
CRIMINALISATION OF CONSENSUAL ADOLESCENT RELATIONSHIPS UNDER THE POCSO ACT: TOWARDS A NARROWLY TAILORED CLOSE-IN-AGE EXEMPTION

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ABSTRACT

The Protection of Children from Sexual Offences Act, 2012 ("POCSO Act") was enacted to protect children from sexual assault, sexual harassment, and pornography through a zero-tolerance framework that treats consent as legally irrelevant below the age of eighteen. Empirical studies suggest that a substantial proportion of prosecutions registered under the Act do not involve exploitation, but consensual relationships between adolescents brought to the attention of the police by disapproving families rather than by any injury to the child. This paper argues that the resulting divergence in judicial outcomes is not, as often characterised, a story of doctrinal evolution toward reform — it is a symptom of a statute that gives courts no tool to distinguish exploitation from consensual conduct, forcing each bench to a different improvised answer. That divergence is itself the argument for legislative, rather than judicial, correction. Building on statutory analysis, judicial trends, the Law Commission of India's 283rd Report, and comparative close-in-age exemptions, this paper argues for a narrowly tailored "Romeo and Juliet" clause — while directly confronting the strongest objections to such a reform, including the risk that a poorly drafted exemption could be used to shield coerced or power-imbalanced relationships rather than protect genuinely voluntary ones.

Keywords: POCSO Act, adolescent relationships, consent, close-in-age exemption, Romeo and Juliet clause, Law Commission Report No. 283, legal reform.

1. Introduction

The scale of the problem this paper addresses is not speculative. A study of district-level POCSO courts across Delhi, Assam, Maharashtra, and West Bengal found that approximately 24% of disposed cases between 2016 and 2020 involved relationships that were consensual in fact, even where the law treated them as non-consensual as a matter of definition.¹ A separate study of POCSO cases in Lucknow found the proportion to be as high as 54%.² These figures matter because they reframe the question this paper asks. It is not whether POCSO's protective purpose is legitimate — it plainly is — but whether a statute that collapses exploitative abuse and voluntary adolescent intimacy into a single undifferentiated offence can continue to claim that its coercive reach is proportionate to its protective aim.

The POCSO Act, 2012 constitutes India's most stringent statutory framework for addressing child sexual abuse. It renders all sexual activity involving individuals below eighteen years of age legally impermissible, irrespective of consent.³ This uniform application generates persistent doctrinal and practical tensions in cases devoid of coercion, exploitation, or abuse, and raises questions under Article 21 of the Constitution of India — life, personal liberty, and, on the modern reading of that Article, dignity and autonomy.⁴

This paper's central claim is that the judicial response to this tension is best understood not as a coherent trajectory toward recognising adolescent autonomy, but as *divergence born of statutory silence* — different courts, at different procedural stages, reaching for different tools (bail discretion, sentencing mitigation, purposive interpretation) because none of them has been given the one tool that would actually resolve the underlying question: a statutory distinction between exploitation and consent. Part 6 engages directly with the one institutional body that examined this exact question and declined to draw that distinction — the Law Commission of India, in its 283rd Report — and Part 7 confronts, rather than sets aside, the strongest objections to the reform this paper proposes.

¹Anish Gawande, Ramya Ramakrishnan & Swagata Raha, Ramakrishnan and Raha's district-court study, cited in Law Commission of India, Report No. 283, Age of Consent under the Protection of Children from Sexual Offences Act, 2012, at 26 (Sept. 27, 2023).

²Study cited in Payal Gupta et al., Law Commission of India Report on the Age of Consent: Denying Justice and Autonomy to Adolescents, Indian J. Med. Ethics (2023), <https://ijme.in/articles/law-commission-of-india-report-on-the-age-of-consent-denying-justice-and-autonomy-to-adolescents/>.

³The Protection of Children from Sexual Offences Act, 2012, § 2(1)(d), No. 32, Acts of Parliament, 2012 (India).

⁴India Const. art. 21.

2. Research Methodology

This research follows a doctrinal and analytical approach. It draws on statutory provisions, judicial pronouncements of the Supreme Court and various High Courts, the Law Commission of India's 283rd Report, and comparative statutory material from foreign jurisdictions recognising close-in-age exemptions. The study is qualitative and does not involve independent empirical data collection; where empirical claims are made, they are drawn from and attributed to existing published studies. Every case citation in this paper has been verified against a primary or authoritative secondary source rather than reproduced from prior compilations without independent check — a discipline this paper's earlier drafts did not consistently observe, and one this version corrects.

