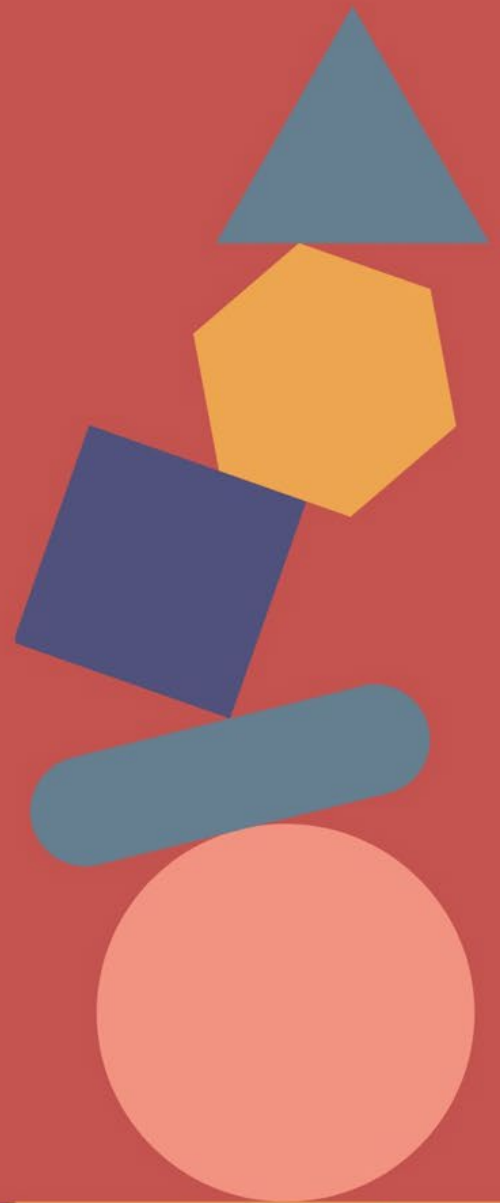


# Balancing Protection and Autonomy: Rethinking the Criminalisation of Adolescent Sexuality

**Executive Summary (English)**

*September 2025*





# **Balancing Protection and Autonomy: Rethinking the Criminalisation of Adolescent Sexuality**

**September 2025**

**Executive Summary (English)**



**Endorsed by**

**National Coalition Advocating  
for Adolescent Concerns**

**NCAAC**

# BALANCING PROTECTION AND AUTONOMY: RETHINKING THE CRIMINALISATION OF ADOLESCENT SEXUALITY

## *Executive Summary*

### *Context*

The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) raised the age of consent from 16 years to 18 years in India. The POCSO Act does not distinguish between exploitative and non-exploitative sexual acts and consent of a child is entirely irrelevant. Consequently, sexual acts involving persons under 18 years, even where they are factually consensual and non-exploitative, are offences punishable with high minimum sentences. The POCSO Act obligates persons or institutions with knowledge or apprehension of commission of an offence under the POCSO Act to report it, and failure to report commission is punishable.

Adolescence is universally recognised as a unique stage where physical, cognitive, emotional and hormonal changes take place and sexual exploration, is also a part of their developmental journey of understanding boundaries, and their identity. International standards urge States to support adolescents through this stage of growth and not penalise factually consensual and non-exploitative sexual activity among adolescents of similar ages. Empirical studies and public health surveys reveal that adolescent sexuality is a reality in India, with multiple studies based on judgements indicating that 15-27% of POCSO cases involve consensual relationships with adolescents. The criminalisation of such acts has been widely recognised as a problem by India's higher judiciary, the National Human Rights Commission, civil society organisations, and health experts. In 2023, the Law Commission of India acknowledged the adverse effects of blanket criminalisation, but expressed concerns that decriminalisation could weaken efforts to address child marriage, trafficking, and online harms faced by children.

### *Implication of Criminalisation*

Blanket criminalisation conflates factually consensual and non-exploitative sexual acts with rape and other sexual offences, disregards normative adolescent sexual development, the evolving capacities of adolescents, and violates their bodily integrity and dignity. Adolescents also face the risk of prosecution for consensually sharing their self-generated sexual material (SGSM) due to the broad wording and expansive judicial interpretation of offences prohibiting child pornography. When reported, adolescents are subjected to criminal investigations, arrest and detention, medical examinations, inquiries and trials which have a stigmatic and disruptive impact on their life. It violates their fundamental rights to life and liberty, dignity, and privacy, undermines their best interests, and affects their education, employment, self-esteem, mental health, social reputation, and family life. Although convictions are rare, the process is the punishment and the strict application of the law and the absence of judicial discretion results in the imposition of high minimum mandatory punishment, in some instances.

