

“A Battle of Age of Sexual Consent Laws and Contemporary Social Influences”

Rohan Gupta
LCRA,
Delhi State Legal Service Authority

ABSTRACT

The higher age of consent laws enacted by the legislature are one set of laws that are working in contradiction of the aims and objectives for which they were enacted and are rather being criticized. The term ‘age of consent’ is itself controversial and it has been suggested what is created is an ‘age of liability’ for the offender rather than an age of consent.¹ Since it is more about the liability of a person engaging in any kind of sexual activity with a person who is considered as a ‘child’ below a certain age. Much of the behaviour caught within the web of Rape of a child between 16-18 years of age involves the cases of consensual sexual intercourse, thus involving the adolescent youth of the country who are being prosecuted. This necessitates the need to educate adolescents to stop this never-ending web of accusations against the boys who are being prosecuted for having sexual intercourse, notwithstanding the involvement and consent of the girl to the fullest. The author attempts to reveal all the aspects associated with adolescents’ sexuality, worth drawing the attention of the legislature. The paper is shared out in five sections. In the first section, author delves into the theme of statutory rape law and the POCSO Act to critically analyse its utility in protecting children from consensual sexual acts. In the second section, the author brings about all the societal factors influencing teenage sexuality. In the third section, based on an **empirical study** conducted in different schools of South Delhi, the author attempts to assess the contemporary scenario of sex education in India. In the fourth section, the author adopts a comparative methodology to frame the best practice paradigm to implement statutory rape laws, taking from International experiences, followed by a conclusion in the last section.

INTRODUCTION

The age of consent in India is 18. “Section 63 of the Bhartiya Nyaya Sanhita, 2023 (hereinafter BNS) states that any sexual intercourse with a girl who is below the age of 18 years is considered to be rape.” Before Criminal Law Amendment Act, 2013 the age of consent was 16 in the Indian Penal Code, 1860.

The consent of the person is irrelevant.² The offence is one with strict liability, i.e., the defence of presence of consent or ignorance of the age of victim cannot be availed by the accused.

¹ Kieran Walsh, ‘Images of Childhood, Adolescent Sexual Reality and the Age of Consent’ in Helen Gavin and Jacquelyn Bent, *Sex, Drugs and Rock & Roll: Psychological, Legal and Cultural Examinations of Sex and Sexuality* (Inter-Disciplinary Press 2010) 47-58, 48.

² Kaushiki, Law prohibiting sexual offences against children sparks controversy over age of consent, The PRS blog, June 13 2012, available at <http://www.prsindia.org/theprsblog/?p=1680>, Last visited on Feb. 22, 2026

The age of consent under Protection of Children from Sexual Offences Act 2012 (hereinafter POCSO), is 18. The Standing committee constituted by the parliament, in its recommendations suggested increasing the age of consent from 16 to 18, although the National Commission for protection of child rights had set the age limit for consensual sex at 16. Lawmakers took into consideration the recommendations made by the committee and thereby decided to amend certain provisions of the bill before passing it and have gone ahead with increasing the age of consent from ‘below 16 to now below 18 years’ and with that, faced a lot of criticism. In doing so, they have failed to consider the present societal trends, largely influenced by western world wherein the teenage sexual relations are rising with time. Many psychiatrists and sociologists stress on the fact that this is important to consider that many youngsters under the age of 18 do engage in sexual activity.³ The erstwhile chairperson of National Commission for Protection of child Rights, Shanta Sinha, stated that, “there are high chances of the POCSO Act being misused. Youngsters between 16 to 18 are more likely to enter into sexual relationships. They could end up being criminalised.”⁴

The higher age of sexual consent can be subject to criticism on various grounds. Firstly, it seems that increasing the age to 16 to 18 was a political compromise and not a reasoned decision made by our lawmakers. After the December 16, 2012 incident, the criminal law amendment Act, 2013 was brought in effect, which amended this provision under IPC as well. This gives an impression that the amended provision was merely a reaction to the incident, not based on any scientific evidence. Secondly, the provision was created to protect minors from sexual abuse and exploitation by elders, but it leads to exploitation of young boys also. It doesn’t take prevailing societal actuality into consideration. Thirdly, there are no international obligations for raising the age of consent, so the justification given by the lawmakers is absurd and without any merit. As our lawmakers claim that the recommendation to make consent “irrelevant” up to the age of 18 aligned with the United Nations Convention On The Rights of the Child (UNCRC). But the convention, nowhere stipulates that the age of consent for sexual activities should be fixed at 18.⁴ Fourthly, the lawmakers have come up with transfer provision under Juvenile Justice Act, 2015 by which a child below 16-18 years can be tried as an adult. The reasoning given by law makers is that a child between 16 to 18 years of age, develops sufficient maturity to understand the nature and consequences of his act. But they have desisted from applying the same understanding while criminalizing consensual sex between minors. Fifthly, the purpose of the act i.e., to prevent children from engaging in sexual activity and thereby, protecting their health from pregnancy and other Sexually transmitted diseases, remains unfulfilled due to lack of awareness and mandatory reporting provisions. Therefore, the entire motive of the State for which the provision has been created is collapsed.

³ Sharmishtha Das, Age No Bar, The Telegraph (Jun. 6, 2012), http://www.telegraphindia.com/1120606/jsp/opinion/story_15575183.jsp, last visited on Feb. 22, 2026.

⁴ Samyak Sibasish, The Issue of ‘Age of Consent’ in The Protection of Children From Sexual Offences Act, 2012 (December 27, 2012), Journal of Indian Law and Society, <https://jilsblognujs.wordpress.com/2012/12/27/the-issue-of-age-of-consent-in-the-protection-of-children-from-sexual-offences-act-2012/>, last visited on Feb. 22, 2026.

After several raging debates and deliberations over rape laws in our country, this provision under POCSO and BNS has faced one of the major criticism and that is, it will give rise to the number of ‘false cases’ of alleged rape, as all youngsters under the age of 18 and above 16 engaging in sexual activity are now prone to harassment by their families, the police and other authorities⁵ such as police exploiting their powers or parents misusing the law to regulate their children’s sexual behaviour⁶ as there are a lot of instances where parents file false cases against the sexual partner of their child or sometimes pressurize their daughters to falsely accuse boys of non-consensual sex where in reality the act was consensual.

The fact that one-third of rape cases in India are filed by parents against boys when their daughter exercises her sexual choice and elopes with him, cannot be ignored.⁷ It is therefore important to highlight the importance of sex education when statutory Rape laws work as a handing sword above adolescents who are at the receiving end, to find out, understand and show up the societal trends and factors associated with increasing teenage sexuality and why is it necessary to bring amendment in laws regulating consensual sex between teenagers.

Lawmakers’ blindness towards teenage sexual consent is becoming the reason for criminalizing young boys. This provision has therefore, inflamed the discourse over the validity of rationale behind age consent laws and the harmfulness of adolescent sex.⁸ The age of consent drawn by the lawmakers is an artificially drawn line with no clear understanding, nor any satisfying justification. They have ignored all important factors which are required to be taken into account while making such laws. These include relying on facts such as the age of sexual maturity, psychology, biological changes, puberty, developmental differences, etc.

As per the Indian Institute of Population Studies, a detailed report states that out of all the people who reported to be in pre-marital romantic relationships, 42 per cent of men and 26 per cent of women have admitted that they engaged in sexual relationship with their partners under the age of 18.⁹ We live in a society which is being influenced extensively by the western culture. We cannot overlook the contemporary transformation in the ideology of adolescents and their curiosities to engage in sexual activity from a very early age. Therefore, criminalizing sex between children belonging to age group 16-18, ignoring these societal advancements in mindset of adolescents would only lead to false accusations against thousands of boys and it becomes difficult to believe that our lawmakers intended to do so. United States is another example, which has faced such instances when few states there had increased the age of consent to 18.¹⁰ Out of all the alleged rape cases, 41 percent were discovered to be false.¹²

There have been negligible efforts since 2013 to highlight the issue of higher age of consent in

⁵ Id.

⁶ Id.

⁷ Id.

⁸ Id.

⁹ John Coggon and Jose Miola, ‘Autonomy, Liberty and Medical Decision-making’ (2011) 70 Cambridge Law Journal 523-547, 524

¹⁰ Eugene J. Kanin, False Rape Allegations, 23 Archives Of Sexual Behavior 81, (1994).

India, with absolute dearth of literature. This difference of opinion and never-ending battle between the sexual autonomy of adolescents and the higher age of sexual consent posed by legislature necessitates the exploration of associated issues to be put forth before the legislature, in an attempt to call for reformation of the laws towards lowering the age of sexual consent and acknowledging the need to modernize the thought process of ultra conservative law makers.

