



BETWEEN PROTECTION AND PUNISHMENT, THE MISUSE OF POCSO ACT, 2012 IN CONSENSUAL ADOLESCENTS

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ABSTRACT

Protection of children against sexual offences (POCSO) Act aimed at curb sexual exploitation and abuse of minors, but has been increasingly criticized because of overly applied to cases of consensual relationships among adolescents. Although the Act is important in protecting the vulnerable children, its application in cases of consensual sex among teenagers has raised concerns about misuse and unintended criminalization of normal adolescent behavior.

This challenge is critically addressed in this paper through the analysis of landmark judicial interventions such as the observations of Supreme Court that warned about the unnecessary application of POCSO in cases of teenage romance and marital relationships involving underage children. It delves into major case laws that highlight the need to strike a balance between child protection and the adolescent's rights to autonomy, privacy, and their evolving capacities. The paper also explains the recommendations of the 22nd Law Commission of India which suggests maintaining the age of consent as 18 while allowing guided judicial discretion in the case of close-in-age.

Furthermore, the paper discusses the socio and psychological effects of over criminalization, in particular, in boys and young men, where the lack of

legal knowledge can result in stigma, trauma, and long term harm. The paper compares India's legal situation with international laws and best practices and identifies the main gaps and recommends reforms to enhance the rights of adolescents. It finds that a child sensitive approach combining comprehensive sexuality education with judicial discretion and protective law is necessary to ensure POCSO does not become into a means of injustice in consensual adolescent relationships, while safeguarding the health and dignity.

Keywords: POCSO Act, adolescent consent, judicial discretion, criminalization of teenagers, Law Commission of India.

INTRODUCTION

Adolescent love affairs occupy an ambiguous and highly debated position at the intersection of developmental psychology, emerging social expectations, and strict legal regulation. Although adolescence is biologically and psychologically a phase of exploration and the discovery of one's sexual self, the Indian legal system adopts a contradictory view of childhood and adulthood. This division is most clearly reflected in the Protection of Children from Sexual Offences (POCSO) Act, 2012, which sets the absolute age of consent at eighteen¹. The Act declares all sexual acts involving minors, irrespective of consent or context, as criminal, since anyone below eighteen is legally defined as a child². This legal inflexibility creates a fiction whereby consensual sex between teenagers particularly those aged sixteen to eighteen becomes indistinguishable from predatory sexual violence, leading to prosecution as a serious sexual offence.

The clash between this zero tolerance legislative approach and the lived realities of adolescence has generated a crisis within the Indian criminal justice system. The disproportionate and often adverse consequences of this framework are increasingly

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

² Id. § 2(1)(d).



highlighted by legal scholars, sociologists, and rights activists. A statute designed to protect innocent children from sexual exploitation is frequently invoked against consenting couples³, commonly referred to in legal discourse as ‘Romeo and Juliet’ cases. The results are harmful especially for adolescent boys who, despite being part of a mutual relationship, are arrested and forced to live with the lifelong stigma of being labeled sex offenders. These outcomes raise serious doubts about the intention of the law when compared to its practical implementation, and it can be argued that the present structure creates more problems than it resolves.

Moreover, the criminalization of adolescent sexuality is deeply intertwined with India’s socio and cultural anxieties. Parents and guardians often employ the POCSO framework as a mechanism of social control⁴. Empirical evidence indicates that many prosecutions are not motivated by concerns of abuse⁵ but by attempts to punish disobedience to parental authority, particularly in relationships that cross caste, religious, or class boundaries⁶. In such cases, the state effectively reinforces patriarchal norms under the form of child protection, thereby deepening the conflict between an adolescent’s emerging autonomy and the social controls imposed upon them.