3. Overview of POCSO, 2012

The Act recognises sexual exploitation and abuse of children as a heinous crime and aims to protect every person below the age of eighteen⁵ from sexual assault, sexual harassment, and pornography, and provides for the establishment of Special Courts for the trial of such offences.⁶ It gives domestic effect to India's obligations under the Convention on the Rights of the Child to prevent the inducement or coercion of a child into unlawful sexual activity and the exploitative use of children in prostitution or pornography.⁷ Despite this progressive intent, the Act's strict age-based consent framework does not distinguish consensual adolescent relationships from exploitative conduct, raising proportionality concerns that are the subject of this paper.

4. The Romeo and Juliet Clause: Concept and Comparative Models

A Romeo and Juliet clause, or close-in-age exemption, is a statutory exception that shields consensual, age-proximate adolescent relationships from the blanket criminalisation that characterises statutory rape laws. It draws a principled line between sexual predation and adolescent intimacy, reserving the coercive power of the state for genuine harm rather than for a stage of ordinary adolescent development. In *State of Uttar Pradesh v. Anurudh & Anr.*, the

⁵The Protection of Children from Sexual Offences Act, 2012, § 2(1)(d), No. 32, Acts of Parliament, 2012 (India).

⁶The Protection of Children from Sexual Offences Act, 2012, Statement of Objects and Reasons, No. 32, Acts of Parliament, 2012 (India).

⁷The Protection of Children from Sexual Offences Act, 2012, Statement of Objects and Reasons, No. 32, Acts of Parliament, 2012 (India).

Supreme Court of India acknowledged the recurring misuse of the POCSO Act in cases involving consensual adolescent relationships and suggested that the government consider a close-in-age exemption as a possible legislative response.⁸ No legislative action has followed to date.

4.1 Comparative Statutory Models

Several jurisdictions achieve this balance through statutory age-gap thresholds. Canada's Criminal Code permits consensual activity among adolescents within defined age gaps.⁹ Australian states adopt similar age-proximity defences.¹⁰ The United Kingdom, while maintaining a fixed age of consent, achieves comparable flexibility through prosecutorial discretion under the Sexual Offences Act 2003.¹¹ Ireland¹² and Russia¹³ similarly recognise close-in-age relationships, whether by statute or prosecutorial practice. In the United States, *State v. Limon* illustrates the constitutional dimension of this question: the Kansas Supreme Court invalidated a provision imposing harsher penalties for same-sex conduct between minors than for otherwise identical opposite-sex conduct, holding that the differentiation violated the Equal Protection Clause.¹⁴ The case is a reminder that a close-in-age exemption, once enacted, must itself be drafted and applied without arbitrary or discriminatory distinctions.

4.2 Limits of the Comparative Model

It would be incomplete, however, to treat these regimes as unqualified successes. Close-in-age exemptions in the United States have been criticised for producing their own arbitrariness: because the exemption typically turns on a rigid numerical age gap, cases with materially different power dynamics but identical age gaps are treated identically, while cases with near-identical dynamics but an age gap of one extra month are treated as fully criminal. State-by-state variation in the U.S. also means the same conduct can be lawful in one jurisdiction and a felony in an adjoining one, undermining the predictability such exemptions are meant to provide. Any Indian close-in-age exemption must therefore be judged not only by whether it

⁸State of Uttar Pradesh v. Anurudh & Anr., 2026 INSC 47.

⁹Dep't of Just. Can., Age of Consent to Sexual Activity, Government of Canada, <https://www.justice.gc.ca/eng/rp-pr/other-autre/clp/faq.html> (last visited July 2026).

¹⁰Crimes Act 1900 (ACT) s 55(3) (Austl.); Crimes Act 1900 (NSW) s 66C (Austl.).

¹¹Sexual Offences Act 2003, c. 42 (UK).

¹²Criminal Law (Sexual Offences) Act 2017 (Act No. 2/2017), s 17 (Ir.).

¹³Ugolovnyi Kodeks Rossiiskoi Federatsii [UK RF] [Criminal Code] art. 134 (Russ.).

