



# AGE DETERMINATION UNDER POCSO ACT OF 2012: A MEDICO- LEGAL CONUNDRUM

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**Abstract--** The safeguard of Children from Sexual Offences (POCSO) Act enacted for protection of child against sexually abuses, places significant emphasis on determining the ages of victims and the accused, as directly impacts the applicability of law. However, age resolution remains complex medico-legal challenge in the Indian legal system due to inconsistencies in documentary evidence, medical assessment methods, and judicial interpretation. This article critically examines the procedural and ethical dilemmas faced by medical professionals, legal authorities, and the judiciary in age determination under the POCSO Act. It explores the reliability of medical tests such as dental and radiological assessments, the legal presumption of minority, and the role of documentary proof. The paper argues for a harmonised and child-centric framework that upholds both scientific rigour and legal fairness. Recommendations for improving medico-legal protocols and judicial sensitivity are proposed to resolve this ongoing conundrum.

**Keywords:** *POCSO Act, age determination, medico-legal issues, child rights, forensic medicine, documentary evidence, judicial interpretation, legal presumption, sexual offences.*

“Children are precious human resources of our country; they are the country’s future. The hope of tomorrow rests on them. But unfortunately, in our country, a girl child is in a very vulnerable position. There are different modes of her exploitation, including sexual assault and/or sexual abuse. In our view, exploitation of children in such a manner is a crime against humanity and the society. Therefore, the children and more particularly the girl child deserve full protection and need greater care and protection whether in the urban or rural areas.”

-M. R. Shah, J.<sup>1</sup>

Assigning age in perhaps one among the most intricate undertakings in the field of forensic science. Age assessment is critical when analysing psycho-social factors because age is crucial in determining meriting criminal liability—particularly in cases focused upon the of POCSO Act<sup>2</sup> and Juvenile Justice Act<sup>3</sup>. In addition, the ages of consent is profoundly relevant legal principle suspicious of statutory rape which establishes a victim’s age. In child pornographic cases, the concepts of human trafficking, prostitution, and sex tourism are all fundamentally rooted in age with human beings being drastically younger in age. Moreover, birth certificates and identification documents are some the important pieces crucial that require additional verification for confirming accuracy. The protection of Children from Sexual Offence Acts<sup>4</sup> , is historic laws in India aims at safeguarding child from sexual abuse and exploitations. One of most critical aspects of this law is the importance given to the ages of both the victims and the accused. The age of individuals involved play decisive part in figuring out applicability of Act, the protection granted to the victim, and the degree of criminal liability attributed to the accused. In POCSO Act<sup>5</sup> , "child" is define as any person under the age of 18 years<sup>6</sup>. This simple yet significant definition serves as the foundation of the Acts. If victim is under the ages of 18, any form of sexual

<sup>1</sup> Nawabuddin vs state of Uttrakhand, AIR 2022 SC 910, para 10

<sup>2</sup> 2012

<sup>3</sup> 2015

<sup>4</sup> POCSO 2012

<sup>5</sup> Section 2(d) of the

<sup>6</sup> Protection of Children from Sexual Offence Act ,2012



activity—whether with or without consent—falls within the purview of the Act and is deemed punishable.<sup>7</sup>

One of the most notable features of POCSO is that consent of the minor is not a valid defence. Even if a child gives consent to a sexual act, it holds no legal value, and the act is treated as a criminal offence. This provision has been designed to recognise the vulnerability of minors and their inability to fully understand the nature and consequences of such acts. As a result, the ages of the victims become the principal factor in hurtful protections offered by Act. This strict age-based classification has led to complexities, especially in cases involving consensual relationships between teenagers. Courts have had to grapple with balancing the intent of the law—protection of children—with the evolving nature of adolescent behaviour and relationships.