SOCIETAL DYNAMICS AND RECKLESS TEENAGERS

In 1939, Feversham Committee stated:

“Emphasis is shifting from the crime to the person committing the crime, and an effort is being made to take into account the needs and distinctive characteristics of the individual offender. Then, again, it is slowly being recognized that to understand the individual one needs to understand not only his character and circumstances at the time the crime was committed, but also the environment in which he has grown up and the factors which have had an influence on the building of his personality.”¹¹

This section brings about almost all possible external aspects that influence the sexuality of a child, making him act upon his desires and accordingly, how insignificantly these factors have been overlooked by the legislators.

There are folks who aren't really fascinated by progressive ideas regarding the preclusion of crimes. And some fall in other category who use their time, before turning off their bedside lamp, to track down comprehensively the actions that are foremost in leading to the detection of any crime. Thus, there are always certain external factors in a society associated with occurrence of such acts that constitute crimes, they form the whys and wherefores of commission of such acts, which essentially require the attention of the law makers and the members of the society as well, in order to be curbed down, to prevent the criminal acts thereto. But at the same time, some external factors are inevitable and cannot be constrained, rather they have become the part of the present societal trend. The lawmakers' responsibility is not limited to give people law whenever they have a problem, but also to bear in mind that the consequences of criminalization will have a direct impact on the members of the society. Thus, importance must be given to the prevailing societal and cultural trends, which when overlooked, inevitably lead to contradictions, unsoundness, illogicality and irrationality in society. Albeit these subjects have largely been a matter of unconcern for State. In cases of consensual sex, the children, protection of whose interest was the sole objective of the State, turn out to be the ones at the receiving end, the sufferers, the victims behind the faces of delinquents! A society that endeavours to uphold its inviolability and to maintain its place in greatest respectable ways nationally and internationally, must involve the larger interest of the society and its members, or else it shall form a costly defect with consequences difficult to receive.

It has been informed by the Magistrates and Police, that both male and female juveniles do

¹¹ Society and the Criminal, 13 Medico-Legal & Criminological Rev. 183, 194 (1945)

indulge in criminal acts as they are living with utmost freedom and without any restraints, which seems to have become the lifestyle of the present times. Thus, a wise thing to do would be to cure the most prevalent evils in the society by learning their cause. There are numerous things flowing in our society, not just from one side but from different directions that contribute to develop sexual hormones amongst children that further stimulates them to involve in sexual acts at a very early age.

There are no cures possible for every case, some of these need to be accepted and acknowledged by the legislator as a part of advancement in the society. The advancement in the thought process, hormonal growth of children, will not necessarily take forward morality along. It is the truth which now or then has to be accepted that advancement and morals are two discrete concepts of society and one can't be modern and advanced yet conservative. With greater western influence in our society, there might come a situation where we need to take out from the extent of morality, certain acts, adapting ourselves to the flow of west culture in our society and which may be a matter of concern for the conservative legislator of our country, but certainly a matter of choice for people in our society, who then decry about its consequences. The legislator must not be conservative and must hold the widest possible and an open view towards the society when it comes to criminalization, for the sake of young teenagers who gets swayed away.

❖ PARENTAL NEGLECT

The environment in which a child grows is an important factor that contributes in teenage depravity. An environment of parental neglect or ignorance towards their children is the foremost factor for lack of moral values in children in present day times. The parents are the first and the foremost source of knowledge for children. As a part of our regular life, we come to observe numerous cases, where young boys and girls go astray, where parents have been found working in the night shifts, or where both the parents are working, the children often tend to move outside and stay all night in objectionable company. In India, apart from going to school, the children have been seen spending most of their time on internet, chatting with strangers, watching English web series, and sometimes, the pornographic content. In such cases, the parental ignorance towards the way of living life of their children often leads to immorality in the development and growth of their children as it is believed that while children are in growing period, it is what they see and hear that moulds them. They inherently are directionless and instead of their parents, all these external sources direct them, which indeed corrupt their moral values, their sense of making judgment is moulded by the what these visual representations imprint on their brain and not what is told by their parents. These immoral values flowing from external sources work as their guide and outweigh the parental role due to

parental neglect under such circumstances. Thus, it becomes useful to occupy children with something productive, like sports, dance, art, etc., which is also beneficial for them in order to utilize their time that they now spend in vicious idleness leading to the said harmful consequences.

The cases of increased sexual conduct by the teenagers and other crimes are rampant in the kind of families overseen by boastful, egoist and ignorant parents which prevents them from dissecting the status quo and also from determining the scope of their contribution to the particular habit or any offence. Seen have been numerous attempts just to save their faces, the parents' neglect and imperfections, in their own defence have been substituted by vociferous avowals of mental abnormality of their child or other external factors affecting their child.

In poor families, these factors are generally unseen, but what is usually seen is that within the space of four walls the children and the parents dwell which makes it evident that children from the very early and tender age get to see their parents cohabitating and engaging in sexual intercourses more or less leading to sexual stimulation, curiosity and encouragement to see themselves performing sexual acts.

Thus, the legislator must distinguish between criminality and immoral acts by the minors between sixteen to eighteen years of age. Criminality is when a person doesn't respect the rights of another person and impinges upon that, when the latter is unwilling to engage in any form of sexual act but the former forces so. An act could be immoral but it may not lead to violation of other person's right, that's where the courts and state must recognize the importance of consent and the factors leading to such immorality.

❖ **DROPPED AGE OF PUBERTY AND ITS IMPACT**

One of the traits of sexuality development in a child is consciousness of sexual interest in other person. This developing consciousness and awareness will perhaps initiate neuro-endocrine changes of adrenarche and pubarche.¹² The most significant difference between a female child and a female adult would be puberty. "Puberty is a physical preparation for adulthood that, along with bodily changes, promotes interest in sexual activity."¹³ Studies show girls are maturing girls, *J Adolesc Health* 36 (2005) 420–427.

¹² Ellis BJ and Essex MJ, Family environments, adrenarche, and sexual maturation: a longitudinal test of a life history model, *Child Dev.* 2007 Nov-Dec; 78(6):1799-817

¹³ Brown JD, Tucker Halpern C, Ladin L'Engle K, Mass Media as a sexual peer for early maturing girls, *J Adolesc Health* 36 (2005) 420–427

Reaching sexual maturity earlier than ever before. The changes in children's diet, obesity are the key reasons that trigger puberty at quite an early age.¹⁴

Early pubertal timing affects psychological well-being of a girl and it gives rise to problematic behaviours such as drinking, smoking, and sexual activity. Girls tend to involve themselves in riskier acts.¹⁵ Historically the onset of menses was considered a symbol of girl turning into a woman.¹⁶ But this doesn't mean that the age of consent should be set at the age of puberty i.e, 12, 13 or so but this is an important factor which must be considered while putting sexual restraints on children.

Considerable form of interest and liking for other sex, by the children with age as low as 10-12 years has been reported by 25% of the parents.¹⁷ “The common cultural nostalgia about adolescent sexuality is often associated with ‘crushes’ denoting to unreciprocated attraction among adolescents, feelings and fantasies for another, which may also be sexual in nature.”¹⁸

In America, a study conducted among 511 children from 6th to 8th grades reported at least one crush at that moment and from the ratio the number of girls (61%) was found to be more than the number of boys (61%), having crush.

Among 511 American 6th, 7th, and 8th graders, 56% reported at least one current crush, with larger proportions of girls (61%) than boys (48%).¹⁹ There are different visible signs of puberty during early adolescence, with increased self-awareness about one's body. These signs are increased weight, development of facial hair, linear growth and development of breast, which others may find appealing and attractive in the body of a female.²⁰

“The hormonal, neuropsychological, interpersonal, and physiologic attributes of adult sexual arousal likely are capacitated during puberty and early adolescence.” All these post pubertal elements of attraction are important in establishment of relationships that structure sexual interactions between adolescent partners. “Substantial attention is given to attractiveness and body image characteristically associated with adolescent development.”²¹ These occurrences are natural and begin with stage of adolescence with visual indications particularly significant

¹⁴ M A Bellis, J Downing, J R Ashton, Adults at 12 Trends in puberty and their public health consequences, *J Epidemiol Community Health*. 2006 Nov; 60(11): 910–911

¹⁵ Graber JA et al., Puberty and girls' sexuality: why hormones are not the complete answer, *New Dir Child Adolesc Dev*. 2006 Summer; (112):23-38

¹⁶ A useful discussion on the place of puberty is given by Mischael C Seto *Pedophilia and Sexual Offending Against Children* (American Psychological Association 2008) 4-6

¹⁷ Bowker JC, Spencer SV, Thomas KK, Gyoerkoe EA, Having and being an other-sex crush during early adolescence, *J Exp Child Psychol*. 2012 Apr; 111(4):629-43

¹⁸ Id.

¹⁹ Id.