This paper critically examines the multiple layers involved in criminalizing consensual adolescent relationships in India. It questions the constitutionality of such criminalization in light of the rights to privacy and dignity and explores the evolving judicial trend wherein courts increasingly express discomfort with a rigid interpretation of the statute. Finally, the study argues that the Indian legal system must realign its approach by moving away from absolute criminalization. It proposes the adoption of close-in-

age exemptions, greater judicial discretion in sentencing, and the integration of comprehensive sex education. With a more balanced approach that protects children without undermining their developmental needs, the state can uphold child safety without criminalizing the natural process of growing up.

THE LEGAL PARADOX OF ADOLESCENT DEVELOPMENT, CONSENT, AND LEGAL REGULATION

Adolescence, in developmental psychology, is universally acknowledged as one of the most crucial transitional periods of life, marked by rapid cognitive, emotional, and psycho sexual maturation. It is a phase characterized not only by physical development but also by the discovery of identity and relationships. Within this developmental framework, the exploration of intimacy both romantic and sexual is regarded as natural, normative, and developmentally appropriate⁷. However, the existing legal landscape in India creates a significant paradox laws intended to protect children from harm end up causing harm by criminalizing these natural developmental milestones.

This paradox becomes particularly evident when examined through the lens of constitutional jurisprudence and moral philosophy. In *K.S. Puttaswamy v. Union of India* (2017), the Supreme Court of India delivered a landmark judgment affirming that the rights to privacy, dignity, and autonomy are integral components of the right to life under Article 21⁸. Human dignity is grounded in autonomy the capacity of individuals to make decisions and exercise self governance. This aligns with the Kantian imperative that human beings must always be treated as ends in themselves and never

³ Shonee Kapoor, *Misuse of POCSO in Consensual Teen Relationships*, JUS CORPUS (2023).

⁴ Flavia Agnes, *Protecting Children or Policing Sexuality?*, 52 ECON. & POL. WKLY. 42 (2017).

⁵ National Crime Records Bureau, *Crime in India 2022*, MINISTRY OF HOME AFFAIRS, GOV’T OF INDIA.

⁶ Aparna Chandra, *Criminal Law and Honour-Based Control in India*, 6 NUJS L. REV. 123 (2019).

⁷ Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 DEV. REV. 78 (2008).

⁸ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).



merely as means⁹. Denying adolescents the agency to form relationships with their peers reduces them to passive subjects of state protection, violating not only their constitutional rights but also their philosophical right to personhood.

This violation is further intensified by the POCSO Act's blanket approach, which ignores the evolving capacities of the child¹⁰ one of the core principles of the United Nations Convention on the Rights of the Child (UNCRC)¹¹, to which India is a signatory. The Act's rigid division between childhood and adulthood fails to reflect neuron scientific and psychological consensus adolescents, though not fully mature, possess developing competence and should be recognized as such by the law. By conflating exploitation with exploration, the law imposes the same punitive framework designed for adult predation onto consensual relationships between sixteen year olds. As a result, the state's refusal to acknowledge degrees of capacity has produced a legal regime that is protective in intent but punitive in practice, thereby criminalizing the very autonomy it must to nurture.

COMPARATIVE JURISPRUDENCE: THE RECOGNITION OF EVOLVING CAPACITIES

The legal paradox faced by India under the POCSO Act is commonly addressed in other jurisdictions through legislative measures that formally acknowledge the developmental reality of adolescent intimacy. Prominent among these are close-in-age exemptions or "Romeo and Juliet" provisions, which represent deliberate legislative efforts to distinguish between exploitative conduct and consensual peer relationships. Such measures reflect the UNCRC's principle of 'evolving capacities,' which recognizes that as adolescents mature, they warrant increased

legal agency and reduced punitive consequences for consensual behavior.

For example, in the United Kingdom, the age of consent is 16¹². The law provides specific defenses for individuals aged 16 or 17 who engage in sexual activity with a partner slightly younger than the age of consent (typically between 13 and 15). This close-in-age defense enables the criminal justice system to treat peer relationships less punitively, acknowledging that the central issue is not exploitation but a technical breach of the age threshold.

