

Criminalizing Desire: A Critique of India's Statutory Age of Consent

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*'When the girl below 18 years is involved in a relationship with the teen age boy or little over the teen age, it is always a question mark as to how such relationship could be defined, though such relationship would be the result of mutual innocence and biological attraction. Such relationship cannot be construed as an unnatural one or alien to between relationship of opposite sexes. But in such cases where **the age of the girl is below 18 years, even though she was capable of giving consent for relationship, being mentally matured**, unfortunately, the provisions of the POCSO Act get attracted if such relationship transcends beyond platonic limits, attracting strong arm of law sanctioned by the provisions of POCSO Act, catching up with the so-called offender of sexual assault, warranting a severe imprisonment of 7/10 years.'*

-- Justice V. Parthiban, *Sabari @ Sabarinathan v. The Inspector of Police, Belukurichi Police Station & Ors.*¹
(emphasis supplied)

¹ Criminal Appeal No. 490/ 2018 decided on April 26, 2019, para 27.

1. Introduction

On 26 April 2019, Justice Parthiban delivered his judgment in *Sabari @ Sabarinathan v. The Inspector of Police, Belukurichi Police Station & Ors.*², recommending that the age of consent under India's Protection of Children from Sexual Offences Act³ (hereinafter, "the Act", which sets the age of consent at 18) be lowered to 16, and that an age proximity clause⁴ be introduced such that the age of the offender not be more than 5 years more than the age of the survivor (presumed a girl), i.e. 16 years or more.⁵ This paper argues that setting the age of consent at 18 years, and therefore criminalizing sexual activity below this age, is a flawed approach. I start with presenting sociological research indicating that consensual sexual activity is hugely prevalent among adolescents in India. Secondly, the Convention on the Rights of the Child⁶ (hereinafter, "the Convention") as well as several General Comments to the Convention require that age of consent laws take into account the evolving capacities of adolescents. In India, several trial court judgments as well as the Justice Verma Committee⁷ and other bodies have recommended a lower age of consent. Across the world, other jurisdictions usually have lower ages of consent and/or an age proximity clause. Judicial interpretations of the Act assume that adolescent girls are 'victims' and boys are the perpetrators (despite the Act itself being gender neutral both with respect to survivor and perpetrator), thereby entirely ignoring adolescent girls' agency. Finally, I argue that setting the age of consent at 18 years not only stigmatizes and criminalizes adolescent sexuality and desire, which also has an impact on adolescents' access to sexual and reproductive health services and comprehensive sexuality education, but also conflates sex with marriage - a dangerous message for the law to send.

Here, a caveat: in the Indian context, discussions on age of consent often include discussions on age of consent in marriage, given that marital rape is not recognized under Indian criminal law⁸ but child

² *ibid.*

³ Protection of Children from Sexual Offences Act, 2012.

⁴ An age proximity clause is designed to prevent the prosecution of underage couples who engage in consensual sex when both participants are significantly close in age to each other, and one or both are below the age of consent.

⁵ *Sabarinathan* (n 1) para 29.

⁶ Article 5, Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

⁷ Justice J.S. Verma (R), Justice Leila Seth (R) and Gopal Subramaniam, *Report of the Committee on Amendments to Criminal Law* (23 January 2013)

<<https://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf>> accessed 1 September 2021.

⁸ Indian Penal Code 1860, s 376B.

marriage (which includes marriage of a girl before the age of 18 years⁹) is prevalent in India. However, this paper shall *not* delve into age of consent within marriage and will only address the question of marriage in the context of the law's conflation between age of consent and age of marriage.

1.1 Background

The Act was enacted in 2012 to provide a comprehensive legal framework for addressing child sexual abuse, close on the heels of increasing reports of rampant child sexual abuse and widespread campaigning against the same. Before the Act came into force, the age of consent was 16 years. Under S. 2(1)(d) of the Act, 'child' means any person below the age of 18 years.¹⁰ Under S. 3 of the Act, penetrative sexual assault¹¹ (inserting body part or object in a child, or making a child do this with another; akin to the rape provision in the Indian Penal Code¹²) is criminalized; under S. 7 of the Act, sexual assault¹³ (touching the private parts of a child with sexual intent) is criminalized; and under S. 11 of the Act, sexual harassment¹⁴ (with sexual intent: showing any object/body part, or making any gesture aimed at a child, making a child exhibit their body, or enticing or threatening to use a child for pornography) is criminalized. Note that the Act is gender neutral with respect to both survivor and perpetrator, i.e., both can be of any gender. Therefore, any sexual activity with anyone below the age of 18 years is an offence, and there is no conception of consent.

2. Prevalence of Consensual Adolescent Sexual Activity

Several studies have shown that consensual sexual activity between adolescents is widespread in India (given that the law does not recognize consent before the age of 18, here 'consent' is used for its English meaning, i.e., permission for something to happen or agreement to do something¹⁵).

⁹ Prohibition of Child Marriage Act, 2006.

¹⁰ Protection of Children from Sexual Offences Act (n 3).

¹¹ *ibid* s 3.

¹² Indian Penal Code (n 8) s 375.

¹³ Protection of Children from Sexual Offences Act (n 3) s 7.

¹⁴ *ibid* s 11.

¹⁵ Oxford English Dictionary (2nd edn, Oxford University Press 1989).

2.1 National Family Health Surveys (NFHS)

	NFHS-4 (2015-16) (latest survey with national data available) ¹⁶	NFHS-3 (2005-06) ¹⁷
Percentage of women aged 15-19 who were already mothers or pregnant	7.9% Rural: 9.2% Urban: 5%	16% Rural: 19.1% Urban: 8.7%
Percentage of young people who had sexual intercourse before they were 15		Women: 10% Men: 2% ¹⁸
Percentage of people aged 15-24 who had ever had sexual intercourse		Women: 51% (1% among never married youth) Men: 27% (12% among never married youth) ¹⁹
Percentage of adolescent girls (aged 15-19) who had sexual intercourse		27.7% (premarital sex: 3%; first sexual encounter after marriage: 24%)

Around 8% of girls between 15 and 19 years of age had first sexual intercourse before the age of 15. The mean age of sexual debut for female adolescents was 16.98.²⁰ The statistics also point to the fact that higher-risk sex and sex with multiple partners is not uncommon among youth in India.²¹

¹⁶ Government of India, National Family Health Survey 4 Fact Sheet India, 2015-16.

