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## REVISITING THE AGE OF CONSENT: A CRITICAL ANALYSIS OF LOWERING THE AGE FROM 18 TO 16

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### Abstract:

The age of consent has long been a subject of societal and legal debate. This paper offers a critical evaluation of the suggestion to lower the consent age from 18 to 16. Proponents contend that this adjustment is in line with the developing sexual consciousness and maturity of today's kids. They argue that it more accurately captures the realities of contemporary relationships and encourages sexual autonomy. This paper, however, also looks at the possible dangers and issues that could arise from such a transition.

Reducing the consent age to 16 is thought to recognise the ability of youth to make mature choices regarding their own bodies and relationships. Its supporters contend that it lessens the possibility of criminalizing consenting relationships between partners who are close in age. Additionally, it might promote more positive views towards sexual interactions by promoting candid discussions about consent and sex in families and educational institutions.

However, critics worry about the possibility of coercion and exploitation, especially when elderly couples are involved. They fear that 16-year-olds might not be emotionally or cognitively mature enough to fully understand the consequences of their decisions. The legal ramifications of consent age and how it interacts with statutory rape legislation are similarly complicated.

This critical study, with reference to the The Protection of Children from Sexual Offences Act or POCSO, explores these divergent points of view, highlighting the significance of a knowledgeable and impartial approach when thinking about a change in the legal age of consent. It emphasizes how important it is to provide age-appropriate knowledge, thorough sex education, and a safe space for young people to make decisions about their sexual lives. In the end, the argument for lowering the consent age necessitates carefully weighing the effects on young people, interpersonal relationships, and society at large.

**Keywords:** Consent, Sexual Autonomy, Mature, POCSO, Sex Education

### Statement of problem:

It is contended that the age of consent at 18 in POCSO act is violative of the bodily autonomy of individuals belonging to the 16 to 18 age group. Age of consent is a complex legal and societal issue that has been debated over for years. The POCSO act has provided that the legal age to indulge in sexual activities is 18 but this has been frowned upon. Various arguments have been made asserting that maintaining the age of consent at 18 stigmatizes and criminalizes

sexual activities.

### Research objective:

How does reducing the age of consent from 18 to 16 under POCSO act protect the bodily autonomy of individuals of the age group 16 to 18?

### Research methodology:

1. Methodological approach – this study uses a doctrinal approach where pre-

existing data and literature will be analyzed to come to the consensus on reducing the age of consent.

2. Data collection - The method of data collection is qualitative method and the grounded theory will be incorporated where pre existing data will be collected and analyzed
3. Data analysis - the method of data analysis is textual analysis. There for various articles and case laws regarding the research topic will be analyzed

### Introduction:

The legal notion of the age of consent, which establishes the age at which people are deemed competent to give informed and voluntary consent to participate in sexual behaviour, has long been a source of discussion and contention in communities all over the world. The right age for consent is a complicated matter that is impacted by changing societal norms and attitudes on relationships and sexuality in addition to legal, ethical, and cultural factors. The idea to lower the consent age from 18 to 16 is examined critically in this essay. This move has been the subject of debate and reform in a number of jurisdictions. The legal notion of the age of consent, which establishes the age at which people are deemed competent to give informed and voluntary consent to participate in sexual behaviour, has long been a source of discussion and contention in communities all over the world. The right age for consent is a complicated matter that is impacted by changing societal norms and attitudes on relationships and sexuality in addition to legal, ethical, and cultural factors. The idea to lower the consent age from 18 to 16 is examined critically in this essay. This move has been the subject of debate and reform in a number of jurisdictions.

The denial of sexual autonomy to minors also

gains significance due to section 19 of the POCSO act. This section mandates healthcare professionals to report cases of sexual abuse, either in the past or anticipated, to the police. Consequently when a minor seeks medical assistance for contraception, abortion or antenatal care, healthcare providers are obligated to report the case to police, irrespective of the minors wishes. This not only strips the individuals of control over their essential personal decisions but also violates their informational privacy.<sup>736</sup>

The goal of the paper is to navigate the complex web of debates and issues surrounding the proposal to lower the consent age from 18 to 16. It emphasises the significance of taking a well-informed and balanced stance, taking into account the rights and vulnerabilities of young people as well as the potential ethical and legal repercussions of making such a shift. It will examine the psychological, legal, and social ramifications of lowering the consent age and provide a critical evaluation of the possible benefits and drawbacks for young people, relationships, and society at large in order to provide readers a thorough grasp of this complicated topic.