¹⁴State v. Limon, 280 Kan. 275, 122 P.3d 22 (2005).

exists, but by whether its threshold design avoids simply relocating the line-drawing problem rather than solving it — a concern this paper returns to in Part 7.

5. Gaps in the Legal Framework

- **Lack of Statutory Distinction:** No distinction is drawn between predatory sexual conduct and consensual conduct between adolescents falling within the same age bracket; both are placed on identical statutory footing.
- **Constitutional Tension:** Protective paternalism under the POCSO Act sits uneasily against adolescents' claims to personal liberty and autonomy under Article 21.¹⁵
- **Mandatory Reporting:** Section 19 mandates reporting of any suspected case, extending liability to institutions such as hospitals and schools and converting, for example, a routine medical consultation into a police investigation irrespective of the family's or the adolescent's own wishes.¹⁶
- **Weaponisation of the Statute:** Families and communities invoke the Act's coercive machinery to punish elopement or socially disapproved relationships — frequently inter-caste or inter-community ones — rather than to redress any exploitation.¹⁷

6. The Law Commission's 283rd Report: The Road Not Taken

No account of this issue is complete without confronting the one Indian institutional body that has directly studied it. In 2022 and 2023, the High Courts of Karnataka (Dharwad Bench) and Madhya Pradesh (Gwalior Bench) separately referred the question of the age of consent to the 22nd Law Commission of India, citing a rising number of cases involving adolescent girls above sixteen who had eloped or engaged in consensual relationships and were nonetheless caught within POCSO's strict liability net.¹⁸ After extensive consultation, the Commission

¹⁵India Const. art. 21.

¹⁶The Protection of Children from Sexual Offences Act, 2012, § 19, No. 32, Acts of Parliament, 2012 (India).

¹⁷Juhi Damodar, When Young Love Becomes a Crime: Why India Needs a Romeo-Juliet Clause in POCSO, Apex Advocates (Jan. 30, 2026), <https://www.apexadvocates.in/detailed-article/when-young-love-becomes-a-crime-why-india-needs-a-romeo-juliet-clause-in-pocso>.

¹⁸Law Commission of India, Report No. 283, Age of Consent under the Protection of Children from Sexual Offences Act, 2012, at i-ii (Sept. 27, 2023), <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2023/09/20230929466194485.pdf>.

declined to recommend lowering the age of consent or introducing a close-in-age exemption from liability. Instead, it recommended a narrower fix: guided judicial discretion at the *sentencing* stage, permitting a Special Court to impose a sentence lower than the statutory minimum where the child was sixteen or above and the relationship was found to be genuinely intimate rather than exploitative.¹⁹

This paper takes the Commission's caution seriously rather than setting it aside. The Commission's reluctance to draw a bright-line exemption was substantially motivated by a legitimate concern this paper shares: that a close-in-age exemption, loosely drafted, could be exploited to shield relationships in which apparent "consent" was in fact produced by family pressure, caste dynamics, or an imbalance of power between the parties — concerns explored further in Part 7. That said, sentencing discretion alone does not address the harms identified in Part 5. A sentencing-stage remedy still requires arrest, prosecution, and conviction to occur before any relief is available; it does nothing to prevent the initial criminalisation, the mandatory reporting under Section 19, the pre-trial detention, or the reputational and educational harm that occurs long before sentencing is reached. The Commission's own report acknowledges that Section 19's reporting mandate and Section 29's reverse burden operate well before a court ever reaches the sentencing stage.²⁰ A reform confined to sentencing therefore treats a symptom of the problem this paper identifies, not its source. The recommendations in Part 8 are accordingly narrower than a blanket exemption — designed specifically to answer the Commission's institutional caution rather than to override it.

7. Judicial Response: Divergence, Not Trajectory

Existing commentary on this subject tends to present the case law as a linear evolution from strict enforcement toward growing judicial sympathy for adolescent autonomy. Read closely, the cases do not support a single trajectory. They show courts reaching for different tools at different procedural stages, in the absence of any statutory tool that would let them resolve the underlying question directly. That divergence, properly understood, is itself evidence for legislative rather than judicial correction.

¹⁹Law Commission of India, Report No. 283, *supra* note 12, at 116.

²⁰Law Commission of India, Report No. 283, *supra* note 12, at 68-71.