¹⁷ Government of India, National Family Health Survey 3 Fact Sheet India, 2005-06.

¹⁸ Sulabha Parasuraman, Sunita Kishor, Shri Kant Singh and Y Vaidehi, 'A Profile of Youth in India' *International Institute for Population Sciences, National Family Health Survey* (August 2009)

<<https://www.scribd.com/document/238788565/Indan-Youth>> accessed 1 September 2021.

¹⁹ *ibid.*

²⁰ *ibid.*

²¹ *ibid* 64-65.

2.2 Youth in India Report (2006-07)²²

This survey covered youth aged 15-24 years. It indicated that 4–6% of rural youth and 1% of urban youth had their sexual debut before age 18.

	Women	Men
Percentage reporting that their first experience of premarital sex with an opposite-sex romantic partner was mutually consensual	66% Rural: 67% Urban: 61%	76% Rural: 77% Urban: 70%
Total percentage reporting any premarital sexual experience	4%	15%
Percentage aged 15-19 reporting sexual experiences	3.4%	11%
Percentage who had initiated premarital sex before 15	0.4%	0.6%
Percentage who had experienced first premarital sex before 20	5%	11%

The Youth Study findings fall in the lower range observed in a variety of small case studies, and the possibility that youth opted not to disclose their sexual experiences in various situations cannot be discounted, particularly in the case of young women, and in the reporting of same-sex relations.

2.3 Other Studies

2016 Population Council studies of adolescents (15-19 years)		
	Girls	Boys
Bihar (more than 10,400 adolescents): percentage of unmarried adolescents who had had premarital sex ²³	6.3% Of these, 28.5% had had premarital sex before 15	14.1% Of these, 22% had had premarital sex before 15

²² 'Youth in India: Situation and Needs 2006-07', *International Institute for Population Sciences and Population Council*, Mumbai, 2010.

²³ Population Council, 'UDAYA – Understanding the lives of adolescents and young adults: Bihar Factsheet 2016' (Population Council, 2017, New Delhi).

Uttar Pradesh: percentage who were sexually active ²⁴	6.2%	17.2%
Study interviewing 2005 adolescents (roughly equal groups of 11-14 and 15-19) in Dharavi, Mumbai²⁵		
	15-19 year-old females	15-19 year-old males
Percentage saying they knew someone who was sexually active (overall: 10%)	6%	15%
Percentage saying they were in a relationship (overall among 15-19: 13%) NB 12% more males than females	4%	23%
2004 data from unmarried youth aged 15-19 living in economically disadvantaged neighbourhoods in Delhi²⁶		
	Females	Males
Percentage who engaged in heterosexual premarital sex	6%	32%

Available evidence suggests that between 20 and 30% of all males and up to 10% of all females are sexually active during adolescence before marriage.²⁷ The 2001 Census of India had also revealed that 300,000 girls under 15 had given birth to at least one child.²⁸ The 205th Report of the Law Commission of India also recognizes that consensual sexual activity above the age of 16 is fairly widespread and routine.²⁹ And finally, a qualitative study of adolescents (15-19 years) residing in a slum and in a

²⁴ Population Council, 'UDAYA – Understanding the lives of adolescents and young adults: Uttar Pradesh Factsheet 2016' (Population Council, 2017, New Delhi).

²⁵ Nayreen Daruwalla, Tanvi Mishra, Neeta Karandikar, Shanti Pantvaidya & David Osrin, 'Good Girls and Boys: Findings from a Cross-Sectional Survey on Adolescent Rights, Relationships, and Sexuality in an Urban Informal Settlement in India' (2017) 23(3) International Journal of Adolescence and Youth 308-32.

²⁶ Jaya J and Hinden MJ, 'Premarital Romantic Partnerships: Attitudes and Sexual Experiences of Youth in Delhi, India' (2009) 35(2) International Perspectives on Sexual and Reproductive Health 97-104.

²⁷ Jejeebhoy, Shireen, 'Adolescent sexual and reproductive behaviour: A review of the evidence from India' in Radhika Ramasubban and Shireen Jejeebhoy (eds), *Women's Reproductive Health in India* (Rawat Publications 2000) 40-101.

²⁸ '2001 Census of India' <<http://www.censusindia.gov.in/>> accessed 1 September 2021.

²⁹ '205th Report on Proposal to Amend the Prohibition of Child Marriage Act, 2006 and Other Allied Laws', Law Commission of India (2008).

resettlement colony in Delhi concluded that despite close supervision and control of adolescent girls, intimate sexual relations do occur; while girls may be reluctant to admit intimacy with boys, in focus group discussions particularly with young males, and in interviews with key informants, it is evident that sexual activity does indeed take place.³⁰

3. Convention on the Rights of the Child

Article 5 of the Convention states that:

*'States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.'*³¹

In addition, Article 12 mandates States to assure to the child capable of forming their own views the right to express those views freely in all matters affecting them, and their views to be given due weight in accordance with their age and maturity.³² General Comments to the Convention have also reiterated these views.

3.1 Evolving Capacities

General Comment no. 20 (hereinafter, "GC 20") reiterates the special status of adolescents and that implementation of the rights in the Convention should take account of children's development and their evolving capacities; it also states that 'approaches adopted to ensure the realization of the rights of adolescents differ significantly from those adopted for younger children'.³³ It adds that adolescence should be a positive developmental stage of childhood, during which States should introduce measures

³⁰ Mishra Surendra, 'Youth Friends' Clinic at Tigri slum, Delhi: A Perspective on Service Utilization of Youths with Special Reference to Sexual and Reproductive Health' (2014) 1(3-4) Indian Journal of Youth and Adolescent Health 44-50.

³¹ Article 5, Convention on the Rights of the Child (n 6).

³² Article 12(1) *ibid*.