### An introduction to The POCSO Act:

India's 2012 enactment of the Protection of Children from Sexual Offences (POCSO) Act is a crucial legislative reaction to the widespread problem of child sexual abuse in the nation. There was a clear legal vacuum concerning sexual offences against minors prior to the passage of this legislation, making the children susceptible to abuse.

Sexual offences against minors were mostly governed by the Indian Penal Code (IPC) prior to the POCSO Act. These laws, however, fell short of meeting the specific requirements and vulnerabilities of child victims, nor did they provide a full coverage of sexual offences directed at children. This made the necessity for

<sup>736</sup> CHANDRA, A. (2017). Privacy and Women's Rights. *Economic and Political Weekly*, 52(51), 46–50.

legislation specifically aimed at shielding kids from sexual abuse urgent.

International agreements and guidelines also affected the formulation of the POCSO Act. India is party to the Convention on the Rights of the Child (CRC) of the United Nations, which places a strong emphasis on the need to shield children from sexual abuse and other types of violence. One way to see the POCSO Act is as a legislative reaction to India's adherence to these global norms.

The POCSO Act was ratified by the Indian Parliament by a unanimous vote in June 2012, and it became operative on November 14 when the President granted his assent. The principal aim of the legislation is to establish a thorough legal structure to address sexual offences committed against minors under the age of 18, guaranteeing their safeguarding and recovery.

The POCSO Act's acknowledgement of the significance of kid-friendly legal processes is one of its main characteristics. It contains provisions for the creation of special courts to handle matters involving child sexual abuse in a prompt and considerate manner. These courts seek to foster a caring and compassionate atmosphere while lessening the trauma that child victims endure during court procedures.

The use of a minor for pornographic purposes is one of the many offences covered by the Act, along with non-penetrative sexual contact and penetrative sexual conduct. In addition, it makes efforts and encouragement to conduct these crimes illegal, emphasising the importance of taking precautions.

In addition, the POCSO Act includes measures requiring the reporting of child sexual abuse, making it legally required for anybody who becomes aware of such an offence to notify the appropriate authorities. This encourages society's need to protect children while also making prompt intervention easier.

The implementation of the POCSO Act in India constitutes a big step towards acknowledging and treating the terrible issue of child sexual

abuse in the country. It has helped bring about greater awareness, harsher punishments for violators, and the creation of a more encouraging atmosphere for victims who are children. To guarantee the effective protection of minors from sexual offences in India, however, implementation problems such as the requirement for increased public awareness and capacity-building for law enforcement and judicial institutions, still need to be addressed.

### Comparing age of consent with that of other countries:

The regulations pertaining to age of consent vary greatly throughout nations, reflecting differences in social, cultural, and legal standards. The age of consent in India is eighteen, implying that a person has to be at least that old to lawfully have sex with another person. Examining age of consent laws in a few other nations is crucial to provide a comparative viewpoint, as each has its own distinct legal system and social norms.

The different States in the United States have the right to define their own age thresholds for consent, and these laws differ from one state to the next. The typical consent age is between 16 and 18 years old, yet some states have "close-in-age" exceptions that permit adolescents to have sex as long as there is a specific age gap. People need to be aware of the laws that apply to their state because the differences in laws might cause misunderstanding.

The legal age of consent in the United Kingdom is sixteen. It is lawful for anyone 16 years of age and older to have sex. This comparatively low consent age is a result of a compromise struck between the necessity to safeguard children from sexual exploitation and the recognition of youth autonomy. To protect children's rights, the UK has enacted extensive legislation prohibiting sexual offences involving minors.

The legal age of consent in Germany is likewise 14. That being said, it is permissible to engage in

sexual relations with a juvenile (14–15 years old) if the age gap is less than two years, underscoring the significance of "close-in-age" exclusions. This method shields young people from possible exploitation while acknowledging their degree of maturity.

Japan has one of the lowest consent ages in the world, at 13. Nonetheless, there are special legal protections against sexual exploitation for minors in Japan. For instance, it is unlawful to engage in sexual activity with anyone younger than 13 and to use child pornography.

The legal age of consent in Canada is sixteen, although there are "close-in-age" exemptions known as "Romeo and Juliet" statutes. These exclusions spare teenagers who are nearly of marriageable age from facing legal repercussions for having sex. The goal of the age of consent and comprehensive sexual offence regulations is to safeguard youth rights while acknowledging the complexity of adolescent interactions.