²⁰ Lindberg SM, Grabe S, Hyde JS. Gender, pubertal development, and peer sexual harassment predict objectified body consciousness in early adolescence. *Journal of Research on Adolescence*. 2007;17(4):723–742. ²³ Halpern CT, Integrating hormones and other biological factors into a developmental systems model of adolescent female sexuality, *New Dir Child Adolesc Dev*. 2006 Summer; (112):9-22

²¹ Tovée MJ, Maisey DS, Emery JL, Cornelissen PL, Visual cues to female physical attractiveness, *Proc Biol Sci*. 1999 Jan 22; 266(1415):211-8.

characteristics of excitement and arousal in boys. This increases the rate of masturbation among adolescents which works as a substitute for sex and but doesn't at any point of time lessens the desire of engaging in sexual acts with a partner.

A study reported the rates of masturbation among children and adolescents, the rate was observed to be, "8.3% among 9–10-year-old boy, 46.7% among 11–12 year old boys and 87.3% among 13–14 year old in the boys and the rate was 19% among 13–14 year old girls."²²

❖ **ELECTRONIC MEDIA STIMULATING SEXUAL DRIVE**

Today's children and adolescents are extensively and habitually accessing social media websites. Social media and social networking websites facilitate social interaction, and other video and gaming sites offer are also a source of learning as well as entertainment. Engaging in various forms of social media is a routine activity that research has shown to benefit children and adolescents by enhancing communication, social connection, and even technical skills.²³

➤ **Social Media**

Occupying oneself with social media is beneficial for children and adolescents in many ways as "it improves communication skills, builds social connection, improves technical skills and keeps children aware and smart."²⁴

Thus, the electronic media is growing more and more rapidly and has also accelerated communication exponentially in last few years. But there are also problems associated with these sites as they create addiction among the adolescents and do not generally form a healthy environment for them. Thus, the parents must be aware of the nature of the activity in which the children are involved via internet and they must keep a watch. These sites are the primary and the easiest source of distraction and also encourage potential problems for adolescents such as "cyber "Facebook depression," sexting, and exposure to inappropriate content."²⁵

Facebook, Instagram and MySpace provide opportunities to children and adolescents to connect with new people as well as their class mates and other friends. With the advent of smart phones and availability of cheap internet packages, these social media websites have become an obsession to many. In last few years, the number of prepubescents and postpubescents actively using social media has only increased.²⁶

²² Ballester Arnal R, Gil Llarío MD, Sexuality in children 9-14 years old, *Psicothema*. 2006 Feb; 18(1):25-30.

²³ Ito M, Horst H et al., *Living and Learning with New Media: Summary of Findings From the Digital Youth Project*. Chicago, IL, John D. and Catherine T. MacArthur Foundation Reports on Digital Media and Learning; 2008. Available at: <http://digitalyouth.ischool.berkeley.edu/files/report/digitalyouth-TwoPageSummary.pdf>.

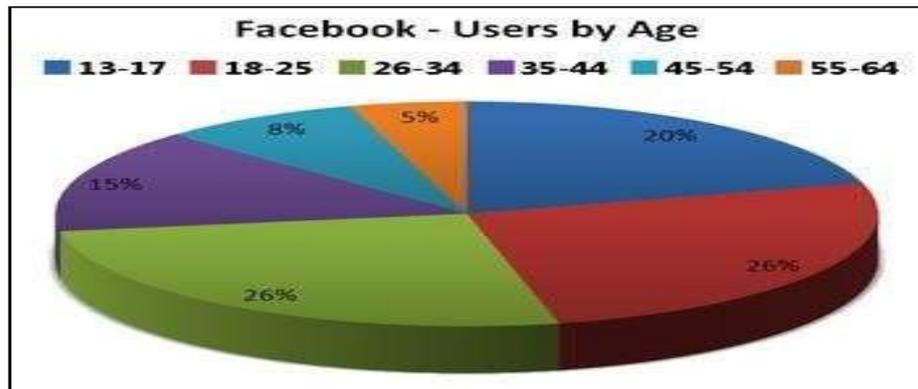
²⁴ Id.

²⁵ Gwen O'Keeffe & Kathleen Clarke Pearson, *The Impact of Social Media on Children, Adolescents, and Families*, 127 *Am. Acad. Of Pediatrics* 800 (2011).

²⁶ Common Sense Media. *Is Technology Networking Changing Childhood? A National Poll*. San Francisco, CA: Common Sense Media; 2009.

In November 2011, it was reported Indians spend more time on social media than on any other activity on the Internet.²⁷ Active users of Facebook increased from just a million in 2004 to over 750 million in 2011.²⁸

Fig 1.2 showing the Pie distribution of the Facebook respondents by their Age³²



It is evident from both the figures that, use of Facebook has extensively increased in India and 20% of the total population operating Facebook are the children between age 13-17 years.²⁹ A study in 2009 revealed that “22% of teenagers log on to their favourite social media site more than 10 times a day, and more than half of adolescents log on to a social media site more than once a day.”³⁰

In 2011, another report stated that “Seventy-five percent of teenagers now own cell phones, and 25% use them for social media, 54% use them for texting, and 24% use them for instant messaging.”³¹ Thus, the extensive use of internet and cell phones by the present generation is subjecting their social and emotional development to what sites they operate and how much time they spend operating on daily basis.³² These social media sites provide adolescents a display place to share their pictures and seek attention of others. It becomes much easier to directly approach on these websites as the only thing required is to have an internet connection and a smart phone or laptop. Many adolescents begin to date. facilitates sexting and video calling.

➤ **Sexting**

“One form of contemporary sexually explicit media – sexting – involves transmission of sexual text, nude or sexual photographs via cellular smart phones.”³³ It has been observed that up to

²⁷ S. Ashwini Veronica and Dr.A.Umesh Samuel, Social Media Addiction among Adolescents with Special Reference to Facebook Addiction, IOSR Journal Of Humanities And Social Science (IOSR-JHSS), PP 72-76 available at www.iosrjournals.org.

²⁸ Id.

²⁹ Id.

³⁰ Supra note 26.

³¹ Id.

³² Id.

³³ Robert Weiss & Charles P. Samenow (2010) Smart Phones, Social Networking, Sexting and Problematic Sexual

28% of adolescents report sexting.³⁴ However, there are huge chances that this percentile must have considerably increased by now and require a comprehensive research.

Different web sites have set a minimum age for the users to sign up and create a profile or account, but adolescents falsify their age and create profiles and this has become a common practice these days. More access to social media encourage sexting which develops the comfort zone among two minor adolescents and which in a direct way encourage adolescents to engage in sexual acts. Thus, parents must keep monitoring and make an appropriate choice with respect to the sites, they wish their children to participate with.

➤ **Pornographic content**

Adolescents are no less curious, they are in a learning and growing phase of their lives, thus they tend to experiment more with content available on internet.

Since they are less capable of regulating themselves and more inclined towards their peers and prone to their influence, sexual experimentation is more fascinating for them. There are pop-up advertisements on internet which display something else and once clicked, the shown content is full of nudity, sex advertisements and porn sites. Visual representation of pornographic films and content excite adolescents to have repetitive access and often making them masturbate habitually. To a larger extent masturbation among males as well as females is bracketed with the use of sexually perspicuous content on internet.

In the contemporary world, adolescents have easy access to sexually explicit content in various forms, such as “television, internet, sexting, books, magazines, etc. It has been reported such exposure begins at the age of 14 years as 87% of the youth looking for sexual images on internet are 14 years or older in age.³⁵ This increased accessibility to pornographic content may lead to sexual development of children and adolescents.³⁶ Occurrence and timing of pubertal growth is associated with escalation in the use of sexually explicit avenues.³⁷ “Pornography was used as a form of social intercourse, a source of information, and a stimulus for sexual arousal.”³⁸

It is thus evident that adolescents select and choose media deliberately to catch sight of explicit sexual content.³⁹ And such an obsession makes it easier for them to act upon their fantasies. The larger point is that all these inevitable factors have not been anticipated by the lawmakers

Behaviors—A Call for Research, *Sexual Addiction & Compulsivity*, 17:4, 241-246

³⁴ *Supra* note 28

³⁵ Ybarra and Mitchell K.J., *Exposure to Internet Pornography Among Children and Adolescents; A National Survey*, *Cyberpsychol Behav* 2005 Oct; 8(5): 473-86, available at <https://www.ncbi.nlm.nih.gov/pubmed/16232040> (last accessed on 20 May 2018)

³⁶ *Id.*

³⁷ Lofgren-Mårtenson and Månsson, *Lust, love, and life: a qualitative study of Swedish adolescents' perceptions and experiences with pornography*. *J Sex Res* 2010 November; 47(6) 568-579, available at <https://www.ncbi.nlm.nih.gov/pubmed/19731132> (last accessed on 24 May 2018)

³⁸ *Id.*

³⁹ Amy Bleakley, Michael Hennessy & Martin Fishbein (2010) *A Model of Adolescents' Seeking of Sexual Content in Their Media Choices*, *The Journal of Sex Research*, 48:4, 309-315

before drafting laws regulating consensual sex between minors with age of sexual consent as high as 18.