Similarly, in the United States, several states have enacted "Romeo and Juliet" laws¹³ that allow statutory affirmative defenses or reduced charges for older minors who engage in sexual activity with younger minors, provided the age difference falls within a defined range, commonly two, three, or four years and the relationship is consensual and non-exploitative.

These laws generally focus on:

1. Age Differential:

Establishing a maximum permissible age gap between the parties to differentiate consensual adolescent relationships from predatory behavior .

2. Maturity Assessment:

Permitting courts to consider the relative maturity of the individuals, the power dynamics, and the overall circumstances of the relationship, rather than relying solely on chronological age .

⁹ IMMANUEL KANT, GROUNDWORK OF THE METAPHYSICS OF MORALS 36–37 (Mary Gregor trans., Cambridge Univ. Press 1998) (1785).

¹⁰ Committee on the Rights of the Child, General Comment No. 20, U.N. Doc. CRC/C/GC/20 (2016).

¹¹ Convention on the Rights of the Child art. 5, Nov.

20, 1989, 1577 U.N.T.S. 3.

¹² Sexual Offences Act 2003, c. 42, §§ 9–13 (UK).

¹³ See, e.g., Michelle Oberman, Regulating Consensual Sex with Minors: Defining a Role for Statutory Rape, 48 BUFF. L. REV. 703 (2000).



Jurisdiction	Statutory Mechanism	Age of Consent	Key Feature Recognizing Evolving Capacity
India (POCSO Act)	Absolute Age Limit	18	None, Consent is irrelevant below 18.
United Kingdom	Close-in-Age Defense	16	Defenses available for partners aged 16-17 with minors slightly under 16.
United States (Varies by State)	Romeo & Juliet Laws	Varies (often 16 or 17)	Reduced charges or affirmative defenses if the age difference is small (e.g., 2-4 years) and the relationship is peer-based.

JUDICIAL TRENDS : A SHIFT TOWARD FINE TUNING AND INTENT DIFFERENTIATION

Indian courts increasingly find themselves at the intellectual and ethical crossroads between the rigid text of the Protection of Children from Sexual Offences (POCSO) Act and the complex realities of adolescent development. A clear judicial trend has emerged in which both the Supreme Court and several High Courts actively attempt to introduce nuance into the legal framework and to prevent the criminalization of consensual peer relationships. Collectively, these judicial interventions place strong pressure on the legislature to pursue long overdue statutory reform.

The Supreme Court has moved beyond mere acknowledgment of the issue and has begun drawing a clear moral and legal distinction between genuine exploitation and consensual romantic relationships. Earlier judgments such as *Independent Thought v. Union of India* (2017)¹⁴ and observations in *Alakh Alok Srivastava*¹⁵ highlighted concerns regarding over criminalization. More recent hearings have gone further, explicitly questioning the fundamental assumption underlying the age based rigidity of the Act.

In proceedings relating to the age of consent and misuse of POCSO, a Bench comprising Justices B.V. Nagarathna and R. Mahadevan openly recognized the social reality of co education and adolescent affection, famously asking ‘Can you say it is criminal to love?’¹⁶ The Court emphasized the need to distinguish between grave offences such as rape and consensual romantic involvement. It expressly stated that POCSO must not be applied indiscriminately to teenage relationships and that minors in genuine romantic situations should not be treated as criminals. The Court also acknowledged the unfortunate reality that the Act is often misused by parents to penalize elopements or enforce caste, honor, or familial control, resulting in wrongful prosecution and immense psychological trauma for adolescent boys.

This judicial trend of interpreting the POCSO Act more contextually and more sensitively is not just acclimated by new cases in the High Court but also upheld by the previous cases in which the judge recognized the details of adolescent relationships. One of the precedents that were used in the current judgment is *Sabari v. Inspector of Police*¹⁷, where the Madras High Court considered the abuse of POCSO in instances of consensual romantic relationships between teenagers. In *Sabari*, the Court emphasized the importance of differentiating actual instances of

¹⁴ *Independent Thought v. Union of India*, (2017) 10 SCC 800 (India).