There are notable differences when comparing the age of consent regulations in India and other nations. Compared to nations like the UK and Germany, which have lower standards at 16 and 14, respectively, India's age of consent, at 18, is rather high. Some countries, like the United States and Germany, have "close-in-age" exclusions, which are an attempt to strike a compromise between protecting children and acknowledging the autonomy of adolescents.

### **Arguments in favour of reducing the age of consent:**

Proponents of lowering the consent age in India from 18 to 16 make strong cases supported by data and research, therefore this is a matter that should be carefully considered. Adolescent autonomy is recognised as one of the main arguments in favour of lowering the consent age. According to research, many young individuals have acquired the cognitive ability to make mature judgements about their bodies and relationships by the time they are sixteen years old. Adolescents at this age are capable

of comprehending the ramifications of their decisions and their outcomes, according to developmental psychology studies. Reducing the consent age recognises this adulthood and gives young people the freedom to make their own sexual decisions, encouraging a sense of accountability and ownership.

Young people are increasingly engaging in sexual activity at younger ages as a result of changing societal standards and attitudes around sexuality. Studies reveal that the average age at which people start having sex has been falling in numerous countries, including India. Reducing the consent age to 16 is in line with the actual experiences of young people and reflects these shifting realities. By promoting candid conversations about sex and consent, this alignment can lessen the gap between the law and everyday conduct.

The present 18-year-old consent age may make age-appropriate relationships illegal, especially if there is not much of an age gap between the partners. Studies show that most teenagers have sex with classmates who are in a similar age group. Lowering the consent age keeps young people in age-appropriate relationships from facing needless legal repercussions by lowering the likelihood of prosecuting those participating in consensual relationships where the age difference is small.

Reducing the consent age can be an effective way to encourage comprehensive sex education. The benefits of sex education programmes, which provide youth with information on safe sex, consent, and sexual health, are regularly highlighted by research. Young people are better able to make decisions when they have access to reliable and age-appropriate information. Reducing the consent age can be combined with a stronger focus on comprehensive sex education to make ensuring that young people have the skills and information needed to engage in responsible sexual behaviour.

Studies indicate that the legalisation of sexual behaviour performed by minors before they can

give informed permission may exacerbate emotions of stigma and shame in young people. These emotions may discourage them from getting the help, support, or medical attention they require. Reducing the age of consent might lessen the social stigma attached to adolescent sexual behaviour, increasing the likelihood that young people will look for the help and resources they need when they need it, such as counselling and reproductive health services.

Particularly when it comes to the interaction between statutory rape legislation and the age of consent, the current legal system might result in complicated and difficult situations. According to research, the judges, law enforcement, and legal experts may become confused as a result of this legal overlap. By eliminating uncertainty and fostering a better comprehension of age-specific legal requirements, lowering the consent age to 16 streamlines the legal system. By focusing on situations that actually include exploitation and abuse, this clarity might ensure that statutory rape laws are administered more successfully.

Encouragement of a lower age of consent can help young people develop positive attitudes about sexuality. Studies reveal that candid discussions about consent and sex in communities, schools, and families are critical in forming young people's conceptions of sexual relationships. By encouraging society to have these crucial discussions, lowering the consent age can help to lower the likelihood of exploitation, false information, and toxic relationships.

Addressing concerns of gender and sexual orientation equality may also benefit from lowering the consent age. According to research, young people from marginalised groups related to their gender identity and sexual orientation may have additional difficulties, such as prejudice and limited access to services. A lower consent age can help ensure that all young people, regardless of gender or sexual orientation, have more equal

access to services and legal protections.

The Allahabad High Court has emphasized that the Prevention of Children from Sexual Offences (POCSO) Act should not be used to criminalize consensual romantic relationships between adolescents. The court stressed that the Act's primary purpose is to protect children under the age of eighteen from sexual exploitation. The court noted that the POCSO Act is currently being misused and has become a tool of exploitation of adolescents. It suggested that consensual relationships born out of love should be considered when granting bail in such cases. The court also highlighted the importance of not ignoring the victim's statement and preventing undue suffering for the accused. These observations were made by Justice Krishan Pahal while granting bail to Mrigraj Gautam alias Rippu.