❖ **GANGING UP WITH ADULTS: INFLUENCE OF DRUGS AND ALCOHOL**

The drug abuse among adolescents' and their sexuality is greatly influenced by the reasons of age, gender, peer influence and ganging up with adults. Adults may engage in sexual acts actively and freely. Consumption of alcohol and going in pubs are the practices generally found common among adults. Alcohol and drugs have left lifetime impact in adolescents.⁴⁰ Not only these habits inflict potential harms on the physical health of children but their personality and behaviour are every so often shaped by them. Alcohol acts as a tranquilliser that hazes one's sense of judgment and diminishes social inhibition.⁴¹ It is believed that adolescents are not much able to regulate their emotions and alcohol consumption may have tumbling effects or it may deteriorate their status quo as their ability to make wise and calculated decisions about their actions is tottered.

The drugs such as Indian hemp and alcohol has been found to intensify the carefree behaviour of adolescents specifically pertaining to sexuality.⁴² Sexuality of an individual is that aspect which gets molded by "biological, psychological and culture forces" which involves all facets of sexual behaviour.

Adolescents are experimenters and opportunity seekers; thus, they are always curious to attempt the things which they are prohibited to meddle with, including drug use and sex. There are many reasons that prompt alcohol and drug use among adolescents such as accessibility and availability of alcohol, which is why its use has been spotted the most above secondary and high school students. In Indian society, there has developed a common culture of serving alcoholic beverages at the social occasions and gatherings. Also, the availability of alcohol to adolescents has been witnessed at the bars and wine shops, by direct purchase. Despite having a law prohibiting selling of alcohol to adolescents, poor enforcement of the same has been observed on day to day basis, as the adolescents have been found involving in pub-going activities, celebrating birthday parties and ending up involving in sexual acts. In many clubs, girls are given alcohol for free to attract more crowd.

Indian hemp, tobacco, glue, thinner, petroleum products are the most commonly used drugs among adolescents which are also easily accessible as they are available in the market. These elements and alcohol have a strong impact on the perception of an individual, thus, inducing him/her to involve in fights, rash driving, and other forms of wrongful acts. Some other anti-

⁴⁰ Berk L. E.(2001) Development Through the Life Span. 2nd edn. Allyn & Bacon Boston.

⁴¹ Gabhainn S. Francois Y.(2000) Substance use. In Currie C. Hurrelmann K. Settertobulte W. Smith R. Todd J.(eds), Health Behavior in School-Aged Children: A WHO Cross National study (HBSC) International Report WHO Policy Series: Healthy Policy for Children and Adolescents, Series No. 1, pp. 97–114 http://www.euro.who.int/data/assets/pdf_file/0006/119571/E67880.pdf (20 May 2018, date last accessed)

⁴² Unachukwu G. C. Nwankwo C. A. (2003) Drug dependence among the youth of Nigeria: implications for community development. The Educational Psychologist, 1, 89–103

social behaviours such as sexual promiscuity and rape have a lot to do with alcohol and drugs. Peer influence also plays a vital role here as adolescents generally learn from their adult friends who brag about their sexual life, persuading adolescents to indulge in sexual acts.

Consequently, there is an austere want of intervening strategies by the state to avert the availability and use of alcohol and drugs among adolescents as it will also help us prevent the increasing sexual promiscuity; consensual or non-consensual sexual acts between the adolescents, for which they are being prosecuted.

Adolescents are in growing period and they learn what they see, are more curious to experiment and act upon their curiosity. They involve in sexual acts, not just because of their biological changes but also, they are persuaded by various societal factors. Thus, it is essential to first hold a control on these instigating factors, to take into account the societal trends and then criminalize only the necessary and harmful acts. It is not only the duty of state but to a larger extent parents and family also play a crucial role in helping adolescents to assume responsibility of their passions, feelings, frame of mind, cravings and their behaviour and reactions via proficient drug education, which will not only help them circumvent drug and alcohol consumption habits but will also go a long way in assisting them to ameliorate and gain control over their sexuality. These intervention strategies may work efficiently to help the adolescents to involve in sexual acts not when they are drunk, or under the influence of alcohol, but when they are free willing to, in a healthful manner which may be socially acceptable.

But alcohol and drugs are being consumed by the adolescents and the sexual acts do take place under its influence. The teenage sexuality is greatly influenced by all aforementioned factors and it is shaped according to the situation. For example, the adolescents in urban areas have greater exposure due to availability of internet sources.

Thus, this is something that lawmakers must take into their interpretation and justifications while drawing age of sexual consent and other Acts and legislations regulating sexual conduct among adolescents.

INADEQUATE EDUCATION ABOUT SEX AND RELATED LAWS

The disinclination to introduce sex education originates from an analogous unwillingness to agree to take childhood sexuality. Since 1990s, several movements have been initiated by the feminists to expose to public “the increasing incidents of rape, domestic violence and child sexual abuse has surpassed the notion of children as sexual beings.”⁴³ These movements considered children absolutely sexless assuming that they either there is absence of libido to engage in sexual act or the maturity to consent to a sexual act.⁴⁴ In place of sex education, the courses adopted involve prevention and protection which are generally unresponsive towards

⁴³ Beatrice Faust, Child Sexuality and Age of Consent Laws: The Netherlands Model, 5 *Australasian Gay & Lesbian L.J.* 78 (1995)

⁴⁴ *Id.*

extensive education or work against it. This idea perhaps continues in the contemporary world reviving the traditional mythology on one hand and ignorance on the other, which has been criticized severely by contemporaries in the present India.

What prevents the parents, teachers and the education ministers of India to provide sex education to children? Why talking about sex is regarded as a shameful act, which is only prevalent in western world? The duties and responsibilities of our parents are not restricted to fulfil our needs till we become self-sufficient. Effective parenting plays an important role in growth of a child physically as well as mentally. Teachers on the other hand, spend more time with children from a very early age. From time immemorial, our parents and teachers have always refrained from telling children about Sex, because they consider it as an act of shame! When education about sex is missing in the school curriculum, then expecting education about laws regulating sexual acts between and with children would be quite too much. Because people of our country still live in this notion that it is against the culture of the country we live in. “Communicating about puberty, biological changes, sex, contraceptives would corrupt the moral values of their child.” But what they need to learn is, pregnancy is not prevented by culture, but by providing correct education. Values do not work as contraceptives. They don’t promise good health and prevention of infectious STDs. But only, the right amount of guidance and information does. Therefore, this issue remains without any consideration by parents and teachers of our country.

What ought to be done is exactly opposite of this. We live in a society where a demarcation is drawn between good people and bad people, where women are considered at fault if any kind of mis happening takes place with them, where good people do not suffer HIV and other STDs.

India is the country with very high rate of population, with high pregnancy amongst teenage girls, high rate of STDs, also with a high rate of rape cases by juveniles. The main reason for these problems is unwilling attitude to educate young children about the developing sexual desires in children and safe and healthy sexual practices.

Sex education doesn’t incite children to engage in such acts. Rather it develops in children a sense of understanding towards the consequences of the act, the social, biological and psychological aspects relating to it. Sex education encompasses awareness about physical changes that body undergoes during puberty, consent, diseases associated and laws made for the protection of children. There’s a natural curiosity among children to know about sexual acts. But no amount of information is added to their knowledge by parents nor teachers, which adds to their curiosity as parents refuse to have any conversation about sex, therefore they eventually resort to other sources within their reach, like friends, movies and internet. Choosing to remain silent on the issue would only increase sexual interaction among adolescents, pregnancy, STDs and also offences like rape and sexual exploitation of children.

❖ JUDICIAL TRENDS

- **“State of UP v. Anurudh”**- In the case of “State of UP v. Anurudh”, the Court conducted its detailed examination into the matter and cited Section 439 CrPC to explain that the Court's authority, under this section, is limited to deciding whether the defendant should be released into society pending trial or kept in prison. A statutory authority, according to the Court, is derivative and conditional, meaning that it can only be exercised after a law has been legally passed by either the federal or state legislatures. The enabling legislation, with all its wording, meaning, and limitations, is the only place where such authority may exist. The powers that are inherent in the Constitution and its spirit are known as constitutional powers. These powers cannot be diminished or eliminated without a legislative amendment as per Article 368, and they do not rely on any action by the legislature. The constitutional authority must not supersede the legislative authority by going beyond the extent originally intended by the legislation. Even though the High Court has both powers, neither of them may override the other's jurisdiction unless the legislation explicitly allows it. The Court took into account the definition of a child as anybody below the age of eighteen found in Section 2(d) of the POCSO Act when deciding whether the directions in the challenged decision to require an age verification test at the beginning of the inquiry could be sustained. So, the offender must be a minor in order for this Act to apply to their case. The Juvenile Justice (Care and Protection of Children) Rules, 2007 (Rule 12) follow the same document hierarchy as Section 94 of the JJ Act, which was also mentioned. Juvenile Justice focuses on dealing with children in need of care and protection and children in confrontation with the law, not young victims of offenses, as the Court pointed out when comparing the JJ Act to the POCSO Act. It is a well-established legal position that the process under Section 94 of the JJ Act is to be implemented, and the Court went on to emphasize that the POCSO Act does not specify how the victim's age is to be determined. Considering the papers listed in Section 94 of the JJ Act is an issue of evidence consideration as it may need questioning witnesses to establish the documents' authenticity. Moreover, the Court has directed that a copy of the judgment be circulated to the Secretary, Law, Government of India, in order to consider initiation of measures that may be possible to curb this menace. This could include, among other things, enacting a mechanism to prosecute individuals who attempt to settle scores by using these laws, and introducing a **Romeo-Juliet clause** to exempt genuine adolescent relationships from its stronghold. On the constitutional dimension of consent and age, the Supreme Court in the above case, raised concerns about the expanding use of the Protection of Children from Sexual Offences (POCSO) Act in consensual adolescent relationships where both parties are minors or close in age. The Court flagged over-criminalisation under POCSO and urged for balanced guidelines that protect children from exploitation without criminalising consensual adolescent conduct that lacks exploitative elements. This reflects evolving judicial awareness around consent, autonomy, and age-sensitive adjudication.