¹⁵ *Alakh Alok Srivastava v. Union of India*, W.P. (C) No. 1024 of 2017 (India).

¹⁶ *Can You Say It’s Criminal to Love?*, HINDUSTAN TIMES (Aug. 2023).

¹⁷ *Sabari v. Inspector of Police*, (2019) 3 Mad. LJ (Cri) 110 (India).



child sexual abuse with cases that involve normal youthful romantic behavior which has been wrongly charged as a criminal offence. The role of this judicial position is to ensure that the Act is not abused besides the need to avoid subjecting adolescents to harsh criminal penalties due to developmentally normal and non-exploitative behavior.

In support of this argument, the judgment also refers to *Parbathbhai Aahir @ Parbathbhai v. State of Gujarat*¹⁸ and *Dhruv Gurjar, (2019) 2 Mad LJ (Cri) 10*. These cases established some valuable principles, which should be followed when quashing non-compoundable offences on the basis of Section 482 of the Code of Criminal Procedure. They emphasize the need to be able to distinguish the personal or interpersonal conflicts, in which case it may be reasonable to quash them, and the offences that have a wider impact on society, in which case they must be curbed by the judicial system.

This shift toward judicial subtlety is even more pronounced in various High Courts, which confront the practical consequences of POCSO on a daily basis:

- **Madras High Court on January 27, 2021** (*Vijayalakshmi v. State*)¹⁹:- The Court has repeatedly criticized the trend of parents filing POCSO cases under societal pressure relating to caste, honor, or family reputation. It emphasized that criminalizing an adolescent boy for a consensual peer relationship, thereby branding him a sexual offender, defeats the protective purpose of the Act.
- **Calcutta High Court on 17th September, 2021** (*Ranjit Rajbanshi v. State of West Bengal*)²⁰:- The Court strongly asserted that a law intended to safeguard children cannot be transformed into a weapon that destroys the lives of young people. It

urged judicial caution and contextual interpretation.

- **Meghalaya High Court on 27th October, 2022** (*Silvestar Khonglah & Anr. v. State of Meghalaya & Anr.*)²¹:- The Court consistently highlighted the unfairness of prosecuting teenagers for consensual acts under POCSO, often mitigating consequences where mutual affection and lack of exploitation were evident.

Importantly, many of these judicial interventions rely on extraordinary constitutional or statutory powers such as Article 226/227 of the Constitution, Section 482 CrPC for quashing proceedings, or Article 142 in the Supreme Court. The courts themselves recognize that these measures are merely stop gap solutions. In effect, the judiciary is signaling to the legislature that meaningful reform is essential.

The cumulative judicial pressure points toward the need for statutory mechanisms most notably, a close-in-age exception that would allow the law to distinguish between predatory abuse and consensual adolescent romance during investigation and trial. Such reforms would align the statute with constitutional values, empirical social realities, and internationally recognized principles of adolescent autonomy and evolving capacities.

ABUSE OF POCSO : SOCIAL, CULTURAL, AND GENDERED ISSUES

The excessive criminalization of teenage intimacy under the POCSO Act is deeply connected to India's socio and cultural environment, where a child protection law is often transformed into an instrument of social control. Empirical evidence and extensive legal research consistently demonstrate that the misuse of POCSO is neither accidental nor incidental it is rooted in entrenched socio and cultural norms and

¹⁸ *Parbathbhai Aahir @ Parbathbhai v. State of Gujarat, (2017) 9 SCC 641 (India)*.

¹⁹ *Vijayalakshmi v. State, 2021 SCC OnLine Mad 276*.

²⁰ *Ranjit Rajbanshi v. State of West Bengal, 2021*

SCC OnLine Cal 2306.