"POCSO was formulated to protect children under the age of 18 years from sexual exploitation. Nowadays, more often than not, it has become a tool for their exploitation. This Act was never meant to criminalise consensual romantic relationships between adolescents. However, this has to be seen from the facts and circumstances of each case".<sup>737</sup>

The Calcutta High Court has made a groundbreaking legal recommendation, proposing a reevaluation of the interpretation and enforcement of the Protection of Children from Sexual Offences Act (POCSO Act). It suggests that consensual sexual acts involving adolescents aged 16 and above should no longer be considered criminal offenses, marking a significant shift in the legal treatment of such cases.<sup>738</sup>

In conclusion, there are several reasons to support lowering India's consent age from 18 to 16 years old. These include respecting an

<sup>737</sup><https://www.hindustantimes.com/cities/others/pocso-act-is-not-meant-to-criminalise-adolescent-consensual-relationships-allahabad-hc-101698863698851.html>

<sup>738</sup><https://www.thehindu.com/news/national/calcutta-hc-calls-for-decriminalisation-of-consensual-sex-involving-adolescents-above-16-years/article67443374.ece>

individual's right to autonomy over their body, being in line with shifting social norms, avoiding the criminalization of relationships that are appropriate for their age, promoting gender and sexual orientation equality, addressing legal complexities, encouraging comprehensive sex education, reducing stigma and shame, and fostering positive attitudes towards sex. These arguments, which emphasise the possible advantages of such a transformation for young people and society at large, are supported by data and research. It is crucial to take into account these considerations within the larger framework of social and legal change, keeping in mind the rights and well-being of youth as they make their way towards adulthood.

#### **Arguments against reducing the age of consent:**

There are compelling arguments for and against lowering the consent age from 18 to 16 under India's Protection of Children from Sexual Offences (POCSO) Act. The safety of children and their possible exploitation is one of the main issues raised by this modification. We will examine the reasons against reducing the consent age in this part, emphasising the worries and anxieties about child abuse and safety.

One of the main counterarguments is that, because of their inexperience, 16-year-olds may still be extremely susceptible to exploitation, manipulation, and coercion. Critics contend that not every person at this age possesses the emotional and psychological development needed to make mature decisions about sexual engagement. They are more likely to be swayed by older partners or peers, which could put them in circumstances where they have sex that they don't completely understand or consent to.

Lowering the consent age, according to critics, may make grooming easier—a technique in which an adult establishes an emotional bond with a child in order to exploit them sexually. The legalisation of sexual interactions between 16-

year-olds and older people raises concerns about potential predators taking advantage of this legal shift to prey on impressionable teenagers.

Reducing the consent age could result in more occurrences of sexual abuse and exploitation. This might happen as a result of the increased difficulty in identifying and prosecuting instances in which older people take advantage of the innocence and inexperience of 16-year-olds. There is concern that the legal system may not be sufficiently prepared to adequately safeguard these young people.

Opponents contend that 16-year-olds might not be emotionally and psychologically developed enough to effectively withstand compulsion. They may encounter circumstances where pressure from older partners forces them to participate in sexual activities against their choice, which can result in non-consensual sex.

Potential sexual connections among peer groups where there may be notable age gaps are a cause for additional concern. Opponents contend that reducing the consent age could unintentionally justify or validate sexual interactions between 16-year-olds and much older members of their peer group. Such connections may give rise to problems regarding power dynamics and ethical issues.

Some are concerned that if the consent age is lowered, attention may be diverted from providing adolescents with thorough sex education. It may be less important to emphasise giving adolescents the information and skills they need to make responsible and informed decisions regarding sexual activity if it is assumed that they can give informed consent at the age of 16.

There are worries that lowering the consent age could put too much pressure on teenagers to mature emotionally and physically too soon. With shifting social norms and legal requirements, younger teens may feel pressured to start having sex before they're ready.



Decreased Age of consent, according to critics, might make child protection initiatives more difficult. To take into account the new era of consent, the current laws and regulations protecting kids from sexual exploitation and abuse would need to be reevaluated and possibly changed. There may be gaps in protection while this procedure takes place.

It may be difficult for law enforcement and legal agencies to enforce the 16-year-old consent age. In situations where there is uncertainty or disagreement, establishing the legitimacy of the consent and confirming the minor's age can be very difficult tasks.