Despite the law being gender neutral, when both parties are minors, adolescent boys are by default treated as perpetrators and the girls as ‘victims’. Adolescent boys above 16 years also risk trial as an adult in cases of alleged rape and penetrative sexual assault. Minor girls are invariably institutionalised in child care institutions till they turn 18 years, if they refuse to return to their parents or their parents refuse to take them back. This disrupts their access to education and employment, affects their physical and mental health, and deprives them of their liberty.

Adolescents’ right to barrier-free access to sexual and reproductive health services is heavily impeded due to the mandatory reporting obligation under the POCSO Act which requires reporting, even if the minor does not wish to do so. This deters adolescents from seeking healthcare services due to fear of disclosure, potential entanglement with the criminal justice system and social stigma.

Further, such cases overburden an already-strained criminal justice system by consuming significant time and resources of the judiciary, police, child protection system, forensic science laboratories, and healthcare providers. It inflates the statistics on incidence of sexual offences against children, impacts the speedy dispensation of justice, skews the rate of acquittals, and ultimately affects the public perception of justice in cases of sexual violence.

### ***Proposed Framework for Decriminalisation of Adolescent Sexuality***

It is proposed that factually consensual and non-exploitative sexual acts involving adolescents between 16 to 18 years be decriminalised, while all protections available under the POCSO Act, including trial by Special Courts and child-friendly procedures remain applicable to those between 16-18 years. Specifically, consensual sexual acts with persons above 16 years should not constitute an offence unless it falls under specific grounds that vitiate consent or amount to exploitation, such as when the partner is in a position of trust or authority.

Decriminalisation must be accompanied by comprehensive sexuality education, access to barrier-free sexual and reproductive health services, and sensitisation of legal and child protection functionaries to uphold adolescent autonomy and dignity.

While close-in-age exemptions and judicial discretion have been proposed as alternatives to blanket criminalisation, both approaches do not address the trauma and disruption caused by the process of arrest, trial and institutionalisation. These alternatives fail to acknowledge the inherent harm of criminalising normative adolescent sexual behaviour and risk arbitrary outcomes. Decriminalisation, coupled with clear grounds for vitiated consent and adolescent-friendly support systems, is the most just and effective approach.

## Child Protection Concerns Related to Decriminalisation of Adolescent Sexuality and Potential Solutions

### *Implications on Child Marriage*

There is a concern that decriminalisation of consensual and non-exploitative sexual acts involving adolescents could undermine efforts to reduce child marriage, and adversely impact girls' education, health, and well-being. The prevalence of child marriage in India is strongly correlated with poverty and lack of access to education. There is a need to address the wider context of poverty and structural inequalities that underpin early and child marriages. Studies reveal that the POCSO Act and Prohibition of Child Marriage Act, 2006 (PCMA) are disproportionately used against self-initiated marriages stemming from consensual relationships including inter-faith and inter-caste unions, as opposed to family-arranged marriages. Criminal law is primarily used to enforce parental control over the choices of adolescent girls to maintain social and cultural norms, and caste boundaries, rather than protecting them from the harm of early or forced marriages. Health risks associated with early pregnancy that arise from early marriage necessitates comprehensive and direct intervention such as comprehensive sexuality education, timely access to reproductive health services, contraception, and adequate nutrition. Criminalisation exacerbates the barriers to their sexual and reproductive health, creates an environment of risk for their family, and deters adolescent girls in these marriages from accessing medical care for fear of triggering the criminal justice system.

While consent in self-initiated underage marriages may be influenced by social realities and pressures, criminalisation is not effective in addressing these root causes as it reinforces these taboos, notions of sexual purity and parental control. Rather than over-relying on the POCSO Act, efforts should focus on strengthening prevention measures and the effective implementation of the PCMA. Moving beyond penal law, positive remedies such as the option of annulment need to be operationalised. Interventions should be designed to recognise and address the unique drivers of early, forced, and self-initiated marriages. Structural interventions, such as ensuring exclusive Child Marriage Prohibition Officers, poverty alleviation, access to free and compulsory education till 18 years, conditional cash transfers, and gender transformative approaches, are more effective than punitive laws in reducing child marriage.