²¹ *Silvestar Khonglah v. State of Meghalaya, 2022 SCC OnLine Megh 189*.



hierarchical structures. Surveys across multiple Indian states repeatedly show that a large proportion of POCSO cases involve consensual adolescent relationships. The sheer volume of such cases being prosecuted as sexual offences highlights the vast gap between the legislative intent of child protection and the harmful consequences experienced by young people in real life.

SOCIO AND CULTURAL FOUNDATIONS OF MISUSE

In practice, the legal system becomes interwoven with conservative social expectations, resulting in the weaponization of criminal law to enforce traditional norms and police social boundaries.

1. Parental Control and Honour Norms :-

Parental disapproval is the most common trigger for misuse of the Act. POCSO complaints are frequently filed when parents oppose their daughter's romantic relationship or elopement, especially when it violates entrenched norms of caste, religion, or age. Such complaints though framed as protective are often driven by broader social motives:

1.1 Regulating Female Sexuality:-

The law becomes a tool of patriarchal control, used to restrict a girl's autonomy over her body and relationships and to enforce compliance with familial and community expectations.

1.2 Preserving 'Honor':-

In communities where caste and religious purity are heavily policed, inter-caste or inter religious relationships are perceived as threats to family honor. Filing a POCSO case enables families to restore their perceived social integrity by seeking harsh punishment for the male partner, symbolically 'cleansing' the supposed dishonor.

2. Caste and Community Surveillance

POCSO's application often mirrors and reinforces caste based hierarchies. Inter caste relationships irrespective of consent are commonly criminalized. The Act thus unintentionally contributes to community level surveillance and control, reinforcing social inequalities by enabling severe legal action against adolescents who challenge caste or religious boundaries. In such cases, the law functions less as a protective statute and more as a conservative tool for maintaining social order, at the expense of minors' constitutional rights to autonomy and choice.

GENDERED IMPACT AND THE CRISIS OF LEGAL LITERACY

Although POCSO aims to protect girls, its misuse disproportionately harms adolescent boys, producing a dual tragedy for both partners in consensual relationships.

1. Gendered Impact on Adolescent Boys:- Many of the boys implicated in POCSO cases are minors themselves. Yet they are subjected to the full force of the criminal justice system immediate incarceration, mandatory minimum sentences, and lifelong stigma as 'sex offenders. The consequences are devastating school expulsion, barriers to employment, long term psychological trauma, and a disrupted life trajectory. These punishments are grossly disproportionate to the moral culpability in consensual, peer level intimate relationships.

2. Crisis of Legal and Sexual Literacy:- The prevalence of consensual POCSO cases also stems from a broader systemic crisis in legal and sexual literacy. Most adolescents are unaware that mutual, consensual intimacy is treated as a serious criminal offence under current law. This widespread ignorance directly reflects structural gaps in Comprehensive Sexuality Education (CSE) and legal awareness programs. The Supreme Court's recent directives emphasizing



the need for public education on the age of consent highlight the urgency of addressing this systemic deficiency.

A GLOBAL VIEW : COGITATING LAWS OF ADOLESCENT SEXUALITY

The legal framework of adolescent sexuality is unique and unprecedented in India due to its stringent and excommunicating nature particularly in comparison with jurisdictions across the world that are more progressive and developmentally suitable in their line of differentiation. The fundamental problem is the lack of distinction between the really exploitative sexual abuse and the intimacy between adolescents aged closely. This is the key difference between modern, rights based legal regimes, which codify this distinction (often under the name Romeo and Juliet laws or close-in-age exemption) and provides an example of reform, in which autonomy and harm reduction are put more highly than criminalization.

This disparity is outlined in a comparative research of various jurisdictions with indications of flexible frameworks that can be applied to the Indian context:

South Africa (A call to Dignity and Ubuntu):- South Africa has also embraced one of the most innovative strategies through successful decriminalization of consensual intimacy²² in the adolescence age. It has a legal philosophy based on the concepts of human dignity and Ubuntu, which means I am because we are and which is focused on compassion, humanity, and mutual respect. This strategy appreciates that any consensual sexual activity, which is not influenced by coercion or exploitation, in the course of adolescent development, is a normal part of growing up and should not be simply criminalized. The emphasis is made on the support, protection, and education of actual harm instead of punitive response.