- **“Jaspal Singh Kaural v. The State of NCT of Delhi”**- In 2025, the Supreme Court of India delivered a significant judgment in “Jaspal Singh Kaural v. The State of NCT of Delhi”, where it clarified the law on consent and breach of promise to marry. The Court held that a consensual relationship that later sours—followed by breach of a promise to marry—does not automatically vitiate consent for the purposes of Section 376 IPC unless it is shown that the promise was false from the very beginning. In other words, mere failure to fulfil a promise to marry is not sufficient evidence that consent was procured by deception, reaffirming that consent must be free, voluntary, and informed at the time of the act and not retrospectively criminalised based on subsequent rupture of relationship.
- **“Akash v. State of U.P.”** - While modifying the summoning order passed by the Special Judge against the accused persons, the court in “Akash v. State of U.P.”, maintained that it is insufficient to hold that a case of Section 376, 511 of the IPC or Section 376 of the IPC read with Section 18 of the POCSO Act has been made out. Rather, it was held that the mere fact that accused 1 and 2 grabbed the victim's breasts and one of them broke the string of her pajamas and tried to drag her beneath the culvert, while passersby interfered and the accused persons fled from the spot, leaving the victim behind. It was emphasized by the court that neither the complaint nor the statements of the witnesses recorded under Sections 200/202 of the CrPC elucidate that the accused experienced distress after ripping the string off the victim's bottom clothing. Specifically, the first accusation is that the defendant tore the victim's pajama string while attempting to drag her beneath the culvert. Additionally, no witnesses have testified that the victim undressed or became nude as a result of the accused's actions. No attempt at penetrative sexual assault on the victim has been made by the accused. The court found that the case circumstances and the accusations against Accused 1 and 2 were insufficient to establish the crime of attempt to rape. If the prosecution wants to press charges of attempt to rape, they'll need to prove that the crime progressed past the planning phase. The main distinction between being prepared to commit an offense and actually trying to do so is the level of resolve involved. The court pointed out that the evidence does not support a prima facie charge of attempted rape against the first and second accused. Instead, they could face a lesser charge under Section 354(b) of the Indian Penal Code, which prohibits assault or abuse with the intent to disrobing or compelling a woman to be naked, or Section 9 of the POCSO Act, which addresses the punishment for severe sexual assault on a child victim.

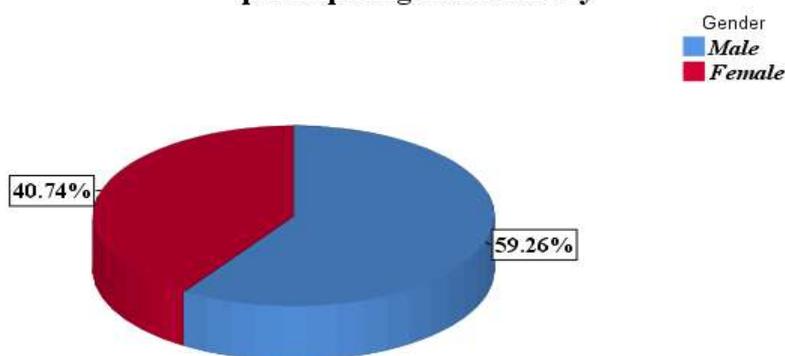
❖ **LAWS NOT A PART OF SCHOOL CURRICULUM: EMPIRICAL EVIDENCE**

Apart from this, emphasis has been made on significance of having right amount of information about the laws made for protection of children as a part of curriculum. The Education authorities must take initiatives to insert some basic provisions in the textbooks of the children. This is significant not only to prevent sexual exploitation of children but also to make them aware of the consequences of consensual sex between them. The whole idea behind doing so

is that, the purpose for creating Statutory Rape provisions, remains unfulfilled as these children lack awareness about the same. In consequence of which, young boys are prosecuted under rape charges in cases of consensual sex with their partners, for the fact they were not aware of insignificance of consent in such cases of strict liability.

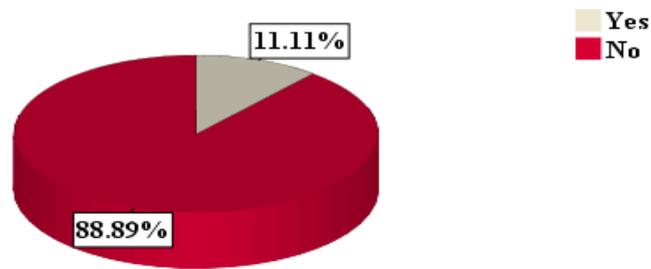
To substantiate, a survey has been conducted by the author in a number of schools located in South Delhi, by the way of administering questionnaires upon 500 students between 15-18 years of age, to find out the level of awareness about laws regulating sex between minors, in order to determine whether the statutory rape laws are protecting children in reality or there's a genuine need to create an age window or to reduce the age of consent; Firstly, to protect the sexual autonomy of children between 16-18 years of age. Secondly, to protect young boys from prosecution in case of consensual sex. Thirdly, to prevent young boys from being falsely implicated by their girl partners, in case of fall out of their relationship, or under pressure or threat of their parents. The percentage of children participating in the survey has been shown in the form of pie chart (Fig 2.1). It was observed that out of all the students, 41% had insufficient knowledge about STDs as consequences of unprotected sex and importance of good health.

Fig 2.1 showing the percentage of Male and Female adolescents participating in the Survey



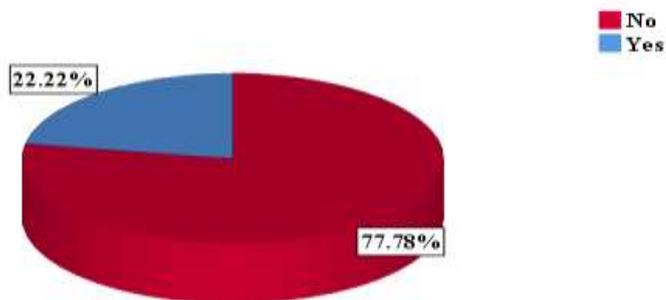
The questionnaire was designed to determine whether in reality there is any need of imparting sex education. The results were absolutely shocking as only 11.11% (fig 2.2) children exhibited presence of knowledge about the laws regulating their sexuality, that engaging in any sexual act below the age of 18 years is a crime and question of consenting to any sexual act does not arise, thus, a very few recognized the 'insignificance of consent' for sexual intercourse with a minor girl.

Fig. 2.2 showing percentage of adolescents when asked whether consensual act below 18 years of age amounts to Rape.



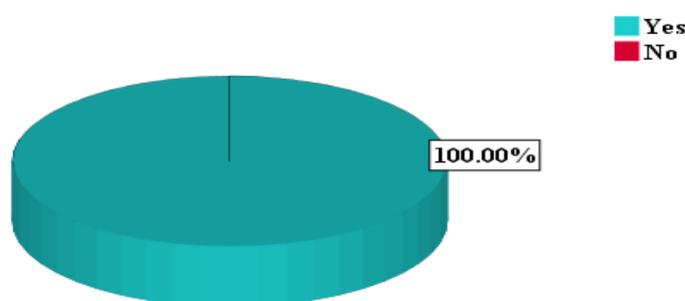
However, this wouldn't be much unpredictable and shocking for us to know that the majority of this small well-informed section were children of lawyers. Ostensibly, specialization and wisdom of their parents attributable to their legal profession turned out to be a foundation of insight for their children. Poignantly, on the other side is the huge section, constituting 88.89% of the total, who are living a life in complete ignorance of such laws regulating their sexuality. In such a case, imagining and presuming the practice of moral excellence by the ones who do not even possess the wisdom of laws safeguarding them and simultaneously exposing them to penal consequences, is absolutely impractical.

Fig 2.3 showing the percentage of adolescents when asked whether sex below 18 years of age is a crime?



