenage growth, and child sexual abuse. This can facilitate the development of a caring atmosphere in which teenagers feel at ease sharing their worries and asking responsible adults for advice.

It is difficult to strike a balance between the vital need to protect children from sexual abuse and the developing rights and autonomy of adolescents when it comes to the minimum age at which criminal liability for sexual offences should begin. The consequences of India's existing minimum consent age, as set by POCSO, for human rights have been examined in this paper.

### 12. Conclusion and Suggestions:

This study suggests the following changes to Indian legislations based on the analysis presented.

i. As previously said, a system of tiers for the age of consent that differentiates between consenting sexual behaviour between adolescents of similar ages and adult abuse that is exploitative could be a viable alternative. Age differences would need to be carefully taken into account, and assessments of consent capacity that are developmentally appropriate would be necessary for this strategy.

ii. Create precise rules that take age, maturity, and compulsion into account when establishing an individual's capacity to reach an agreement. To guarantee fairness and age appropriateness in court cases, these principles should incorporate cooperation between mental health professionals and legal experts.

iii. It is imperative to prioritise preventive measures by implementing comprehensive sexuality education programmes in schools. Moving away from a purely punitive approach, these programs empower adolescents with knowledge and communication skills to make informed decisions, foster healthy relationships, and identify and prevent instances of abuse.

iv. An interdisciplinary approach is necessary to strike a balance between adolescent's rights and child protection. An atmosphere that is secure and nurturing for kids and teenagers must be established by legislative changes, educational programmes, and public awareness campaigns.

v. Collaboration between legislators, law enforcement, educators, mental health specialists, and civil society organisations is necessary for the effective implementation of these reforms. To create complete plans that approach the problem from multiple perspectives, a team effort is required.

vi. Laws and regulations must be continuously reviewed and discussed openly. Frequent reviews make it possible to make modifications in alignment of new informations and international best standard practices. Adolescents' perspectives and worries can be better understood by including them in these conversations.

India can develop a stronger legislative framework to prevent child sexual abuse and promote the welfare of all young people by putting a human rights-based strategy that respects the rights of adolescents and protects their protection at the top of the list.

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