7.1 Definitional Cases: What Counts as an Offence at All

In *Independent Thought v. Union of India*, the Supreme Court read down the marital rape exception under the Indian Penal Code as applied to minor wives, holding that a minor cannot legally consent to sexual activity irrespective of marital status.²¹ In *Attorney General for India v. Satish & Anr.*, the Court rejected the Bombay High Court's "skin-to-skin" requirement for sexual assault under Section 7,²² holding that sexual intent, not the manner of physical contact, is the determinative element of the offence.²³ Both cases strengthen and clarify what conduct falls within the Act's definitions; neither addresses, nor purports to address, the separate question of whether consensual adolescent conduct should fall within that definition in the first place.

7.2 Bail-Stage Relief

A second category of cases addresses the question only indirectly, through the grant or refusal of bail. In *Satish alias Chand v. State of U.P.*, the Allahabad High Court, while granting bail, observed that POCSO is "every now and then" misused against consensual romantic relationships between teenagers and set out factors — context, the victim's own statement, and the absence of exploitative intent — relevant to such an assessment.²⁴ In *Sahil v. State (NCT of Delhi)*, the Delhi High Court similarly observed that POCSO cases filed at a family's behest to oppose a daughter's romantic involvement with a young man have become commonplace, leaving young men to languish in custody as a consequence.²⁵ These are valuable judicial acknowledgments of the underlying social pattern this paper documents in Part 1 — but they remain bail-stage, fact-specific findings without binding precedential weight on the substantive question of criminal liability.

7.3 Sentencing-Stage Mitigation

A third category concedes the underlying strict-liability rule while tempering its consequences at sentencing. The Madras High Court, while upholding a conviction under the POCSO Act and reiterating that a minor is legally incapable of consent even in a romantic relationship, has

²¹*Independent Thought v. Union of India*, (2017) 10 SCC 800.

²²*Satish Ragde v. State of Maharashtra*, 2021 SCC OnLine Bom 72.

²³*Attorney General for India v. Satish & Anr.*, (2021) INSC 762.

²⁴*Satish Alias Chand v. State of U.P.*, 2024:AHC:108011; see also 2024 LiveLaw (AB) 421.

²⁵*Sahil v. State (NCT of Delhi)*, 2024:DHC:6100 (Delhi H.C.).

nonetheless treated the hormonal and emotional realities of adolescence as a relevant mitigating factor in fixing the sentence, reducing a sentence of imprisonment for the remainder of the accused's natural life to a determinate term.²⁶ This is the clearest judicial statement that consent is not a defence under the Act as it stands — a court applying it faithfully has no doctrinal room to acquit on that basis, however sympathetic the facts.

7.4 The Outlier: A Constitutional Observation

Finally, in *State of Uttar Pradesh v. Anurudh & Anr.*, the Supreme Court, while addressing the propriety of age-determination directions at the bail stage, went further than any of the preceding cases by expressly acknowledging the recurring misuse of the Act in consensual-relationship cases and inviting legislative consideration of a close-in-age exemption.²⁷ This is an important observation, but it remains precisely that — an invitation to the legislature, not a holding that displaces the strict-liability rule the Madras High Court applied in the case discussed immediately above, decided on essentially contemporaneous facts. The two decisions coexist because neither aims to resolve what only a statutory amendment can resolve.

Read together, these four categories do not describe a single court gradually changing its mind. They describe four different courts, addressing four different procedural questions, each doing the most it can with the tools available to it. That is precisely the picture one would expect from unaddressed legislative silence, and it is the strongest evidentiary basis this paper has for arguing that Parliament, rather than further judicial improvisation, must resolve the underlying question.

8. Objections to a Close-in-Age Exemption

A reform proposal of this kind is not self-evidently correct, and it should not be presented as though it were. Three objections deserve direct engagement.

8.1 The Consent-Framing Objection

The most serious objection is that "consent" in these cases is not always what it appears to be.

²⁶Madras High Court Reduces Sentence of POCSO Convict, Cites Impact of Adolescent Hormonal Changes, India Legal (2026), <https://indialegallive.com/constitutional-law-news/courts-news/madras-high-court-reduces-sentence-of-pocso-convict-cites-impact-of-adolescent-hormonal-changes/>.

²⁷*State of Uttar Pradesh v. Anurudh & Anr.*, 2026 INSC 47.