³³ Para 1, General Comment No. 20 on the implementation of the rights of the child during adolescence, UN Committee on the Rights of the Child (6 December 2016) <<https://www.refworld.org/docid/589dad3d4.html>> accessed 1 September 2021.

to help adolescents explore their emerging sexualities.³⁴ Further, GC 20 requires States to ‘introduce legislation recognizing the right of adolescents to take increasing responsibility for decisions affecting their lives’, and age limits to be ‘consistent with the right to protection, the best interests principle and respect for the evolving capacities of adolescents’, for example, the right to make decisions in respect of health services or treatment.³⁵ Similarly, General Comment no. 14 states, ‘there might be situations where ‘protection’ factors affecting a child (e.g. which may imply limitation or restriction of rights) need to be assessed in relation to measures of ‘empowerment’ (which implies full exercise of rights without restriction). In such situations, the age and maturity of the child should guide the balancing of the elements’. It adds that evolving capacities must be considered in the best interests assessment for the child.³⁶

3.2 Age of Consent

Specifically with respect to age of consent, GC 20 states that States should **take into account the need to balance protection and evolving capacities, and avoid criminalizing adolescents of similar ages for factually consensual and non-exploitative sexual activity.**³⁷ General Comment no. 4 (hereinafter, “GC 4”) adds that the age of consent should ‘closely reflect the recognition of the status of human beings under 18 years of age as rights holders, in accordance with their evolving capacity, age and maturity’.³⁸ General Comment no. 13 (hereinafter, “GC 13”) states that sexual abuse comprises any sexual activities imposed by an adult on a child, against which the child is entitled to protection by criminal law, or sexual activities when committed against a child by another child, if the child offender is significantly older than the child victim or uses power, threats or other means of pressure.³⁹ Therefore, criminalizing all adolescent sexual activity before the age of 18 is in contravention of India’s obligations under the Convention.

³⁴ *ibid*, paras 15-16.

³⁵ *ibid*, para 39.

³⁶ Paras 83-84, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, UN Committee on the Rights of the Child (29 May 2013)

<<https://www.refworld.org/docid/51a84b5e4.html>> accessed 1 September 2021.

³⁷ Surendra (n 30) (emphasis supplied); General Comment no. 20 (n 33) para 49.

³⁸ Para 5, General Comment No. 4 on Adolescent Health and Development in the Context of the Convention on the Rights of the Child, UN Committee on the Rights of the Child (1 July 2003)

<<https://www.refworld.org/docid/4538834f0.html>> accessed 1 September 2021.

³⁹ General Comment No. 13 on the right of the child to freedom from all forms of violence, UN Committee on the Rights of the Child (18 April 2011) <<https://www.refworld.org/docid/4e6da4922.html>> accessed 1 September 2021.

3.3 Right to Treatment

S. 19 of the Act contains the mandatory reporting requirement: it states that any person who has apprehension that an offence under the Act is likely to be committed or has knowledge that such an offence has been committed must provide such information to the local police or the Special Juvenile Police Unit.⁴⁰ This reporting requirement therefore extends to *all* sexual activity before the age of 18 since under the law consent is immaterial. Therefore, anyone having knowledge or apprehension of any adolescent sexual activity must report it or be subject to punishment. This obstructs access to confidential and private medical care for adolescents, as health providers are obliged to report any adolescent sexual activity. However, Article 24 of the Convention guarantees the right to facilities for treatment of illness and rehabilitation of health, and obliges States to ensure that no child is deprived of his or her right of access to such health services.⁴¹ GC 20 also emphasizes adolescents' right to privacy and criticizes States that have violated this, especially in the context of confidential medical advice.⁴² It states that consideration should be given to the introduction of a legal presumption that adolescents are competent to seek and have access to preventive or time-sensitive sexual and reproductive health commodities and services, and that all adolescents have the right to access confidential medical counselling and advice without the consent of a parent or guardian, irrespective of age, if they so wish.⁴³ GC 4 adds that adolescents should be provided with access to appropriate sexual and reproductive information regardless of marital status and whether parents or guardians consent.⁴⁴ General Comment no. 15 also states that children have the right to access confidential sexual and reproductive health services without the need for consent from parents or guardians, and make choices with respect to the same in keeping with their evolving capacities, and requires States to ensure 'confidential, universal access to goods and services for both married and unmarried female and male adolescents'.⁴⁵ Finally, GC 13 states that reporting requirements must be 'coupled with, and should present themselves as help-oriented services offering public health and social support, rather than triggering responses which are primarily punitive'.⁴⁶ The Committee on the Rights of the Child has recommended to India to 'take measures to

⁴⁰ S. 19(1) & S. 21, Protection of Children from Sexual Offences Act (n 3).

⁴¹ Article 24, Convention on the Rights of the Child (n 6).

⁴² General Comment no. 20 (n 33) para 49.

⁴³ *ibid* para 39.

⁴⁴ General Comment 4 (n 38) para 24.

⁴⁵ Paras 24, 31, 56 and 69, General Comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health, UN Committee on the Rights of the Child (17 April 2013)

<<https://www.refworld.org/docid/51ef9e134.html>> accessed 1 September 2021.

⁴⁶ General Comment 13 (n 39) para 49.

ensure that adolescent girls and boys have effective access to confidential sexual and reproductive health information and services, such as modern contraception and legal abortions for girls, in practice.⁴⁷ The mandatory reporting requirement within the Act is clearly in contravention of these guaranteed rights to private and confidential medical care.

4. Indian Jurisprudence on Adolescent Sexuality

4.1 Background to the Act

The Parliamentary Standing Committee that considered the Protection of Children from Sexual Offences Bill 2011 (hereinafter, “the Bill”) justified setting the age of consent at 18 by stating that while adults committed offences against children, there was also a need to protect children from sexual abuse by their own peers and relatively older children, and that setting the age at 18 was in consonance with the Convention.⁴⁸ This would imply that the intent was not, in fact, to criminalize consensual sexual activity among adolescents. In fact, the draft of the Bill considered by the Standing Committee contained provisos in the sections on penetrative sexual assault and sexual assault to the effect that for children between the ages of 16 and 18, consent would be taken into account,⁴⁹ in line with the provisions of the Indian Penal Code (which then specified 16 as the age of consent), and that ‘emerging social reality regarding awareness, understanding and exposure of the adolescents cannot be overlooked and it would cause more detriment to criminalize consensual action by children between 16 to 18 years of age’.⁵⁰ This was, however, rejected, and the provisos deleted “to protect the rights of the child and for the sake of protecting children against abuse”; the Standing Committee also considered such deletion to be in consonance with the Convention.⁵¹ The National Commission for Protection of Child Rights (NCPCR) had also recommended that the age of consent be retained at 16 years,⁵² as well as that consensual non-

⁴⁷ Concluding Observations on the Combined Third and Fourth Periodic Reports of India, UN Committee on the Rights of the Child CRC/C/IND/CO/3-4 (2014) 10.