United Kingdom & Canada (Age-Gap Safeguards):- Both Canada and the United Kingdom permit teenage consent but provide age gap protections to ensure that the teenage is not abused by a much older person. Their legal paradigms create a practical compromise they admit the possibility of consensual relationships between older and younger teenagers, but create an upper age limit at which point exploitation is assumed. This guarantees further safeguard of minors who are vulnerable without making relationships among people of almost similar age and developmental stage criminal.

Australia (Uninterrupted Close-in-Age Protections):- However, regardless of age of consent differences across the states and territories of Australia, it has a consistent age of close-in-age protections. Although the exact age ratios tend to vary, the general principle is the same in cases where no substantial age difference exists and the acts were consensual, the law tries to prevent the imposition of harsh legal penalties of rape by statute. This ambiguity shows that there is a legislative intent of differentiating between social behavior that is normal during adolescence and the predatory types of behavior.

Germany (Consent with Restraints on Power and Imbalance):- Germany establishes the age of consent at 14 but contains critical limitations that deal with power imbalances²³. The law recognizes and penalizes the instances where an adult takes the advantage of their power, as a teacher, guardian, coach, or a vast difference in age to abuse a minor, regardless of the minor supposedly agreeing to it. The model is advanced since it does not focus on the chronological age but considers the context, relationship, and the possible abuse of power.

France vs. Philippines (New Contemplative Reforms):- The recent changes in the French and

²² Teddy Bear Clinic for Abused Children v. Minister of Justice & Constitutional Development 2014 (2) SA 168 (CC) (S. Afr.).

²³ Strafgesetzbuch [StGB] [Penal Code], §§ 176–182 (Ger.).



Philippine legal systems can be seen as an indication of a worldwide move toward a more subtle conceptualization of adolescent development. Such changes acknowledge that adolescent sexuality is not simple and that the law also needs to be changed in line with psychological maturity and chronological age. The changes simplify legal language and establish firmer lines between the two in order to ensure that attraction between equals is not confused with predatory actions.

INDIA LESSONS : A WAY OF REFORM

There is the strong guidance of the international experience to India. Autonomy based, developmental recognition based and harm reduction based models show that rigid criminalization cannot be justified and cannot work. The present system of India tends to ignore the reality of the relationships between adolescents and therefore thousands of youths, particularly boys, have been accused of being criminals because of engaging in consensual sex.

Both the close-in-age exemption and the stringent precautions against power imbalances will make India take a step forward into globally progressive measures. These reforms would enable the justice system to focus their punitive power on actual predators, and afford adolescents the room to experience their developmental process without having to fear being criminally prosecuted.

POCSO ACT OF INDIA AND THE CASE OF THE NEED TO REFORM LEGISLATION

India is now faced by a profound and problematic paradox of application of the Protection of Children from Sexual Offences (POCSO) Act, 2012. A legislation that was meant to guard children is in most instances hurting the same teenagers that it should be guarding. This hypocrisy has proven too difficult to ignore and the stark contrast in the fixed paradigm of the Act and the actualities of adolescents, especially

adolescents between the ages of 16 to 18. This state of affairs demand an extreme and timely legislative amendment to make the law fit the values of the constitution, the realities of contemporary society, and best practices in international societies about children rights.

The first problem that should be addressed is the most immediate and urgent problem the use of the Act in case of the consensual relations between the teenagers. Currently, the law has failed to draw a line between actual sexual exploitation and romantic or sexual relations by consent of the minors, particularly between similar age groups. Close in age exemptions must thus be introduced. Such exemptions would stop criminalization of consensual relations between adolescents who are nearly in the age of majority and when the interaction is not exploitative. The absence of this reform has seen dozens of young people unjustly charged with crimes and families and communities broken in the name of protection.