The ages of accused is equally important in figuring out the level on criminal responsibility. If the accused is an adult (i.e., 18 years or older), they are fully liable under the POCSO Act. The law applies with full force, and the accused can face stringent punishments, including rigorous imprisonment, even the death penalty in certain aggravated case. However, if the accused is under 18 years, they are treated as a juveniles under the Juvenile Justice (Care and Protection of Children) Act, 2015.<sup>4</sup> In such case, the Juvenile Justice Boards assesses ages, mental capacity on accused. If child is between 16 and 18 years is accused of a heinous offence, the Board shall decide of try the juvenile as an adult. This framework ensures a careful balance between the need to protect society and the opportunity for rehabilitation of minor

In case of *Courts on its own Motion v. State of H.P.*<sup>8</sup>, Himachal Pradesh High Court states that consensual relationships between adolescents required a rethinking of POCSO's application in such cases, given the strict age cut-off.

POCSO is a strict liability law, which means that an accused cannot escape liability by claiming ignorance of victim's ages or alleging the child misrepresented their age. Furthermore, the Act places the accused's burden of proof, with Sections 29 and 30 creating a legal presumption of guilt once the prosecution proves that sexual activity occurred with a minor. This shifts the responsibility to the accused to prove innocence, a deviation from the traditional criminal law principle of "innocent until proven guilty."

In *Raj Kumar v. State of U.P.*<sup>9</sup> the courts upheld constitutional validity of these presumptions, stating they are justified given the objective of protecting children.

The Act provides for enhanced punishments in cases involving aggravated sexual offences, especially when person in a position of trust or authorities, like police officer, teacher, or family member, commits the crime, or when the victim is younger than 12 years<sup>10</sup>. These offences are considered more heinous due to the increased vulnerability of victim and breach of trust involves. Punishments in such cases may range from at least of 10 years of rigorous imprisonments to life imprisonments, and in some circumstances, the death penalty. In case of *State of M.P. v. Ajab Singh*,<sup>11</sup> Supreme Court of India emphasized the need for deterrent punishment in case involving child sexual assault that was exacerbated.

<sup>7</sup> Independent thought vs union of India 2017, 10 scc 800

<sup>8</sup> 2017 SCC online 1217

<sup>9</sup> 2019 SCC online all 4554

<sup>10</sup> Protection of children from sexual offences act , 2012 ss 5910

<sup>11</sup> 2019 15 SCC 174



## BURDEN OF PROOF ON AGE WHEN DOCUMENTATION IS UNAVAILABLE UNDER THE POCSO ACT

In situations where official documents are unavailable or disputed, determining the age of victims or the accused becomes a significant legal challenges. Courts have repeatedly dealt with the burden of proofs and appropriate methods for ages determination, especially in criminal trials under POCSO. Under the POCSO Acts, the meaning of a "child" is anyone below the age of 18 year.<sup>12</sup> Thus, age is a foundational element of the offence. The question of who bears the burden of proving the age arises when the age of the victim or the accused is in dispute and documentary proof such as birth certificate, academic records, or Aadhaar card is not available.

The courts have held that the prosecution bears the burden of proving the victim is a minor, as it is an important elements of the offences under POCSO. However, once *prima facie* evidence is presented, the burden may shift to the accused to rebut the same.

In case of *Jarnail Singh v. State of Haryana*<sup>13</sup>, Supreme Court laid down guidelines for ages determination in criminal case, holding that the same procedure as prescribed in the Juvenile Justice Rule might be followed even for the victims.<sup>10</sup> That the Court emphasised a hierarchy of evidence:

1. Class 10 certificate or equivalent school certificates, if available.
2. Birth certificates from municipal authority.
3. In absence of both, the age may be determined by medical examination (ossification test, dental examination, etc.).

In *Mahadeo v. State of Maharashtra*<sup>14</sup>, Supreme Court of India observed that date of birth entered in school records could be accepted unless it is proven to be false or manipulated.<sup>11</sup> The Court cautioned against relying entirely on medical opinion when documentary evidence is unavailable, as such tests only provide an approximate age with margin of errors of 1–2 years. In case of *State of M.P. v. Anoop Singh*<sup>15</sup>, High Court of Madhya Pradesh rejected the contentions accused that victim's age was not proven, stating that minor discrepancies in school records would not override the clear purpose of POCSO.<sup>16</sup> The Court noted that benefit of doubt on age cannot always go to the accused when circumstantial or supporting evidence reasonably indicates minority.