Some people also contend that principles and societal standards ought to be taken into account. A lower age of consent might not be acceptable to all populations in India due to the country's different cultural and socioeconomic settings. In certain areas, this shift may cause difficulties and cultural conflicts.

In conclusion, worries about child safety and possible exploitation are at the core of the counterarguments against lowering the age of consent under the POCSO Act in India from 18 to 16. Critics highlight a number of concerns, including the influence on comprehensive sex education, the risk of coercion, the vulnerability of younger teenagers, and the possibility of grooming. Any proposed adjustment to the age of consent in the Indian legal system must take these concerns into serious account. It is a complicated and delicate issue that calls for careful consideration and debate to strike a balance between young people's rights and their safety from exploitation and abuse.

### **A detailed analysis of both arguments for and against:**

It is clear from a careful examination of the reasons for and against India's decision to lower the consent age from 18 to 16 that this change is both necessary and effective. There are strong arguments against lowering the consent age to

16 and in favour of keeping it at 18, but there are also strong arguments in favour of keeping it at 18. Lowering the age of consent is supported by research because it recognises the autonomy of adolescents, conforms to evolving social norms, keeps age-appropriate relationships from being criminalised, promotes gender and sexual orientation equality, mitigates stigma and shame, addresses legal complexities, and fosters positive attitudes towards sexuality.

Based on empirical data and international practises, these elements collectively imply that a lower consent age is in line with young people's rights and changing needs. It opens the door for comprehensive sex education that provides young people with the information and tools they need to engage in responsible sexual behaviour, promotes candid conversations about sexual relationships, and works to eliminate unwarranted legal repercussions for consensual partnerships. India can create a more egalitarian, knowledgeable, and inclusive society where young people's rights are upheld and they are given the freedom to make decisions about their own bodies and relationships by welcoming this shift. By doing this, India can take a step towards establishing a more progressive legal system that better represents the realities of contemporary relationships and the sexual liberty of its youth, thereby improving the wellbeing of the country's youth.

### **Case laws and precedents:**

1. Ashik Ramjan Ansari v. The State of Maharashtra and anr on 10th July 2023 2023 SCC OnLine Bom 1390

Majority and minority opinion - decision of the special learned judge:

The accused and the prosecutrix were involved in a love affair and in cross examination she specifically admitted about the same. With evidence on record the learned special judge has rightly derived a conclusion that there is no evidence led by the prosecution establishing that the accused has taken away her or enticed

her. The judge though derived a conclusion that it is a case of consensual sex found the consent immaterial. Since the prosecutrix was minor the judge recorded a finding of guilt against the accused and found him guilty of committing the offence under section 376 of IPC as well as sections 4 and 6 of the POCSO act.

Decision of M.M. Salgaonkar – Minority opinion: He was unable to concur with the conclusion derived from the learned judge merely on the ground that though the sexual intercourse was consensual, but the girl was minor and based on this aspect, the appellant, in his opinion, should not suffer the sentence in case of consensual sex.

## 2. Sabari and anr v. The inspector of Police and ors

The accused in this particular case was set free on the lack of evidence. The court observed that when the girl below 18 years is involved in a relationship with the teenage boy or little over the teenage, it is always a question mark as to how such a relationship could be defined, though such relationship would be the result of mutual innocence and biological attraction. Such a relationship cannot be construed as an unnatural one or alien to between the relationship of opposite sexes.

### Conclusion:

This research has conducted a critical analysis of the intricate and diverse matter of reevaluating the consent age, with a particular focus on the proposal to reduce it from 18 to 16. We have examined the reasons for and against this move throughout this study, considering aspects related to law, society, psychology, and ethics.

Although many who support reducing the consent age make the case for greater autonomy, individual rights, and matching the legal age to biological development, serious questions about child safety, possible exploitation, and mental preparedness still need to be answered. International norms and the

social and cultural background of every area contribute to the complexity of this issue.

Given these complications, it is obvious that any choice on the consent age needs to be carefully considered, supported by a wealth of data, and kept the interests of teenagers at the forefront. We have to strike a careful balance between protecting young people from harm and upholding their rights. The age of consent debate ought to develop further in tandem with society's advancements and the discovery of fresh data. With a shared commitment to the rights and well-being of all adolescents, it is a conversation that calls for continued participation from policymakers, academics, activists, and members of the public. In the end, the right course of action should emphasise making well-informed, fact-based judgements and a dedication to protecting our society's most vulnerable citizens.