The Debate on Age of Consent

***Mains**: GS-II – Polity & Governance*

Why in News?

Recently, the Supreme Court, in State of Uttar Pradesh vs Anurudh & Anr., noted that the POCSO Act (2012) is increasingly misused in cases of consensual adolescent relationships where one partner is a minor.

What is the evolution and current law on age of consent in India?

- **Age of consent –** It refers to the ***legally defined age*** at which an individual can consent to sexual activity.
- **Age of Consent Act, 1891** – It raised the age of consent for sexual intercourse for all girls, married or unmarried, *from 10 to 12 years* in all jurisdictions.

  *The **age of consent** is distinct from the **'minimum age of marriage'**, which under the Prohibition of Child Marriage Act, 2006, is 18 for females and 21 for males.*

- **Criminal Law (Amendment), 2013** – Section 375 of IPC defines 'rape' and, prior to 2012, fixed the age of consent at 16 years, after that it ***aligned with 18 years under POCSO***.
- **Mandatory Reporting** – Section 19 of the POCSO Act mandates that anyone who aware/suspecting an offence must report it to local police or Special Juvenile Police Unit.
- **Bharatiya Nyaya Sanhita (BNS), 2023** – Section 63 defines rape to include sexual acts with or without consent if the woman is under 18.
- **Current position –** In India, the ***age of consent is 18 years***, as established by the gender-neutral POCSO Act.
- Anyone below this age is classified as a "child", making their consent to sexual acts legally irrelevant.
- Consequently, sexual acts with minors are treated as "statutory rape", based on the legal presumption that children lack the capacity to give valid consent.

What is the parliamentary stance about the issue?

- **Consistent rejection** – The Parliament has ***consistently rejected*** proposals to lower the age of consent.

- **Justice Verma Committee, 2013** – It had recommended keeping age of consent at 16 under IPC Section 375, but Parliament chose to raise it to 18 in 2013, aligning with POCSO.
- **240th Standing Committee Report, 2011** – It rejected recognising minor consent in the POCSO Bill, stating that willingness or maturity was legally irrelevant.
- **167th Standing Committee Report, 2012** – It supported raising the age to 18 and opposed any 'close-in-age' exemption.
- **283rd Law Commission's Report, 2023** – It warned that reducing the age of consent would render POCSO a "paper law", undermining efforts to combat child marriage, prostitution, and trafficking.

What are the judicial views on age of consent?

- **State versus Hitesh (2025)** – The Delhi HC held that adolescent love deserves respect if it is consensual and free from coercion, highlighting the rights of young people in relationships.
- **Ashik Ramjaii Ansari versus State of Maharashtra (2023)** – The Bombay HC held that sexual autonomy includes both the right to choose consensual activity and the right to be protected from sexual aggression, recognising both is essential to uphold human dignity.
- **The SC's view on August 20, 2024** – It reaffirmed POCSO's strict stance on minor consent but used Article 142 (extraordinary jurisdiction) to avoid sentencing, stressing the ruling was case-specific and not precedent.
- **Mohd. Rafayat Ali versus State of Delhi, 2025** – The Delhi HC, asserted that "consent is legally immaterial" under POCSO if the victim is under 18.

What are the arguments in favour of changing the age of consent to 16?

- **Surge in POCSO cases –** In recent years, the debate on age of consent has intensified, due to a surge in POCSO cases involving adolescents aged 16-18, where the girl often testify the relationship was consensual.
- **Advocates views –** They argue that the current law fails to recognise adolescent sexuality, infringing on the autonomy of 16-18-year-olds capable of giving mature consent.
- They stress POCSO was meant to protect children from abuse, not criminalise consensual romantic relationships among older adolescents.
- **Ground realities of 'adolescent sexual behaviour'**
  - **NFHS-4 (2015-16)** – It shows that 11% of girls had their first sexual experience before age 15, and 39% before 18.
  - **Enfold study (2016-2020)** – It analysed 7,064 POCSO judgments across Assam, Maharashtra, and West Bengal & found 24.3% involved romantic relationships, 82% of victims refused to testify against the accused.
  - **Enfold-Project 39A study** - It examined 264 cases under Section 6 (aggravated penetrative sexual assault) of POCSO, found 25.4% involved in consensual relationships.
- **Call for Nuanced Legal Approach** – Many experts advocate recognising consent for adolescents over 16, with safeguards against coercion, exploitation, or abuse of

authority.

- **Shift in Focus –** Move from blanket criminalisation to open dialogue on sex education, relationships, and consent.
- **Global Practices** – In many Western democracies, the ***consent age is 16***, with safeguards against coercion and abuse.
- Countries like the ***U.K., Canada, and several EU nations*** use 'close-in-age' exemptions or the 'Romeo-Juliet clause' to avoid criminalising consensual teenage relationships.

What are the arguments against changing the age of consent?

- **Risk of Weakening Deterrence** – Many believe that lowering the age of consent may reduce the law's deterrent power, allowing trafficking and abuse under the cover of "consent."
- **Bright-Line Rule** – The law treats everyone under 18 as unable to consent, creating a clear zone of protection under POCSO and BNS.
- **Judicial Discretion vs Legal Exceptions** – Opponents agree courts may use discretion in rare consensual adolescent cases, but caution against making such exceptions part of the law.
- **Risk of exploitation** – Abuse often comes from trusted figures like family members, neighbours, teachers, or caregivers.
- A 2007 study by the Ministry of Women and Child Development found that over 50% of abusers were known to the child.
- **Limits of Child Consent –** Children often lack emotional independence to resist or report abuse, making any claim of consent meaningless.
- **Risks of Diluting the Law** – Weakening the law could legitimise coercion, suppress disclosures, and undermine constitutional and statutory child protection commitments.
- **Concern of premature sexual activity –** Lowering the age may push younger children into sexual activity before they are emotionally mature enough to understand its consequences.
- **Ground realities** – Data from studies shows that many cases stem from consensual romance weaponised by parents which clog courts, erodes trust and fail to address root issues like poor sex education or cultural taboos around dating.
- **Real Challenge** – It involves not merely analysing whether the age of consent should remain 18 or fall back to 16, but how the law can be recalibrated to distinguish genuine adolescent relationships from exploitative ones.
- The blanket reduction risks diluting child protection, yet the current blanket rule unjustly criminalises consensual adolescent intimacy.

What is the way forward?

- **Role of Parliament & SC** – Reducing age of consent lies within Parliament's jurisdiction.
- The SC must clarify the interpretational divide between the statutory framework and HC rulings, ensuring consistency for investigating agencies and lower courts.
- **Beyond Legal Framework** – Laws alone cannot address the complex realities of adolescent life.

- **Need a holistic approach** – True change requires sex education, autonomy, health services, fair law enforcement, and a supportive society for adolescents.
- **Close-in-Age Exemptions** – Instead of a blanket reduction, introduce 'close-in-age' exemptions for 16-18 years, within a 3-4 years gap, coupled with mandatory judicial reviews to detect coercion or abuse.
- **Strengthening Support Systems** – Expand school programs on healthy relationships, consent, and emotional resilience, which promote awareness to help adolescents navigate love safely.
- **Balanced Outcome** – Respects adolescent autonomy without weakening child protection and reduces misuse of law while fostering a more empathetic and supportive society.

Reference

[The Hindu | Should the age of consent be lowered?]