⁴⁸ ‘Department-Related Parliamentary Standing Committee on Human Resource Development, Two Hundred Fortieth Report on The Protection of Children from Sexual Offences Bill’, Rajya Sabha, Parliament of India (21 December 2011) New Delhi
<https://www.prsindia.org/sites/default/files/bill_files/SCR_Protection_of_Children_from_Sexual_Offences_Bill_2011.pdf> accessed 1 September 2021 para 5.3.

⁴⁹ *ibid* para 6.5.

⁵⁰ *ibid* para 6.7.

⁵¹ *ibid* para 6.9.

⁵² ‘Study on the Working of Special Courts under the PoCSO Act, 2012 in Andhra Pradesh’, *Centre for Child and the Law*, National Law School of India University, Bangalore (28 November 2017) 92.

penetrative sexual activity 'between two children who are both over 12 years of age and are either of the same age or whose ages are within 2 years of each other' and consensual penetrative sexual activity 'between two persons who are both over 14 years of age and are either of the same age or whose ages are within 3 years of each other' be decriminalized.⁵³ These provisions did not make it to the Act either, thereby ignoring adolescents' autonomy and evolving capacities, treating all adolescents engaging in any sexual activity as children in conflict with the law,⁵⁴ and attracting penal character for all such relationships including consensual relationships.

The Justice J.S. Verma Committee Report suggesting amendments to criminal law in the aftermath of the Delhi gangrape of December 2012 also noted that Parliament set 18 as age of consent on the view that this was in furtherance of its obligations under the Convention, thereby criminalizing all sexual activity, whether consensual or not, where (at least) one person is below the age of eighteen. It stated that the Convention was aimed to protect children from sexual abuse and not criminalize consensual sex below 18 years of age. It recommended, based on its interpretation of the Convention and representations made by various groups, that the age of consent be reduced to 16.⁵⁵ The 205th Law Commission of India Report had also recommended that 16 be the age of consent.⁵⁶

4.2 Interpretation of the Act

Several lower courts have refused to convict adolescents who fall below the age of consent in situations of consensual or 'romantic' relationships, which form quite a large proportion of all the cases adjudicated under the Act. For instance, in interviews for a study done in Andhra Pradesh of cases under the Act, respondents stated that a 'majority', or '60%' of cases arise from 'romantic' relationships.⁵⁷ Similarly, a November 2017 study on cases under the Act found that 35% cases of the study sample related to

⁵³ Exception 1, Clause 3A, National Commission for Protection of Child Rights (NCPCR), Protection of Children from Sexual Offences Bill, 2010 (However, it is to be noted that these recommendations propound a phallogocentric view of sexual activity as they assume capacity to consent to non-penetrative sexual activity to be present at a younger age, instead of recognizing that sexual activity exists on a spectrum and not along a clear penetrative – non-penetrative divide).

⁵⁴ Swagata Raha, 'Love and Sex in the Time of the POCSO Act' *Tarshi Magazine* (1 June 2014) <<http://www.tarshi.net/inplainspeak/voices-love-and-sex-in-the-time-of-the-pocso-act-2012/>> accessed 1 September 2021.

⁵⁵ Report of the Committee on Amendments to Criminal Law (n 7).

⁵⁶ Law Commission of India (n 29) pp. 43-5.

⁵⁷ Study on the Working of Special Courts under the PoCSO Act, 2012 in Andhra Pradesh (n 52) 33, 65-7.

romantic relationships, and of these, 94% resulted in acquittal. The study concluded that this was because the age of consent had been raised to 18, and the girl either turned hostile or the prosecution was otherwise unable to prove the offence.⁵⁸

In some of these cases, the refusal to convict is because the 'victim's' age cannot be established, or because the 'victim' and 'perpetrator' have married (and she is sometimes pregnant) or the 'victim' has been married to someone else.⁵⁹ But most such cases are filed by family members of the girl⁶⁰ after the girl and boy have eloped due to familial disapproval (for various reasons such as caste or religion); in some 'romantic' cases, court testimonies of the girls against their boyfriends are unduly influenced by their families.⁶¹ Often, the girl either refuses to testify or turns hostile stating that she is above 18 or that there were never any physical relations.⁶² In such cases, consent is not usually discussed. But let us look at some of the cases in which age of consent and the Act itself were discussed.

In *State v. Suman Dass*⁶³, the judge interpreted the words 'penetrative sexual assault' in light of the meaning of assault under the Indian Penal Code (hereinafter, "IPC"), stating that the word 'assault' is significant here, and not consent. The court acquitted the accused, stating that 'if they are happy about it, why put obstacles on their path... the girl child knew what she was doing', and 'physical relation with the child was not in the nature of assault or consequent to use of any criminal force upon the girl child'.

⁵⁸ HAQ, FACSE and UNICEF, 'Implementation of the POCSO Act: Study of Cases of Special Courts in Delhi & Mumbai (2012 - 2015)' (2017) 106-107. ("Out of 224 cases in Delhi, 79 cases (35%) related to 'romantic relationship', and out of these 79 cases, 74 cases (94%) ended in acquittal, which formed 39% of the total acquittal cases (190). This shows that a large amount of court time is being spent on cases involving a romantic relationship - especially since the age of sexual consent went up from 16 years to 18 years - resulting in the child turning hostile and/or the prosecution being otherwise unable to prove the offence of 'penetrative sexual assault' or 'sexual assault'").

⁵⁹ 'Studies on the Working of Special Courts under the PoCSO Act, 2012 in five states', *Centre for Child and the Law*, National Law School of India University, Bangalore, 2016-2017.

⁶⁰ 'Study on the Working of Special Courts under the PoCSO Act, 2012 in Karnataka', *Centre for Child and the Law*, National Law School of India University, Bangalore (8 August 2017) 67; 'Study on the Working of Special Courts under the PoCSO Act, 2012 in Maharashtra', *Centre for Child and the Law*, National Law School of India University, Bangalore (7 September 2017), 26; Study on the Working of Special Courts under the PoCSO Act, 2012 in Andhra Pradesh (n 57) 33, 65-7. Of the 108 romantic cases, the father filed the complaint in 33 cases (30.9%), the mother in 26 cases (23.63%), the guardian in one case and other relatives in three cases. As is evident in 54.62% of romantic cases, the victim's parent set the criminal justice system into motion (and in another 2.78% the guardians did); Rukmini S, 'Young Love Often Reported as Rape in Our "Cruel Society"' *The Hindu* (21 April 2016) <<https://www.thehindu.com/news/national/stories-behind-sexual-assault-rulings-shine-light-on-reality-of-rape/article6265285.ece>> accessed 1 September 2021.