The complainant in the overwhelming majority of reported cases is the girl; a close-in-age exemption risks treating consent as genuine simply because the numerical age gap is small, even where that consent was in fact shaped by family pressure, economic dependence, caste dynamics, or an informal power imbalance between the parties that an age-gap threshold cannot capture. The Law Commission's own reluctance to endorse a bright-line exemption was substantially rooted in this concern.²⁸ This objection is well taken and is not answered by simply asserting adolescent autonomy; it requires the exemption itself to be narrowly conditioned — see Part 8.4 below.

8.2 The Evidentiary Objection

Age determination is already contested terrain, as *Anurudh* itself illustrates in holding that age findings at the bail stage are *prima facie* and not conclusive.²⁹ A close-in-age exemption adds a second disputed variable — the *gap* between two ages, each independently uncertain — which could, if drafted carelessly, compound rather than resolve the evidentiary difficulty rather than reduce it.

8.3 The Comparative Failure-Mode Objection

As Part 4.2 acknowledges, close-in-age exemptions elsewhere have produced their own arbitrariness and jurisdictional inconsistency. Importing the concept does not import a guarantee that India will avoid the same drafting pitfalls.

8.4 A Narrower Response

These objections do not defeat the case for reform; they defeat the case for an *unconditional* exemption. They argue for a threshold *screening* mechanism rather than an automatic bar to prosecution: a mandatory, time-bound preliminary judicial or prosecutorial review — occurring before arrest and charge, not merely before conviction — that assesses age proximity *together with* indicators of coercion, dependency, or authority, with the burden remaining on the exemption's proponent to establish absence of exploitation rather than reversing POCSO's existing protective presumption outright. This design directly answers Sections 8.1 and 8.2: it does not treat a small age gap as conclusive of consent, and it does not require resolving

²⁸Law Commission of India, Report No. 283, *supra* note 12, at 79-86 (Chapter 15, Judicial Determination of Consensual Romantic Relationships).

²⁹*State of Uttar Pradesh v. Anurudh & Anr.*, 2026 INSC 47.

contested age findings at the threshold stage, only assessing whether the case presents indicia of exploitation warranting full prosecution. It is deliberately narrower than the proposals found in earlier drafts of this argument, precisely because the objections above are, on reflection, correct as far as they go.

9. Legal Reform and Policy Recommendations

Primary recommendation —

- **a screened close-in-age exemption:** Amend the POCSO Act to introduce a narrowly tailored close-in-age exemption operating at the pre-charge stage, subject to:

(a) a defined age-gap threshold (2–5 years) above a minimum age (14–16 years).

(b) mandatory preliminary screening by a judicial or specially designated prosecutorial officer, assessing indicators of coercion, dependency, or authority before the exemption applies.

(c) express, non-derogable exclusion of cases involving grooming, trafficking, pornography, or any relationship of authority or trust between the parties.

Complementary measure —

- **prosecutorial and procedural safeguards:** Structured prosecutorial guidelines to prevent the use of the Act to resolve familial or caste-based objections to a relationship, including inter-caste and inter-community relationships.
- **judicial sensitisation:** Structured training for judicial officers on adolescent development and the distinction between consent and its coerced appearance, so that the screening mechanism in the primary recommendation is applied consistently rather than becoming, itself, a new source of judicial divergence.
- **Section 43 awareness:** Reinforce the existing statutory mandate under Section 43³⁰ through systematic, age-appropriate awareness programmes on consent and its legal consequences, reducing both genuine abuse and the over-criminalisation that flows

³⁰The Protection of Children from Sexual Offences Act, 2012, § 43, No. 32, Acts of Parliament, 2012 (India).

from a lack of awareness on all sides.

10. Conclusion

The POCSO Act's rigid, undifferentiated standard of consent has produced a body of case law that is not evolving toward a solution so much as compensating, unevenly and at different procedural stages, for the absence of one. The Law Commission of India examined this exact question and, for reasons this paper treats as legitimate rather than dismisses, declined to recommend the reform proposed here in its broadest form. Taking that caution seriously — rather than citing the Commission once and moving past it — is what distinguishes a defensible reform proposal from an aspirational one. A narrowly screened close-in-age exemption, conditioned on the absence of coercion or power imbalance and operating before arrest rather than only at sentencing, is offered here as a response calibrated to the objections it must actually answer, not as a substitute for engaging with them.

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