As demonstrated by Fig. 2.3, only 22.22% had the knowledge that Indian legal system prohibits sexual interaction between and with children below 18 years of age, but exactly half of them believed that consensual sexual acts are not Rape, hence permitted by the Indian Legal system. However, some distressing and blatant consequences may follow such as the ignorant class of children forming a major part of the segment in Fig 2.2 and 2.3, may be engaging in consensual sexual acts with their partners.

Fig 2.4 showing the percentage of adolescents who believe that laws regulating sexual sexual conduct must be a part of curriculum.



All the children participating in the survey articulated their need to have POCSO laws and Statutory Rape laws as a part of their curriculum along with right amount of knowledge about their sexuality (fig 2.4).

The old conservative mindset of legislators totally neglects the concept of sexual autonomy and sex between adolescents is criminalized to build moral values in children. In Sandeep Paswan’s case, the court had observed that, “Good virtues cannot be included and good conscience cannot be imbibed in a child by legal provisions. It would be better and wiser to leave this job to parents and school teachers. Children need to be imparted sex education in the schools.”⁴⁵ Therefore, a legal provision should be designed considering the circumstances of the society and should not be a mere reflection of legislator’s state of mind. Ultimately, laws are made for the benefit of the society. In order to impact the ability to form informed consent with respect to their choice in sexual matters, measures should be taken to provide sex education in India.

❖ **NEED FOR PARENT-CHILD INTERACTION**

Parents also play an essential role in guarding their children from sexual abuse. Children who have an interaction with their parents, know what is bad for them better than children who lack communication with their parents. Such children recognise sexual abuse and are more likely to inform someone in those cases.⁴⁶ In a report by the United States Office of Juvenile Justice and

⁴⁵ State v. Sandeep Paswan, Dwarka Courts, New Delhi, SC No. 08/12, Unique Case ID No. 02405R0363092011
⁴⁶ Heather Corina, Sex education can stop abuse, 30 April, 2009, available at <http://www.guardian.co.uk/commentisfree/2009/apr/30sex-education-children-primary-school>, last visited on 24 Feb. 2026

Delinquency Prevention, a decline in sexual abuse cases was experienced between 1992-2000, with increased awareness of both parents and their children.⁴⁷ Therefore, parents should develop a kind of relation with their children that in cases of sexual matters, children should feel free to approach their parents, for appropriate guidance. This can only be achieved, when parents actually have the realisation of the sensitivity of the matter, that they must not refrain from communicating and guiding their children about the sexual urges that develop in a child, what touch is good or bad for him/her and what is the legally or morally wrong.

The number of adolescents in India is quite high as India is the country with rate of population is increasing every day. Out of the adolescent population, the number of illiterates is also very high. But the lack of information about sexuality among adolescents, both males and females is not because of lack of education in India, but primarily because of 'lack of sex education' in India taken together with conservative ideology about sex. The survey conducted clearly brings to the surface the difference in the level of knowledge these adolescents actually possess and the level of knowledge they are expected to possess, by the lawmakers of India.

The National Council of Educational Research and Training incorporated sex education as a part of curriculum but the same was not dealt in a form of separate chapter but scattered in small parts in between the chapters, which extremely less and incomplete awareness. Furthermore, this part was left out by the teachers who generally refrain from teaching such topics. Thus, despite making several programmes the government had not been able to reach out a large number of schools and the huge section of adolescents who do not attend school.

Therefore, the questions about the 'naturally occurring' sexual urges, menstruation, masturbation, physical appearances and body growth remain unattended and these questions turn into curiosities with are then resolved by adopting unguided internet and other sources due to the failure on part of parents, teachers and the state, leading them to experiment with their body. It makes the course of sex education, not only significant to have as a part of school curriculum in all public and private schools but also its absence can have detrimental consequences on the adolescents due to the presence of age of consent laws leading to their prosecution.

Just like 'do or die' situation, it is 'know or being prosecuted' situation which is strongly howling for attention of the state

IV. A COMPARATIVE DISCOURSE ON ISSUE OF HIGHER AGE OF SEXUAL CONSENT

In the occasion where you are the only nation in the world with a specific law, you need to genuinely examine the rules you have in worldwide legal systems. For example, in case where

⁴⁷ David Finkelhor and Lisa M. Jones, Explanations for the Decline in Child Sexual Abuse Cases, U.S. Department of Justice, JUVENILE JUSTICE BULLETIN (Jan 2004), available at <https://www.ncjrs.gov/pdffiles1/ojdp/199298.pdf>.

only you are executing 16 to 18-year-olds and no one else in the world executes 16 to 18-year-olds, at that point maybe you need to look genuinely and anxiously into whether this can be seen to conform to essential standards.⁴⁸

In majority of the countries, the age of consent is 16 years or older. In that case, every sexual intercourse between this population is unlawful as per the law and every such act constitute an offence of Statutory Rape.⁴⁹

The rate of sexual intercourse amongst adolescents has increased in last 40 years⁵⁰, but this is also true that higher teenage pregnancy rates were experienced in 1970s and 1980s, than today.⁵¹ In 1990, a small study was published by Professor Michael Males, which was replicated by Alan Guttmacher Institute across a larger population and it was observed that 29.2% of the babies were born to girls who were under the age of 16.⁵² Again, one study done on prostitutes (136) shows that 55% of them had sex in their childhood. On studying adolescent sexual activity, it has been found that not just love and their sexual urge incites them but there are multiple other reasons such as peer pressure, confusion, desire of male attention.⁵³ For many young people, sexual intercourse is the first thing what they do when they like someone, and

this can be evidenced from the falling age of first sexual intercourse. And many experts believe that in upcoming years, this age will continue to fall.⁵⁴

Many experts believe that early participation in sexual intercourse, makes them engage more actively. More involvement makes them neglect the emotional and sexual boundaries and soon the feeling of guilt becomes extinct. This gives rise to tendency of resorting to sexual acts in order to support themselves emotionally. This eventually gives rise to underage sexual intercourses.

In 1995, a study revealed that 50% of U.S. teenagers have had sexual intercourse by the age of sixteen.⁵⁵ As per U.S. Census Bureau figures, the data on teenage sexual activity reveals that at

⁴⁸ Id.

⁴⁹ Charles A. Phipps, Children, Adults, Sex and the Criminal Law: In Search of Reason, 22 Seton Hall Legis, J, 1, 62 (1997). Statutory rape is a strict liability crime imposed on those who engage in sexual activity with certain group of minors

⁵⁰ See Tom Kean & Isabel Dawhill, Editorial, More Teens Just Say 'No', Wash. Post, Sept.5, 2000, at A25; Erin McClam, Teen Births Drop to Lowest Level in 60 Years, Record (Bergen Country, N.J.), Aug. 9, 2000, at A3.

⁵¹ See McClam, at A3; Kristen Luker, Dubious Conceptions: The Controversy over teen Pregnancy, in The American Prospect 73 (1991).

⁵² See Jacqueline E. Darroch et al., Age Differences Between Sexual Partners in the United States, 31 Fam. Plan. Persp. 160, 163 (1999)

⁵³ See Michelle Oberman, Turning Girls Into Women: Re-Evaluating Modern Statutory Rape Laws, 85 J. Crim.

⁵⁴ Dr Richard Gallagher, of New York University's Child Study Centre, "I see no reason not to believe that soon a substantial number of youths will be having intercourse in the middle-school years... It's already happening." Anne Jarrell, The Face of Teenage Sex Grows Younger, N.Y. Times, April 2, 2000, § 9, at 1. In a 1992 survey 70% of teens reported to be sexually active by 12th grade. (17 years of age)

⁵⁵ Charles W. Warren et al., Sexual Behaviour Among U.S. High School Students, 1990-1995, 30 Fam. Plan. Persp. 170, 171 (1998).

least 7.5 million incidents of Statutory Rape each year.⁵⁶ There are fifteen million teenagers “between the ages of thirteen and sixteen” in the United States and the studies show half of these teenagers actively engage in sexual acts. Since the sexual acts between the teenagers are prohibited by the Statutory Rape Laws, it therefore results in a higher number of incidents of Statutory Rape per year.⁵⁷ But this claim signifies an unsuitable statement of law as a review of state statutes makes evident that two adolescents of comparable age, involving in sexual act voluntarily, does not constitute a crime.⁵⁸ Almost in a number of thirty-eight States, voluntary sexual intercourse between adolescents is not “Statutory Rape”.⁵⁹ As well, many jurisdictions have promptly enacted provisions that permit exemptions from statutory rape.⁶⁰

Different mechanisms have been adopted by different states to keep away from the reach of criminal law, the mutual sexual acts between teenagers.