⁶¹ Study on the Working of Special Courts under the PoCSO Act, 2012 in Andhra Pradesh (n 52) 94.

⁶² *ibid* 65; Study on the Working of Special Courts under the PoCSO Act, 2012 in Maharashtra (n 60) 26.

⁶³ SC No. 66/13 decided on 17.08.2013.

The judge also added that the Act aims to curb acts of sexual assault and harassment that impact mental and physical health, freedom, and dignity. Rejecting the argument that the Act criminalizes all adolescent sexual activity, the judge held that 'law cannot and should not prohibit teens from experimentation of such nature', and that 'if that interpretation is allowed, it would mean that the human body of every individual under 18 years of age is the property of State and no individual below 18 years of age can be allowed to have the pleasures associated with on[e's] body.' The Delhi High Court upheld this judgment.⁶⁴ Similarly, in **State v. Shiv Nand Rai**,⁶⁵ the accused was charged with aggravated penetrative sexual assault, and the IPC definition of assault was used to interpret the Act; the girl stated that there was no undue influence, fear or coercion from the boy's side. The judge held that, 'in case of critical age between 16 years and 18 years, Section 4 of the POCSO Act has to be interpreted distinguishing between an act which is per se criminal for being in the nature of coercion, fear, inducement or exploitation committed upon a child from an act which would otherwise criminalize a person for having done something which is without any malice, ill will or ulterior motives'. The same reasoning was applied in **State v. Suresh Kumar**,⁶⁶ **State v. Varun**⁶⁷ and **State v. Vicky**.⁶⁸ In **Sunil Mahadev Patil v. State of Maharashtra**,⁶⁹ a case involving a 15 year old girl and 20 year old boy who eloped, the court granted bail and observed that, 'because of their impressionable age, girls and boys both may tend to get provoked and there can be a curious and very compelling demand of the body to get into such kind of relationship.' In **Shambu Thilak v. State of Kerala and Ors.**,⁷⁰ a 17-year-old girl and 20-year-old boy had consensual sexual intercourse and, once the girl attained majority, they married. The judge held that this was a case of a love affair and not a crime that had a serious impact on society or reeked of extreme depravity or perversity. The case was quashed because the girl herself asserted that she did not want the prosecution to continue.

In a study done in Maharashtra,⁷¹ out of 1330 cases under the Act that were analysed, 273 (20.52%) were classified as 'romantic'. The rate of conviction in such cases was 9.15% while the rate of acquittal was

⁶⁴ State of NCT of Delhi v. Suman Dass, CrI. L.P. 301 / 2014 decided on 03 September 2014 by the Delhi High Court.

⁶⁵ SC No. 56/13 decided on 09.10.2013.

⁶⁶ SC No. 113/13 decided on 08.10.2013.

⁶⁷ SC No. 108/13 decided on 29.10.2013.

⁶⁸ SC No. 147/13 decided on 07.12.2013.

⁶⁹ 2016 (3) BomCR (Cri) 435.

⁷⁰ MANU/KE/0043/2017.

⁷¹ Study on the Working of Special Courts under the PoCSO Act, 2012 in Maharashtra (n 60).

90.85%. For instance, in **State v. Akshay Balu Bacchav**,⁷² it was established that the girl was below 18 years of age, but not that she was below 16, and the court acquitted the accused on the basis that he could not have known she was below 16 (even though the age of consent is 18). In **State v. Sachin Gotiram Kedar**,⁷³ the court held that the girl was above 17 (though below 18) and therefore mature enough to understand the consequences of her actions. Similarly, in **State v. Rupesh @ Banti Bajirao Mokal**,⁷⁴ the court held that ‘on the date of the incident she has completed 17 years and 8 months, and therefore, I have to say that she has attained puberty on the date of the incident’, and based on this it was held that she was mature enough to understand the consequences of her actions and her consent was valid.

In a similar study done in Assam, out of 27 ‘romantic’ cases, only 2 resulted in conviction,⁷⁵ and in Karnataka all such cases resulted in acquittal⁷⁶. In **State v. Saidul Ali**,⁷⁷ a girl and boy had eloped, married and consummated the marriage. The court held that there was no evidence that the girl had tried to escape while going with the boy. It added, ‘she was a fully grown up girl, may be one who had not yet touched 18 years of age, but, still she was in the age of discretion, sensible and aware of the intention of the accused..., that he was taking her away for a purpose’, and that ‘at the time of occurrence the victim, though not reached the age of majority, had reached the age of discretion. She had developed the capacity to know the full import of what she was doing. Even then she did not try to escape by jumping from the bicycle of the accused.’ Similarly, in **State v. Geenya Gupta**,⁷⁸ an FIR was lodged by the girl’s mother; the court acquitted the boy, stating that ‘the victim girl was 17 years of age and she was a consenting party to the act of the accused. The victim voluntarily agreed to all the acts of the accused...the POCSO Act is a necessity of time. It is needed in our society where sexual offences against the children are dangerously increasing. But this act would prove futile when young children below eighteen years of age would voluntarily go for sex.’ And in **State v. Riki Bora**,⁷⁹ the accused was acquitted because the girl went with him voluntarily; the court stated that ‘the prosecutrix took the initiative to go with the accused with whom she was having an affair. Though she was not an adult, she was on the verge of attaining majority.’

⁷² SC No. 338/15 decided on 03.09.2016 (Nashik).

⁷³ SC No. 25/15 decided on 25.04.2016 (Nashik).

⁷⁴ SC No. 302/15 decided on 20.10.2016 (Nashik).

⁷⁵ ‘Study on the Working of Special Courts under the PoCSO Act, 2012 in Assam’, *Centre for Child and the Law, National Law School of India University, Bangalore* (13 February 2017) 63.

⁷⁶ Study on the Working of Special Courts under the PoCSO Act, 2012 in Karnataka (n 60) 70.

⁷⁷ Special (POCSO) Case No. 50/15 decided on 22.06.2016.

