

Protection against misuse: on POCSO Act, adolescent sex

Criminalising adolescent sex will undermine the aim of POCSO Act



Understanding the POCSO Act

Key Objective

The Protection of Children from Sexual Offences (POCSO) Act, 2012 aims to protect children from sexual offences.

Current Definition

Under Section 2(d) of POCSO Act, anyone below 18 years is considered a "child" and their consent is legally irrelevant.

Legal Consequences

Stringent punishment under Section 6 of POCSO Act, Section 9 of Prohibition of Child Marriage Act, 2006, and provisions of IPC and BNS.



The Growing Concern

Courts around the country and rights activists have called for exemptions to the POCSO Act after noticing a troubling trend:

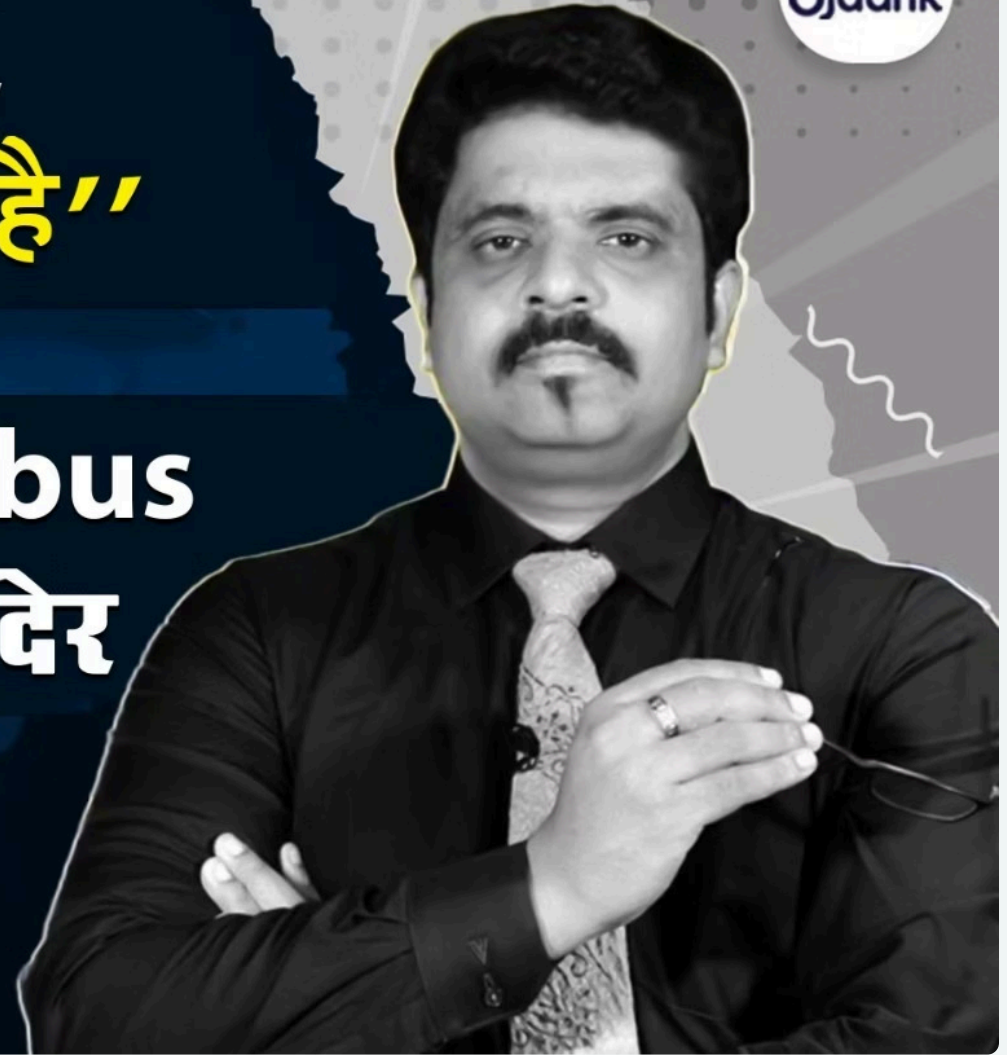
- **Adolescents above 15 but under 18 years in voluntary relationships are being persecuted**
- **Consensual sexual activity between teenagers is being criminalised**
- **The protective intent of the law is being misused in non-exploitative relationships**



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Amicus Curiae Submission

"Such an exception would preserve the protective intent of the statute while preventing its misuse against adolescent relationships that are not exploitative in nature."

Indira Jaising's Proposal

Senior advocate Indira Jaising, appointed as amicus curiae, submitted that consensual sex between teenagers aged 16–18 years must not be criminalised.

Challenge to Age of Consent

Her brief challenged the designation of 18 years as the age of consent, suggesting 16 as "an almost universal age of sexual maturity."

Recommended Exception

Called for an exception to be read into the POCSO Act and Section 63 (sexual offences) of the Bharatiya Nyaya Sanhita (BNS).

Law Commission's Stance



2023 Report Findings

The Law Commission opposed changing the age of consent in its 2023 report.

Instead, it advised "guided judicial discretion" in sentencing for cases involving children between 16 and 18 years in voluntary, consensual relationships.

This approach aims to balance protection with recognition of adolescent relationships.



Madras High Court Suggestion

1

2021 Case

In *Vijayalakshmi vs State Rep* (2021), the Madras High Court suggested important caveats to the POCSO Act.

2

Age Gap Recommendation

The court proposed that the age difference in consensual relationships should not be more than five years.

3

Rationale

This limitation would ensure that a girl of an impressionable age is not taken advantage of by an older person.



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Balancing Protection and Reality



Protect Vulnerable Children

Maintain strong legal protections against non-consensual, exploitative sexual offences involving minors



Recognize Adolescent Reality

Acknowledge that consensual relationships between adolescents of similar ages are common and different from exploitation



Education is Essential

Educate adolescents about the law on sexual offences and its consequences

Conclusion: The Way Forward

Criminalising normal adolescent behaviour is not the way to protect against sexual offences. A balanced approach requires:

- **Carefully crafted exceptions for consensual relationships between adolescents**
- **Maintaining the protective intent of POCSO Act**
- **Considering age-gap provisions as suggested by the Madras High Court**
- **Comprehensive education about consent and legal consequences**



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