❖ AGE PROXIMITY CLAUSES

Some States set a minimum age bar but consider the differences between the age of the persons. For instance, in some states minors are allowed to have consensual sexual intercourse with persons within 3 years of their age and acts done with any person outside that permissible age limit are considered unlawful. The offence is said to be committed only when the defendant is a number of years older than the victim, generally the common age span requirement is three to four years.⁶¹

If we refer to **California** in that regard, the age of consent in the state has been set at 18. Therefore, engaging with a minor who is below the given age of consent is unlawful. But at the same time the prevailing societal trends have been taken into consideration and made a tiered framework for preventing sexual exploitation with minors. The framework has been set out in such a manner that the greater the age difference between the persons engaging in sexual intercourse, the greater the punishment and penalties awarded. For instance, if the age difference is less than 3 years with that of the age of the minor, then the person shall be guilty of misdemeanour.⁶² If the age difference is greater than 3 years, than the crimes is regarded as

⁵⁶ See Michelle Oberman, Turning Girls Into Women: Re-Evaluating Modern Statutory Rape Laws, 85 J. Crim. L. & Criminology 15 at 28-29 (1994).

⁵⁷ Id.

⁵⁸ Charles A. Phipps, Misdirected Reform: On Regulating Consensual Sexual Activity between Teenagers, 12 Cornell J. L. & Pub. Pol'y 373, 446 (2003)

⁵⁹ Id.

⁶⁰ Currently, there are only twenty states that do not have any age exception for their statutory rape laws otherwise referred to as an "age-gap" provision. AOC Chart for the States & D.C., The Age Of Consent, <http://ageofconsent.us/> (last visited Feb. 19, 2026) [hereinafter AOC Chart]. For example, Iowa's Romeo and Juliet exception decriminalizes sexual conduct between persons over the age of fourteen and anyone three years younger or less. Iowa Code Ann. §§ 702.17, 709.1, 709.3, 709.4(2)(c) (2008); see also Minn. Stat. §§ 609.342- 345 (1997) (allowing sexual activity between individuals within twenty-four months in age regardless of whether both have reached the age of consent); Tex. Penal Code Ann. §§ 21.11(b)(1), 22.011(e) (1997) (creating a Romeo and Juliet exception for individuals within three years age difference)

⁶¹ See Ala. Code §§ 13A-6-62(a)(1) (Lexis Supp. 2001) (two years); Alaska Stat. §§ 11.41.436(a)(1) (Michie 1996) (three years); Ariz. RV. STAT. § 13-1407(F) (West 2001) (two years); Colo. REV. STAT. § 18-3-402 (2001)

⁶² Misdemeanour is a crime punishable with lesser penalty. They are not as serious of crimes. Mostly punishable

a serious one, and the person shall be guilty of felony. If the age of the accused is more than 21 and the age of the minor is less than 16 years, then they are subject to even stricter penalties.

In **England and wales**, the age of consent is 16. If any person engages in sexual activity with a person less than 16 year of age then that person shall be criminally charged. The crime is one of felony. In 1885, the age of consent was raised from 13 to 16.

“If the crime is committed by a person who is in position of trust with a person who is incapable of consenting, then that person shall be held guilty under Sexual Offences Act. Generally, minors and disabled persons are viewed as persons incapable of giving consent.” **United Kingdom** recognizes the concept of ‘position of trust’ which India doesn’t.

Under the Sexual Offences (Amendment) Act 2000, the age of consent was set at 16. The law extended to whole of **UK**.⁶³ The age of consent took into consideration both heterosexual as well as homosexual acts. But for cases where any person holding position of trust, for example teachers, has sexual intercourse with a person of 16 or 17 years of age, the age of consent was raised to 18 for those specific cases.⁶⁴ The Sexual Offences Act 2003, laid down a special provision for protection of children below 12 years of age from sexual exploitation, which higher punishments, reaching up to imprisonment for life.⁶⁵ Children below 12 are not capable of consenting to any form of sexual activity, legally. Several demands and attempts have been made to reduce the age to consent to 15, but the same was rejected in 2013.⁶⁶

In **Scotland**, the similar kind of framework subsists. The age of consent is 16 for both the genders. The defence of consent to the person in cases of sexual intercourse with a girl between the age of 13-16, and the charge of rape is lowered down to that of a lesser offence.⁶⁷

❖ **ROMEO-JULIET EXCEPTIONS**

A departure from the strict liability⁶⁸ imposed by traditional Statutory rape laws criminalizing consensual sexual intercourse between adolescents has been witnessed in differ countries that are at the verge of enlarging the scope of privacy rights of minors by incorporating “Romeo and Juliet” exceptions.⁶⁹

The greatest story of young love, where two lovers couldn’t meet due to age-old hatred and

with fines.

⁶³ Age Of Consent To Sexual Acts In England And Scotland, Juvenile Law Centre, 18 May 2016, available at <http://www.juvenilelawcenter.com/age-of-consent-to-sexual-acts-in-england-and-scotland/>, last accessed on 25 May. 2018. (author’s name not mentioned)

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ Strict liability is the legal responsibility for the damages resulting from a crime regardless of whether guilt is established. Black's Law Dictionary 429 (9th ed. 2009)

⁶⁹ Wendy Koch, States Ease Laws That Punish Teens for Sex with Underage Partners, USA Today, July 25, 2007.

disagreement between the families of the two.⁷⁰ Shakespeare's tale was about two teenage lovers, Romeo and Juliet, who extremely loved each other but were put into a compelling situation, either to choose their family or their love that resulted in their separation.⁷¹

In present day context, the present laws would also become an additional hinderance as both of them fell below the age of sexual consent. Romeo would not be able to consent to any kind of sexual act as her consent would form no meaning and would be wholly immaterial. In most of the jurisdictions, perhaps Romeo and Juliet would be prosecuted for violating the laws for the protection of the minors, as the law doesn't shield this modern-day fairy tale. Countries like India require that such cases of Romeo and Juliet, be transferred to the court of Juveniles.⁷²

The benefit of adoption of Romeo and Juliet extends to minors' right to privacy that allows them to choose to consent to sexual acts and not being subjected to prosecution. While the said exception has been accepted and adopted by different states, India is nowhere close to allowing such exemptions.

Thus, instead of ignoring this kind of ideology as a whole, the legislation must be drafted bearing a reflection of changing cultural trends of teenage sexuality, allowing for some enlargements in the areas where teenage consensual sexual conduct should be accepted and decriminalized.⁷³

Thus, a legislation in absence of a Romeo and Juliet exception, "applied to teenagers engaging in consensual sex with one another is an unfortunate and misguided attempt to enforce morality through legislation."⁷⁴ There's a need for reform in Indian Criminal law, considering the ever-changing discourse on teenage sexuality and the inherent recklessness in teenage persona, which would not only help the State to protect the interest of these vulnerable minors but also provide a safe environment free from police harassment and other stigmatization that is caused by criminal law, to explore their sexuality.⁷⁵ This thoughtlessness of the adolescents, taken together with the societal influences forms an important aspect of ever-increasing sexual desires among adolescents, that must not escape from the sight of legislator. The said influence of societal factors on the teenage sexuality has been best doled out comprehensively in the next chapter.

⁷⁰ Steve James, *Romeo and Juliet Were Sex Offenders: An Analysis of the Age of Consent and a Call for Reform*, 78 UMKC L. REV. 241, 241 (2009)

⁷¹ William Shakespeare, *Romeo and Juliet*, in *The Norton Shakespeare* (Stephen Greenblatt et al. eds., 1997)

⁷² Protection of Children from Sexual Offences Act, 2012

⁷³ Jordan Franklin, *Where Art Thou, Privacy: Expanding Privacy Rights of Minors in Regard to Consensual Sex: Statutory Rape Laws and the Need for a Romeo and Juliet Exception in Illinois*, 46 J. Marshall L. Rev. 309 (2012)

⁷⁴ Emily J. Stine, *When Yes Means No, Legally: An Eighth Amendment Challenge to Classifying Consenting Teenagers as Sex Offenders*, 60 DePaul L. REV. 1169, 1174 (2011)

⁷⁵ Michelle Oberman, *Girls in the Master's House: of Protection, Patriarchy and the Potential for Using the Master's Tools to Reconfigure Statutory Rape Law*, 50 DePaul L. REV. 799, 825 (2001).

CONCLUSION

Reformations in the Indian Criminal justice system are much needed. The culture of ignorance of external influences associated with an act by the legislators while drafting and enacting legislations, needs alteration. Albeit it is easy to say. Much challenging and difficult to achieve- or even to define. It must be noted that the governments may come and go but the citizens being governed and regulated form the soul of the country and will always be the ones at the receiving end.