⁷⁸ Special (POCSO) Case No. 41/15 decided on 27.04.2016.

⁷⁹ POCSO Case No. 48/15 decided on 16.02.2016.

In a similar study done in Andhra Pradesh, convictions were recorded in only 5.55% of ‘romantic’ cases⁸⁰, and 94.45% of such cases resulted in acquittal.⁸¹ Acquittal rate in ‘romantic’ cases in Andhra Pradesh was about 5% higher than that in other cases under the Act.⁸²

5. Comparative Perspective

Setting the age of consent at 18 also means that India is at odds with most other jurisdictions:

Country	Age of Consent	Age Proximity Clause
Countries where Age of Consent is 14		
Austria ⁸³	14	3 years
Bolivia ⁸⁴	14	3 years
Hungary ⁸⁵	14	For those aged 12 and above to consent to those aged below 18
Countries where Age of Consent is 15		
Croatia ⁸⁶	15	3 years
Sweden ⁸⁷	15 (rises to 18 if the survivor “is offspring to the perpetrator or in the perpetrator's care or in a similar relationship to the perpetrator, or for whose care or guardianship the perpetrator is responsible due to the decision of a government agency”)	If “it is obvious that the act is no violation of the child”
Countries where Age of Consent is 16		

⁸⁰ Study on the Working of Special Courts under the PoCSO Act, 2012 in Andhra Pradesh (n 52) 64.

⁸¹ *ibid* 68.

⁸² *ibid* 93.

⁸³ S. 206, Austrian Penal Code.

⁸⁴ Article 308 Bis, *Violación de Niño, Niña o Adolescente* (Rape of Boys, Girls and Adolescents).

⁸⁵ Lina Acca Mathew, ‘Right to sexual autonomy of children – Implications of the UNCRC upon the Indian law on the age of consent’. (2019) 8(2) *International Journal for Crime, Justice and Social Democracy* 121-134.

⁸⁶ Article 158, Croatian Criminal Code 2013.

⁸⁷ Chapter 6, Swedish Penal Code.

Netherlands ⁸⁸		16	At the discretion of the prosecution for minors close in age in a relationship within “social-ethical norms” (relationships falling outside of such norms include, for example, group sex; this provision gives discretion to judges to not convict if both parties testify to the non-abusive nature of the sexual act(s) ⁸⁹)
Canada ⁹⁰		16 (rises to 18 if the older party is in a position of trust or authority over the younger, or if the relationship is exploitative etc. ⁹¹)	<ul style="list-style-type: none"> • For those aged 12-13 to consent to those who are less than two years older • For those aged 14-16 to consent to those who are less than five years older
USA ⁹²		Varies across states between 16 and 18	Present in many states⁹³
E.g. 1	Hawaii ⁹⁴	16	For those aged 14-15 to consent to those who are less than five years older
E.g. 2	Delaware ⁹⁵	18	<ul style="list-style-type: none"> • For those aged 12-15 to consent to those who are less than five years older

⁸⁸ Art. 245, Dutch Criminal Code.

⁸⁹ Mathew (n 85) 130.

⁹⁰ Ss. 150.1(1)–(2.1) of the Criminal Code [Canada].

⁹¹ S. 153, Criminal Code of Canada.

⁹² Mathew (n 85) 130.

⁹³ Joseph J. Fischel, ‘Per Se or Power? Age and Sexual Consent’ (2010) 22(2) Yale Journal of Law & Feminism 279-341.

⁹⁴ Ss. 707-730, 707-732, Hawaii Revised Statutes.

⁹⁵ S. 768-773, Title 11, Delaware Criminal Code.

			<ul style="list-style-type: none"> For those aged 16-17 to consent to those aged below 30, or to consent if both partners married
E.g. 3	Florida ⁹⁶	18	For those aged 16-17 to consent to those aged below 23

6. Analysis and Conclusion

As discussed at length, the Act has the consequence of criminalizing *all* adolescent sexuality. Young love between unmarried adolescents is almost always deemed illegitimate and stigmatized; criminalizing it simply furthers this dangerous narrative and contributes to the stigma already persistent in adolescent minds surrounding any expressions of their sexuality. As feminist legal scholar Catharine MacKinnon notes, ‘the age line under which girls are presumed disabled from consenting to sex, whatever they say, rationalizes a condition of sexual coercion which women never outgrow. One day they cannot say yes, and the next day they cannot say no. The law takes the most aggravated case for female powerlessness based on gender and age combined and, by formally prohibiting all sex as rape, makes consent irrelevant on the basis of an assumption of powerlessness... Such protection has not prevented high rates of sexual abuse of children and may contribute to eroticizing young girls as forbidden’.⁹⁷

In fact, there is a trend toward increasingly punitive punishments under the Act, including amendments imposing the death penalty where a minor under 12 is involved, among other increased sentences (for instance, the minimum sentence for penetrative sexual assault is now ten years⁹⁸). This puts adolescent boys, often from marginalized and low-resource communities who cannot afford legal aid, at risk of increased incarceration.⁹⁹

⁹⁶ Florida code, Title XLVI, Chapter 794, 794.05.

⁹⁷ Catherine Mackinnon, *Towards a Feminist Theory of State* (Harvard University Press 1989) 175-176.

⁹⁸ S. 4(1), Protection of Children from Sexual Offences Act 2012.

⁹⁹ ‘Impact on Health and Human Rights Through Criminalisation in Adolescent Sexuality’, Partners for Law in Development, Submissions to the ICJ (2019).

6.1 Consequences on adolescents' health and education

The criminalization of, and therefore increased stigma toward, adolescent sexuality, often blocks access to non-judgmental medical care for adolescents who have engaged in or plan to engage in sexual activity, as health service providers often respond with moralistic sermons to adolescents trying to access sexual or reproductive health services. To provide just one example: the HPV vaccine is recommended to be administered before girls and boys become sexually active and therefore pre-puberty (9-12 years). However, because there is an assumption that adolescents do not engage in penetrative sexual activity (or indeed any sexual activity) before marriage or at the very least before the age of 18, there has been much opposition to the vaccine based on moral judgment (for example, a veteran radiologist specializing in women's cancers tells her patients not to give the vaccine to their daughters, stating that if they have been 'raised well', they will not have to give it to them, clearly implying that the vaccine is not required because daughters 'raised well' are not sexually active before marriage¹⁰⁰). In fact, certain right-wing groups have opposed the vaccine for 'moral reasons', claiming that it would encourage young girls to be sexually active before marriage; the Swadeshi Jagran Manch, an affiliate of the Rashtriya Swayamsevak Sangh, even wrote to the Prime Minister claiming that including the vaccine in the Universal Immunisation Programme would be an 'unmitigated disaster'.¹⁰¹ Clearly, age of consent is seen as a proxy for sexual activity when it comes to policymaking, therefore setting the age at 18 can lead to dangerous and unsafe policies.