In contrast, in case of *Sunil v. State of Haryana*<sup>17</sup>, High Court of Haryana is acquitted accused where the age of the prosecutrix could not be conclusively established, and the medical report showed her to be between 17 and 19 years<sup>18</sup>. Since the prosecution could not prove the victim was under 18 beyond reasonable doubt, the benefit went to the accused. When no documentary evidence is available, medical examination becomes a secondary tool, as held in case of *Jaya Mala v. Home Secretary*,<sup>19</sup> the Government of Jammu and Kashmir. The Court of India held that ossification tests cannot determine age with certainty and a margin of errors should be considered.

Therefore, when age is close to the threshold (e.g., 17–19 years), courts may lean towards giving the benefits of doubt to accused unless corroborative evidence is available. However, this approach can

<sup>12</sup> PROTECTION OF CHILDREN OFFENCES ACT 2012

<sup>13</sup> 2013 7 scc 263

<sup>14</sup> 2013 14 scc 637

<sup>15</sup> 2015 scc online mp 7424

<sup>16</sup> *State of M.P. v. Anoop Singh* 2015 scc online mp 7424

<sup>17</sup> 2010 SCC Online Punjab and Haryana 921

<sup>18</sup> Sunil vs state of Haryana, 2012, scc online P & H 921

<sup>19</sup> AIR 1982 SC 1297



sometimes weaken the protective intent of POCSO, especially in underdeveloped regions where birth registration is not universal.

When the accused claims to be a minor, the burden is initially on them to raise the plea and provide supporting material. Thereafter, it is for court or Juvenile Justice Boards to conduct an inquiry as per Sec. 94 of the Juvenile Justice Acts.<sup>20</sup> *In case of Ashwani Kumar Saxena v. State of M.P*<sup>21</sup>, Supreme Court held that if documentary proof of produced, courts should not order ossification tests unless the documents appear manipulated.

### **MEDICO-LEGAL DILEMMA UNDER THE POCSO ACT: AGE DISPUTES AND LEGAL UNCERTAINTY**

The Protection of Children from Sexual Offences Act<sup>22</sup> was implemented with intention of shielding kids from sexually assault, sexually harassment, and a pornography. This Act define "child" as any person under the age of 18 years<sup>23</sup>. While this definition offers a clear statutory threshold, in practice, age determination often becomes a contentious medico-legal issue, especially in the absence of valid documentary proof. This has led to a number of disputes in courts where the accused or the victim's age is in question, thus creating legal and ethical dilemmas. Under POCSO, the age of the victim is the foundational criterion for applying the provisions of the Act.<sup>24</sup> If the victim is found to be below 18 years, the offence is tried under POCSO, and consent becomes legally irrelevant. Conversely, the age of the accused also becomes crucial when the accused is a minor, triggering the provision of the Juveniles Justice (Care and Protections of Children) Act<sup>25</sup>. Hence, disputes about age have significant legal consequences, including the severity of punishment and procedural safeguards.

In many cases, especially involving children from poor or rural backgrounds, birth certificates or school records may be unavailable, unreliable, or even tampered with. In such situations, medical examination becomes a necessary tool to estimate the age. Medical boards often rely on radiological examinations such as ossification tests, which assess bone maturity. However, these tests are not precise and typically offer an age range (e.g., 16–18 years), which makes it difficult for courts to conclude age conclusively. In *case of Jarnail Singh v. State of Haryana*,<sup>26</sup> the Supreme Court emphasized this when documentary evidence is unavailable, the court must follow the guidelines under a Juvenile Justice Acts, giving preference for school records, birth certificates, and only then considering medical opinion. However, the Court also cautioned against absolute reliance on ossification tests due to their inherent limitations. Similarly, In *Sunil v. State of Haryana*,<sup>27</sup> Punjab and Haryana High Court of India laid that where possibility two points—one placing victim below 18 and another above—the benefits of doubt must go to accused, given serious implications under POCSO. A recurring medico-legal dilemma arises when documentary evidence suggests an age below 18, but medical tests suggest otherwise. Courts have often had to resolve such contradictions. In *Mahadeo v. State of Maharashtra case*,<sup>28</sup> Supreme Court of India ruled school records maintained in ordinary course of business are primary evidence for determining