Finally, the considerations for sexual consent and age of marriage are fundamentally different and should not be conflated. While adolescent exploration of sexuality raises questions about the threshold for consent and autonomy, marriage entails significant additional responsibilities and legal obligations, justifying different ages for the two. Further, decriminalising adolescent sexuality does not preclude the enforcement of laws against underage marriage. The emphasis must shift from punitive criminal sanctions to supportive mechanisms that empower adolescents to resist, delay, and exit child marriages, without causing further harm to adolescents.

### ***Implications on Child Trafficking***

There is a concern that decriminalisation of factually consensual and non-exploitative sexual acts involving adolescents will impede the efforts to combat child trafficking. Trafficking can occur through various means, for a variety of purposes, and while some relationships may act as conduits for trafficking, policies cannot be framed on the assumption that all adolescent relationships or self-initiated child marriages will inevitably result in trafficking. Assuming all adolescent relationships are invariably exploitative blurs the distinction between sexual acts that are normative and those that are for the purpose of sexual exploitation. Sexual abuse and trafficking for sexual exploitation are distinct harms and require different frameworks for the effective prosecution of the offences. The apprehension that consent of a minor can act as a valid defence in trafficking-related acts is misplaced as consent of the victim is immaterial in determination of the offence of trafficking. Further, a strategy that relies only on the POCSO Act to address trafficking ignores the liability of different actors involved and the multiple wrongs caused during the different stages of trafficking. Effective anti-trafficking responses require training enforcement agencies to identify exploitation, not to penalise all adolescent intimacy.

### ***Implications on Online Harm against Children***

Adolescents and children today are digital natives, and for many, digital spaces are not separate from their real lives. Apart from using the internet for various purposes, adolescents, are using it for romantic and sexual exploration, relationship maintenance, coping with the dissolution of a romance, and accessing sexual health information. There are risks for adolescents in the digital realm, such as bullying, coercion, and non-consensual sharing of images. However, Indian laws fail to distinguish between consensual SGSM and exploitative child sexual abuse material (CSAM). Adolescents who create, store, or share sexually explicit content of themselves, even privately, risk prosecution under the POCSO Act and the Information Technology Act, 2000. This exposes minors to criminal liability for normative behaviour and deters them from seeking help when their private images are shared without consent.

International and regional bodies, including the UN Committee on the Rights of the Child, have called for the decriminalisation of consensual SGSM among adolescents, cautioning that criminalising such conduct violates their rights to privacy and self-expression. Different jurisdictions have introduced legal exceptions or diversion mechanisms to separate consensual SGSM from CSAM. As digital intimacy becomes a part of adolescent development, legal frameworks must reflect evolving realities, distinguishing abuse from normative behaviour.

## *Conclusion*

Continued criminalisation of adolescents cannot be justified as a measure to combat child marriage, child trafficking, and online child sexual abuse and exploitation. There are laws to address these distinct issues and any lacunae in their design or implementation cannot justify the blanket criminalisation of all adolescent sexual behaviour. Factors that make children vulnerable to under-age marriage, early motherhood, and child trafficking require an empowering approach that

involves investment in socio-economic measures, functional community-based child protection systems, free and accessible education till 18 years, life-skills, comprehensive sexuality education, confidential access to sexual and reproductive health services, gender transformative approaches, and robust enforcement systems.

Criminalisation of factually consensual and non-exploitative sexual acts among adolescents and young people denigrates their constitutionally protected rights to dignity and privacy, undermines their best interests and evolving capacities, deters them from seeking sexual and reproductive health services, and results in the deprivation of their liberty. Viewing all adolescent relationships from the prism of potential exploitation blatantly disregards the harm it causes to the adolescents the law seeks to protect.

The proposal to decriminalise sexual acts involving persons above 16 years and below 18 years is consonant with their fundamental rights to life, liberty, dignity, and privacy, and their best interests and evolving autonomy. This approach ensures that adolescents are recognised as individuals undergoing a critical developmental phase who should not be subject to the trauma of criminalisation for normative sexual acts under the garb of protection. It also ensures that all protections under the POCSO Act remain in place to address non-consensual or exploitative acts against them. Such decriminalisation will not impact other protection laws regarding under-age marriage, trafficking, and cybercrimes which remain independently enforceable. Protecting adolescents from harm cannot come at the cost of subjecting them to unjust criminalisation. Instead, there is a need to invest in supportive, rights-based interventions that foster healthy, informed, and empowering transitions into adulthood in accordance with Article 39(f) of the Indian Constitution.