Further, the mandatory reporting requirement under S.19 of the Act obstructs access to confidential and private medical care for adolescents, as health providers are obliged to report any adolescent sexual activity; it also comes into conflict with their obligation toward confidentiality under medical ethics. Even confessions of sexual activity to a therapist or friend, for example, fall under the ambit of this provision. Many adolescents (and their guardians) do not want their consensual (or indeed non-consensual, as much of this involves family members or acquaintances as perpetrators) sexual activity to be reported. However, the reporting requirement has no regard whatsoever for what action the adolescent herself

¹⁰⁰ Ramanathan S, 'Raising girls right: Stigma of HPV vaccine is increasing risk of cervical cancer' *The News Minute* (20 August 2019) <<https://www.thenewsminute.com/article/raising-girls-right-stigma-hpv-vaccine-increasing-risk-cervical-cancer-107478>> accessed 1 September 2021.

¹⁰¹ Dr. Nimeshika Jayachandran, 'Why has the beneficial HPV vaccine not been included in national immunisation programme?' *The News Minute* (28 August 2018). <<https://www.thenewsminute.com/article/why-has-beneficial-hpv-vaccine-not-been-included-national-immunisation-programme-87362>> accessed 1 September 2021.

may want to take (if any), whether she is inclined to report or not, and whether she is ready to face the criminal justice system and all of its procedures, many of which may well traumatize (and in non-consensual cases, re-traumatize) her.¹⁰² The requirement blocks access to sexual health tests, HIV testing and a range of other sexual health information and services for adolescents engaging in any sexual activity. The Standing Committee that considered the Bill also recognized this issue, stating that the reporting requirement may hinder children and parents from seeking medical or psychiatric services,¹⁰³ and adding that ‘the Committee was given to understand that due to social stigma, child’s emotional attachment to the abuser etc reporting of abuse was not preferred in a large number of cases...factors like social stigma, community pressure, difficulties of navigating the Criminal justice system, total dependence on perpetrator emotionally and economically, lack of access to support systems etc inhibited children and their families to seek redressal within the legal system’, and that for these reasons if there is a decision not to report there would be serious obstructions to medical help for the survivor.¹⁰⁴ For adolescent girls, the requirement also has an impact on reproductive autonomy when they do not want to trigger the criminal justice system but need formal health care such as safe abortion.¹⁰⁵ Such hindrance to accessing health services for those who are reluctant to report is violative of the right to health under the Indian Constitution¹⁰⁶ as well as of the right to access treatment under the Convention.¹⁰⁷ The ‘apprehension’ limb of the requirement also springs into action when an adolescent is merely seeking information on contraception or sexually transmitted diseases, for example.¹⁰⁸ Many adolescents often leave the medical facility or refuse treatment when they are reluctant to report.¹⁰⁹ The provision may also hinder adolescents from providing full and correct information about injuries or health conditions when they access health services.¹¹⁰ Stigmatizing and criminalizing all adolescent sexuality also means

¹⁰² ‘An Analysis of Mandatory Reporting Requirement under the POCSO Act and its Implications on the Rights of Children’, *Centre for Child and Law*, National Law School of India University (15 June 2018).

¹⁰³ Department-Related Parliamentary Standing Committee on Human Resource Development (n 48).

¹⁰⁴ *ibid* paras 10.2-3; An Analysis of Mandatory Reporting Requirement under the POCSO Act and its Implications on the Rights of Children (n 102).

¹⁰⁵ Mrinal Satish, ‘Gender And Nation: In Defence of the Victim’ *Indian Express* (19 December 2017) <<https://indianexpress.com/article/gender/genderand-nation-in-defence-of-the-victim-pocso-act-4978124/>> accessed 1 September 2021.

¹⁰⁶ Article 21, Constitution of India 1950; *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*, AIR 1996 SC 2426.

¹⁰⁷ Article 24 (n 6).

¹⁰⁸ An Analysis of Mandatory Reporting Requirement under the POCSO Act and its Implications on the Rights of Children (n 102) para 16.

¹⁰⁹ *ibid* 12.

¹¹⁰ Jagadeesh N., Padma Bhate-Deosthali and Sangeeta Rege, ‘Ethical Concerns Related to Mandatory Reporting of Sexual Violence’ (2017) 3(2) *Indian Journal of Medical Ethics* 116, 117, 119.

incomplete and deficient comprehensive sexuality education for adolescents. While there is a government programme for the same (the Rashtriya Kishor Swasthya Karyakram), it misses out on essential elements of the diversity of sexualities and gender identities as well as education on sexual rights and consent.¹¹¹

6.2 Conflation between age of consent and age of marriage

With the age of consent being raised to 18, it is now the same as age of marriage for girls.¹¹² Proponents of raising the age of consent have spoken out in favour of aligning the two ages, as they see any expression of girls' sexuality outside of marriage as deviant and wrong.¹¹³ However, marriage and sexual activity are vastly different endeavours – the former is defined as 'the legally or formally recognized union of two people as partners in a personal relationship'¹¹⁴ (in India, a union between a man and a woman). Marriage often comes with responsibilities (assumed to be lifelong responsibilities) of raising children, managing finances, and entering into contracts. This is different from sexual activity, which is merely the manner in which humans experience and express their sexuality.

In particular, adolescent girls' lives are tightly regulated in India given their families' anxieties about their sexuality, restricting access to school, friends, work and public spaces.¹¹⁵ There is a societal need to ensure their sexual 'innocence' and 'purity', which is linked to their family's 'honour', so as to render them suitable for marriage; the Act only furthers this narrative by contributing to the policing of adolescent girls' consensual sexual expression. As mentioned above, many studies have made clear how the Act is being used as a tool in the hands of parents and guardians to punish girls' sexual expression before marriage due to disapproval of girls' premarital sexuality based on 'honour', caste etc. Complaints are filed as a way to recover custody and control of girls, and in many such cases the girls prefer to stay in shelter homes rather than their own homes to escape abuse and forced marriage.¹¹⁶ In practice, prosecution lies mostly against the male party in 'romantic relationships'¹¹⁷ (therefore entirely ignoring

¹¹¹ Impact on Health and Human Rights Through Criminalisation in Adolescent Sexuality (n 99).