Besides a statutory exemption it is important that guided judicial discretion should be adopted with the recommendation being highly suggested by the 22nd Law Commission of India²⁴. Human relationships are too complex and cannot be controlled only by strict legal solutions. Judicial discretion would enable courts to examine beyond an age factor and be in a position to provide an assessment that is more significant and examine the context, power relations, and pure intent of the sexual performance. This would assist in distinguishing between actual instances of exploitation and consensual teenage love whereby the punitive provisions of POCSO would be applied to actual culprits and not young couples. The lack of such discretion in the current times has led to the victim as accused phenomenon, in which families are using the law as a weapon, and adolescents engaged in consensual relationships are facing criminal charges. Moreover, the effectiveness of any protection law relies so much upon social consciousness and willingness. The need to have comprehensive sex

²⁴ LAW COMM'N OF INDIA, CONSULTATION

PAPER ON REFORM OF FAMILY LAW (2018).



education in every school is thus inevitable. This should be factual, rights based and age sensitive education, where the adolescents are informed about consent, healthy relationships, sexual and reproductive health risks, and their rights under POCSO. A well informed youthful community is among the most effective means of counteracting victimization and unwanted criminal acts, a culture of responsible behavior and making informed choices will always be much more effective than incarceration.

Another issue that is very pronounced in the present application of POCSO is the disproportionate criminalization especially among young men who are engaged in consensual relationships with the age difference is small. In order to overcome this gender imbalance and to ensure the principle of equality before the law, we should make some amendments based on gender neutrality. The emphasis of the law should be on whether or not the accused is exploited as opposed to the gender of the accused. It is only at this point that the Act can effectively focus on the offenders without necessarily punishing young boys who have consented to sexual relationships.

Lastly, where no exploitation is witnessed the justice system ought to substitute punitive options by restorative intervention²⁵ and developmental intervention. The counseling option as opposed to criminalization is imperative. In cases where a court concludes that the teenagers have done consensual sex without the exploitative factors, non punitive interventions, like counseling, psychological assistance, and family mediation ought to be considered. Crime in this instance leads to stigmatization, school dropout and long term mental health problems which contradict the very principle of the best interests of the child on which child protection laws are founded. Reformative and not punitive approaches not only provide much more advantages in

the long run of the well being and development of adolescents.

CONCLUSION

The extent to which the Protection of Children from Sexual Offenders Act, 2012 has been applied to consensual adolescent relationships shows a gaping disconnect between the rigidity of the laws and legal frameworks and the realities of the modern world. Although when it was enacted, the Act had a legitimate purpose of guaranteeing that children are not sexually exploited and abused, its criminalization of all sex involving individuals under the age of eighteen years has been in effect the wrongful prosecution of consensual teenage relationships. The judicial statements made in the different High Courts and the Supreme Court have proved over and over again the detrimental effects of this careless usage, but the judicial restraint is not enough to correct the structural and legislative failure of the current structure.

It is without any doubt that the guarding of the minors against sexual violence should always be a priority of the legal system. However, this kind of protection cannot be achieved at the expense of undermining adolescent autonomy, dignity and emerging abilities, and should not result in the criminalization of youth over the long term of behavior that is developmentally normal and consensual. It is thus an urgent need to have a calibrated, child sensitive, and rights oriented approach. Such a strategy should include exemptions at close age, allow a judicial discretion which should be guided by some constitutional considerations, and entail strong emphasis on preventive and educational strategies, including extensive sexuality education. By amending the POCSO Act to accommodate such concerns, the Act will not undermine its protective role instead, it will make it more legitimate and effective because it would make a clear distinction between sexual exploitation, and intentional teenage intimacy. This reform is critical to the preservation of

²⁵ Howard Zehr, *The Little Book of Restorative Justice*

45–47 (2002).



constitutional values of dignity, privacy, equality and personal liberty and to promote a legal regime that is just and humane, without being in any way compromised on the best interests of adolescents.