Journalist Laura Berman's quote is paramount in expressing teenage sexuality: "whether we like it or not, sexual desire is part of being a teen."⁷⁶ Even though the Indian culture continues to preserve and value purity and innocence of a girl and chastity of childhood. However, there is a shift in these values as today the contemporaries do not aim to reduce the identity of women to her chastity and purity. The goal of a legal system must only be to protect women and girls from forced and non-consensual sexual intercourse instead of restraining their individual sexual autonomy by criminalising consensual sexual acts among adolescents and adults, without providing any exceptions. As emphasized by Noraval Morris and Gordon Hawkins⁷⁷ "we have too much of Criminal Law and this is a very bad thing. The focus and aim of the criminal law must only be to prevent harm to others and when it strays beyond this remit, into the areas of morality and social welfare, it exceeds its defined limits at the cost of neglecting its primary function, which results in gross injustice and wasteful spending."⁷⁸

There is a dynamic shift from the traditional values that our contemporary society and coming generations are embracing but evidently the shift has not been welcomed by Indian law makers and judges, which is why the judges are reluctant to strike down laws which are no more appreciated by the contemporaries of our society. There are questions and disagreements against the laws restricting the privacy rights of gays (the issue of section 377). These laws were drafted a century ago and the cultural, social and the mental drift since then has not been appreciated by the conservative judges and the law makers till date. The right of a man on her wife similar to that of a right over a property is still endured and can be clearly observed by Adultery law we have in The Indian Penal Code. If these disagreements and the plural voices will go unacknowledged or remain unheard by the judiciary and the legislator, then why do we call ourselves democratic in spirit?

The values are shifting and the youth is adapting to the increasing sexual activity of Indian teenagers, which has gradually increased since the 1980s and up to fifty percent of high school students are living a sexually active life.⁷⁹ This number is ever increasing and 15% is added to

⁷⁶ Laura Berman, True Love and Teenage Hormones Won't Wait, CHI. SUN-TIMES, Dec. 24, 2007, at 30.

⁷⁷ Robinson, P. (2014). The Structure and Limits of Criminal Law, London: Routledge, Chapter 8, 'The Overreach of Criminal Law.'

⁷⁸ Id.

⁷⁹ Danice K. Eaton et al., Youth Risk Behavior Surveillance-United States 2009, Centers for Disease Control and Prevention, MORBIDITY AND MORTALITY WEEKLY REPORT (June 4, 2010).

<http://www.cdc.gov/mmwr/pdf/ss/ss5905/pdf> (reporting that 46% of teenagers have had intercourse while 34.2% of

it just after graduation.⁸⁰ Usually, it has been discovered that “teenage boys become sexually active at age 16.9 and teenage girls at 17.4.”⁸¹ It is therefore desirable to lower the age bar to sixteen years to allow adolescents to engage in sexual acts without being prosecuted. As penalising the said act is not likely to cause deterrence, nor will it prevent the future incidences from occurring. The acrimonious reality of the contemporary world is that sexual acts do occur between minors and will continue to occur. No law can prevent them, but only thing the law can do to these mischievous children is to prosecute them.

After indicating the complications and difficulties with the POCSO Act and the Statutory Rape laws, it is evident that there is a need for reform. The rationale as mentioned to support the reformed system, will only be effectuated by the necessary law reforms. In this while it becomes pertinent to take a practical and comprehensive approach that will definitely repair the complexity in the system created and the faults in the construction and the implementation of the contemporary age consent laws for minor girls.

Apart from retaining the pre-existing age of consent, there are certain other things worth paying attention. As stated by Michelle Oberman:

Because for Adolescents, it is somewhat experimental in nature to engage in sexual intercourse, it becomes significant to acknowledge that mistakes will occur.⁸²

She calls it a “learning curve”.⁸³ And where in cases it is evident that the conduct of the teenage boy and the girl is the result of that learning curve, then it seems totally unjustified to title the teenage boy as a criminal offender, where in reality the sexual act was consensual, uncoerced. But the contemporary Rape laws continue to label it as ‘Rape’. The quintessence of the Strict Liability offense is that the state of mind of the defendant becomes irrelevant. The fact that the victim appears to give consent is totally out of consideration and the defendant’s conduct under all possible circumstances become wrongful in the eyes of law.

Thus, it implies that POCSO Act aimed at strengthening the legal provisions for the protection of the children from sexual abuse and exploitation and their empowerment.⁸⁴ But with the introduction of such provisions, the law enforcement agencies would subject children to harassment. Therefore, it is somehow implicit that such a situation would fail the entire motive of the State for which the POCSO Act was enacted and amendment of the provisions concerning the offence of Rape was brought under IPC as the same would form the reason for teenage unjust harassment. Thus, there is a need for an amendment to reduce the age for consensual sex.

teenagers surveyed were sexually active, which was defined as having had sexual intercourse with at least one person in the last three months).

⁸⁰ Id.

⁸¹ In Brief: Fact Sheet, Sexual and Reproductive Health: Women and Men, ALAN GUTTMACHER INST. (Oct. 2002), <http://www.guttmacher.org/pubs/fbl0-02.html>.

⁸² Frances Olsen, Statutory Rape: A Feminist Critique of Rights Analysis, 63 TEX. L. REV. 387, 401-02.

⁸³ Id.

⁸⁴ The Protection of Children from Sexual Offences Act, 2012, Ministry of women and Child Development PRESS INFORMATION BUREAU, GOVT. OF INDIA (22 May, 2012). <http://pib.nic.in/newsite/erelease.aspx?relid=84409>

Considering the ongoing situation, in order to favour the child rights and ascent the contemporary laws in consonance with the International trend, it turns out to be significant that the age should be retained back to 16 (pre-existing) to remove the absurdity in the provision and to ensure that the lawmakers achieve their goals while respecting sexual autonomy of the adolescents. Legislators should frame only such laws that aim at eliminating prospective difficulties rather than creating new ones. In the light of the same, as quoted by Professor Conrad's⁸⁵ "a law which can effectively deal with absurdities in future is the best law." Therefore, "It's the time to abandon the myth of age of consent and the reduce the threshold of legal sex."⁸⁶

Bearing in mind the biological structures would be of significant value as it is an absolute truth that girls mature physically earlier than boys but boys enhance their sexual knowledge out of curiosity and show earlier involvement in sexual acts and also more vigorously than girls in all forms. **There is a need for education about sex and laws regulating teenage sexuality.** The Survey by the author shows the 'contemporary scenario of sex knowledge' among adolescents. In a situation where we have terrible consequences of not possessing knowledge about the laws hanging like a sword just above their heads regulating their sexuality, there is utmost need to educate them about the changes their body undergo, its consequences along with development of sexual urges and the laws that have been structured so broadly, encompassing all forms of sexual acts including consensual sexual acts between adolescents as well. Thus, there is a need for identification of certain important aspects relating to teenage sexuality such as: (i) along with the steps initiated by the state there is a need for community support for such programmes intending to create 'self-discipline and abstinence' among adolescents towards sexual acts, (ii) to establish effective learning methodologies confining to not only sex education but also about the laws for the time being in force regulating their sexuality.

There are surveys that show that adolescents resort to media, books, magazines and other internet sources to understand their sexuality. However, these options do not bring accurate results for them.⁸⁷ They are exposed to a lot of unnecessary sexual content which works rather for acceleration of their sexuality instead of gaining information regarding the development and growth of reproductive process. In such a situation, it is not only desirable but also of absolute necessity to incorporate all sex-related information and the laws regulating teenage sexuality as "early adolescence is a period of transition, including for some, initiation for sexual activity."⁸⁸

This may work as an alternative to the criminal law which at present is of no deterrent value

⁸⁵ Professor Dietrich Conrad, formerly head of the law department, South Asia Institute of the University of Heidelberg, Germany, Lecture at the Law Faculty of the Banaras Hindu University: "Implied Limitations of Amending Power" (1965)

⁸⁶ William Saletan, Rethinking the age of Sexual Consent, Sept. 27, 2007, available at http://www.slate.com/articles/health_and_science/2007/09/the_mindbooty_problem.html, last visited on 24 Feb. 2026

⁸⁷ Tripathi, Niharika, and T.V. Sekher. "Youth in India ready for sex education? Emerging evidence from National surveys." PLOS one 8, no. 8 (2013): e71584.

⁸⁸ Kristin Haglund, Recommendations for Sexuality Education for Early Adolescents, Journal of Obstetric, Gynecologic, and Neonatal Nursing, Vol 35, No. 3 (May/June 2006): 369-375.

for these unaware children.

Thus, the Research evidence and findings very well support the premise that (a) the lawmakers must stop the culture of overlooking societal aspects influencing or encouraging teenage sexuality, and thereby, reduce the age of sexual consent from eighteen to pre-existing sixteen,

(b) the lawmakers must learn by adopting comparative methodology to incorporate close-in-age exceptions and holding a liberal view showing deference towards the sexual autonomy of adolescents, and (c) the lawmakers must come up with effective guidelines mandating incorporation of sex education and age of consent laws as a separate chapter in school curriculum holding some weightage in examination for making sure that the chapter is being taken up and taught by the teachers in the school effectually.

As the research has demonstrated the influence of societal factors on teenage sexuality and the need for right amount of consideration to be paid to these trends by the lawmakers. Furthermore, it is clear that both male and female adolescents ranging from 16 to 18 years of age are capable of attaining sufficient maturity to understand the nature of sexual acts as by the time they turn sixteen they are already exposed to such content by one way or the other.