¹¹² Prohibition of Child Marriage Act (n 9).

¹¹³ Impact on Health and Human Rights Through Criminalisation in Adolescent Sexuality (n 99).

¹¹⁴ Oxford English Dictionary (n 15).

¹¹⁵ Surendra (n 30).

¹¹⁶ Impact on Health and Human Rights Through Criminalisation in Adolescent Sexuality (n 99).

¹¹⁷ An Analysis of Mandatory Reporting Requirement under the POCSO Act and its Implications on the Rights of Children (n 102) 19.

adolescent girls' agency and consent to such 'romantic' relationships). An NGO employee in a study in Maharashtra also stated that the boy is always punished, and then treated as if he went to jail.¹¹⁸ Most of these boys come from marginalized communities. Clearly the Act has only increased adolescents' (particularly those who even otherwise cannot afford legal aid) vulnerability to caste- and 'honour'-based retaliation. Therefore, there is an urgent need to delink age of marriage and age of consent.

The Act is a clear instance of law being used to govern and limit sexuality and desire, criminalizing as it does all sexual activity before the age of 18 irrespective of consent, and therefore perceiving such desire as sexual violence. This contributes (along with judicial interpretations of the Act that acquit the accused if the 'victim' has been married as stated above, as well as other laws such as the marital rape exemption) to a conception of 'legitimate' relationships within the law: heterosexual and monogamous marriage, outside of which a girl's right to bodily autonomy and privacy can be disregarded.¹¹⁹ This is particularly because the age of marriage for men is 21; therefore, the messaging of the law is that women's expressions of sexuality are only legitimate within marriage, while this may not be the case for men. This delegitimizes women's sexual agency by taking away the right to say yes outside 'legitimate' marriage and the right to say no within.

The government has recently proposed to increase the age of marriage for girls from 18 to 21.¹²⁰ This will only exacerbate the above-mentioned problems. While many (including the government itself) have portrayed this proposed plan to be a progressive step by linking it to delayed pregnancy, such arguments are in complete ignorance of on-ground realities. The prevalent perception of any sexual activity on behalf of girls outside of marriage being deviant and illegitimate will, under this proposal, extend to sexual activity on behalf of girls before the age of 21. This only increases the ambit of the social and (now) legal 'wrongs' that young girls commit, leading to a rise in social punishment and ostracization as well as an increase in young girls being sent to State-sanctioned institutions such as shelter homes. The attitude toward young girls' expressions of sexuality is already punitive and carceral; the recent proposal to increase the age of marriage will further extend the ambit of this attitude and its social and legal implications.

¹¹⁸ Study on the Working of Special Courts under the PoCSO Act, 2012 in Maharashtra (n 60) 78.

¹¹⁹ Raha (n 54).

¹²⁰ Divya Mukand, 'Raising the "legal" age of marriage in India: Who's asking the girls?' *Girls not Brides* (21 August 2020) <<https://www.girlsnotbrides.org/articles/raising-the-legal-age-of-marriage-in-india-whos-asking-the-girls/>> accessed 1 September 2021.

7. Conclusion

Through this paper, I have sought to argue that setting the age of consent at 18 years under the Act actively causes harm to adolescents. Not only do various studies indicate that adolescent sexuality is widely prevalent, setting age of consent at 18 is also in contravention with India's obligations under the Convention on the Rights of the Child. Recommendations prior to the enactment of the Act indicated that all adolescent sexuality was not meant to be criminalized, and this is also clear from the way the Act has been implemented, in the form of judicial recognition of consensual relationships and adolescents' capacity to consent before the age of 18. Additionally, setting the age at 18 puts us at odds with most other jurisdictions.

Given the expressive function of the law, criminalizing all adolescent sexuality is dangerous messaging in a society where premarital and adolescent relationships are already stigmatized, especially if they cross religious and/or caste barriers. It leads to adolescents being subjected to moralistic sermons, and the reporting requirement inhibits them from approaching health service providers for any sexual and/or reproductive problems or information, as well as putting providers in a dilemma between their duty to report and their duty toward confidentiality under medical ethics. The apprehension limb of the requirement also means sexual and reproductive education for adolescents suffers as it may fall within the ambit of the requirement. And finally, setting the age at 18 conflates sex with marriage and sends the message that sexuality is only legitimate within marriage, while any expression of sexuality outside of it or before it is criminal. In a culture where female sexuality is already tightly policed by family, community and State, such policing is only furthered by the Act, thereby entirely ignoring women's agency and decisional autonomy.

In my own *pro bono* work delivering workshops on consent and the law to young people across rural and urban spaces in Delhi, the feedback I often get from adolescent girls is that they are taught to entirely suppress their sexuality, in the form of constant messaging that *any* association with the opposite sex is bad, alongside the assumption that queer desire simply does not exist. Additionally, although the workshops seek to address sexual violence, they inevitably end up incorporating dialogue on desire. Clearly, young people are being taught that sexuality is always a site of danger. However, these workshops also make it clear to me that we cannot enforce a right to say no until we recognize a right to

say yes; many of these girls express their appreciation for the workshop in terms of being empowered to say no because sexual violence infringes autonomy, instead of 'honour'. On the other hand, when I delivered such workshops in schools across different parts of the UK, questions from students had more to do with the limits and boundaries of consent rather than confusion between non-consensual and consensual behaviour. The difference is undoubtedly due to India's social context of delegitimizing all sexuality before or outside of marriage including adolescent sexuality. To speak only of sexual oppression entirely dismisses women's agency in sexuality, which is precisely what the Act in its current state does.

Therefore, the age of consent must be reduced from 18 to 16 years of age. Further, an age proximity clause may be introduced to free consensual sexual activity between those close in age from the ambit of criminalization while maintaining penal provisions for child sexual abuse. This will take into account provision of sexual and reproductive health and education for adolescents, and perhaps most importantly, recognize their agency under the law.

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