<sup>20</sup> 2015

<sup>21</sup> (2012) 9 SCC 750

<sup>22</sup> POCSO , 2012

<sup>23</sup> Protection of Children from Sexual Offences Act 2012

<sup>24</sup> Ibid ss 3-13

<sup>25</sup> 2015 ss 2[12],15

<sup>26</sup> 2013 7SCC 263

<sup>27</sup> 2016 SCC ONLINE P&H 541

<sup>28</sup> 2013 14 SCC 637



age and should be preferred over medical estimation unless there is a reason to doubt their authenticity. However, State of *M.P. v. Anoop Singh*<sup>29</sup> raised concerns when the prosecution failed to produce any reliable documentary proof, and age of the Prosecution was solely determined on basis of medical examination. The Court recognised the need for careful evaluation of all available evidence, noting that uncertainty in age must not lead to automatic criminal liability under POCSO. Another aspect of the medico-legal dilemma involves consensual relationships among teenagers, where disputes about age become central to the defence. In such cases, courts are often confronted with the moral versus legal dilemma: whether to strictly apply the law or to adopt a reformative approach. In *Kumari Anju v. State of U.P.*<sup>30</sup> Court of India observes that in cases on romantic involvement between adolescents, an accurate and fair determination of age is essential, as a miscalculation may result in long-term consequences for the accused under the rigid framework of POCSO.

#### **AGE DETERMINATION PRACTICES IN OTHER JURISDICTIONS: A COMPARATIVE ANALYSIS (UK, US, CANADA)**

In cases involving child sexual offences, the age of the victims is important factor in determining criminal liability and applicability of child protection laws. While India adopts a strict age-based framework under Protection of Children from Sexual Offence Act, other jurisdictions like United Kingdom (UK), United States (US), and Canada follow nuanced approaches that consider not only chronological age but also contextual and developmental factors in specific cases.

1. United Kingdom (UK): In UK, the Sexual Offence Act <sup>31</sup> governs sexual crimes, including those against child. Act define child as any person under the ages of 18 years , in line with the United Nation Conventions on Right of Child.<sup>32</sup> However, law make distinctions based on two age thresholds: under 13 and under 16. Under Section 5 of the Acts, any sexual activity with a child under 13 years of ages is treated as statutory rape offence , irrespective of consent.<sup>33</sup> This is an offence of strict liability, meaning the accused cannot claim ignorance of the child's age. For children aged 13 to 15, sexual activity is also criminalised, but the law provides more flexibility, especially when the parties involved are close in age.<sup>34</sup> The courts may consider the developmental maturity of the individuals and the context of the relationship. Notably, sexual activity between individuals both under 16 years is technically illegal but rarely prosecuted when it is consensual and not exploitative.<sup>35</sup> Age assessment in immigration and trafficking cases involves a "Merton-compliant" age assessment, named after a UK case, requiring a fair, holistic evaluation and an opportunity to challenge the assessment.<sup>36</sup>
2. United States (US): The United States follows a state-wise approach to age determination and statutory rape laws, with no single federal age of consents. The age of consents range from 16 - 18 years depending on the state.<sup>37</sup> Many state use "Romeo and Juliet" laws, which provides exception

<sup>29</sup> 2015 SCC ONLINE MP 6874

<sup>30</sup> 2020 SCC ONLINE ALL 326

<sup>31</sup> 2003

<sup>32</sup> SEXUAL OFFENCES ACT 2003 UK C.42 S.3

<sup>33</sup> Ibid s.5

<sup>34</sup> Ibid , ss,9-12

<sup>35</sup> CROWN PROSECUTION SERVICE UK , GUIDELINES PROSECUTING CASES INVOLVING SEXUAL OFFENCES AGAINST CHILDREN AVAILABLE AT: <http://www.cps.gov.uk> [last visited apr.18, 2025]

<sup>36</sup> R [B] vs LONDON BOROUGH OF MERTON , 2003 EWHC 1689

<sup>37</sup> UNITED STATES DEPARTMENT OF JUSTICE , LEGAL AGE OF CONSENT BY STATE AVAILABLE AT: <http://www.justice.gov>[last visted apr.18,2025]



or reduced penalty for consensual sexual activities between minor closed in age.<sup>38</sup> For example, in California, if age difference between the minors and accused is less than three years, the offence is considered a misdemeanour rather than a felony.<sup>39</sup> The US also recognises the concept of “constructive knowledge” where the accused may be held liable if they should have reasonably known the victim was underage. However, some states allow a mistake of age defence, especially when the victim is above a certain age, like 14 or 15.<sup>40</sup> In immigration or asylum cases, age determination often involves multifactorial analysis, including physical appearance, psychological evaluation, and documentation, but there is no uniform standard across states.<sup>41</sup>

3. Canada: Canada's approach is codified under the Criminal Code of Canada, which set the general age of consents at 16 years<sup>42</sup>.<sup>35</sup> However, there are close-in-age exemption a minor aged 14 or 15 years may legally consents to sexual activities with someone less than 5 years older, provides the relationship is no exploitative.<sup>43</sup> For children under 12, no consent is legally recognised, and any sexual activity is criminalised. Between ages 12 and 13, consent is only valid if the other party is less than two years older and not in a position of authority.<sup>44</sup> Age determination in refugee and child protection matters is typically conducted by provincial authorities and involves interviews, physical assessments, and credibility analysis, rather than purely medical tests. Canada emphasises a “benefit of the doubt” principle in ambiguous cases, in line with international human rights standards.<sup>45</sup>

While all three jurisdictions—UK, US, and Canada—criminalise sexual activity with minors and recognise children as persons under 18, age determination and culpability are handled with more contextual flexibility than in India. The use of age proximity defences, mistake of age exceptions, and differentiated penalties for peer sexual activity reflects a developmentally sensitive legal approach. Additionally, age assessment for non-criminal matters such as trafficking and asylum shows a preference for multidisciplinary and humane evaluation, contrasting with the often-rigid practices in some developing countries. The comparative analysis of age determination practices in the UK, US, and Canada reveals that while the protection of children remains a paramount legal objective, these jurisdictions strive to balance that protection with contextual fairness, especially for adolescents and young offenders. Their models provide important insights for evolving the Indian framework to better reflect the realities of youth development, consent, and proportionality in justice.

## A WAY FORWARD

Disputes over age are not just procedural issues; they go to the heart of justice delivery in cases involving children. A flawed age determination can lead to a minor being denied protection or an adult being wrongly shielded. Therefore, a robust, uniform, and sensitive approach is essential like- (a) Preference to Documentary Evidence, (b) Medical Age Determination Should Be a Last Resort, (c) standardised national protocol, under of Ministry of Women and Children Developments in collaborations with

<sup>38</sup> Ibid.

<sup>39</sup> CALIFORNIA PENAL CODE 216.5[2023]

<sup>40</sup> DEBORAH W.DENNO, "PERSPECTIVE STATUTORY RAPE LAW AND TEENAGE SEXUAL RELATIONSHIP IN THE U.S. , YALE J.L. & FEMINISM ,VOL.16,NO.2 P.322[2004]"

<sup>41</sup> UNITED NATION HIGH COMMISSIONER FOR REFUGEES [UNHCR}, GUIDELINE ON ASSESSING THE BEST INTEREST OF THE CHILD ,GENEVA 2008.

<sup>42</sup> CRIMINAL CODE , RSC1985,CC-46 S,150.1

<sup>43</sup> Ibid ,s.150.1[2].

<sup>44</sup> Ibid , 150.1[1]-[3]

<sup>45</sup> CANADIAN COUNCIL FOR REFUGEES , BEST INTEREST OF THE CHILD AND CHILD SENSITIVE PROCEDURES , 2017, AVAILABLE AR <http://ccrweb.ca/en> [last vested apr.18.2025]



medical and forensic experts, (d) In case of ambiguity, the principle of "benefit of the doubt" should favour the party claiming to be a minor. India must move towards a system that upholds the best interest of the children, ensures scientific accuracy, respects all legal rights of all parties involved. A blend of reliable documentary scrutiny, medically sound procedures, and statutory guidelines will help resolve age disputes efficiently, fairly, and humanely.