
THE ROMEO JULIET CLAUSE AND THE CONSTITUTIONAL DILEMMA OF ADOLESCENT INTIMACY: A JURISPRUDENTIAL APPRAISAL OF POCSO ACT, 2012 AND THE BHARATIYA NYAYA SANHITA, 2023

Mr. R. Shanmuganandan, M.A., Pub. Admn., M.A., Sociology
Member, Juvenile Justice Board, The Nilgiris

ABSTRACT

India has increased the legal age of consent to sexual relationship from 16 years to 18 years according to the POCSO, 2012¹ backed up by the BNS, 2023.² The “Romeo Juliet clause” is a statutory close-in-age exemption that must be viewed as a necessary corrective to the wholesale criminalisation of consensual adolescent relationships. This research adopts to an extensive doctrinal and comparative analysis of various jurisdictions like the USA, Canada and Australia etc., examining the “constitutional paradox”, with the interface of protective paternalism with personal liberty, privacy, as well as doctrine of evolving capacities. The Supreme Court of India’s observation in *State Of Uttar Pradesh V. Anurudh*(2026)³ assumed the centre-stage in this inquiry which supported legislative flexibility to distinguish between predatory sexual abuse and genuine adolescent intimacy. The report synthesises various judicial pronouncements, statistical reports prepared by Enfold⁴ and Project 39A, and the findings of the 283rd Law Commission Report⁵ to encourage an effective analytic framework for reform. This framework seeks to protect the "best interests of the child" while also avoiding the "menace" of weaponising child protection laws for collateral family purposes.

Keywords: Romeo-Juliet clause, Child protection, POCSO, Constitution, BNS, Consent, Age

¹ Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012 (India)

² Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023 (India)

³ *State of Uttar Pradesh v. Anurudh*, 2026 INSC 47 (India).

⁴ Enfold Proactive Health Tr. & UNICEF, *Romantic Cases under POCSO: A Study of Judgments* (2022)

⁵ Law Commission of India, Report No. 283: Age of Consent under the Protection of Children from Sexual Offences Act, 2012 (2023)

INTRODUCTION:

The legal architecture for protecting children in India has reached a crucial stage due to the increasing disparity between the bright-line test of eighteen years as a legal standard and the real world of adolescents. The POCSO Act, 2012⁶ was a groundbreaking event in the evolution of child rights, taking India from a gender-biased country of tolerance towards child sexual abuse to one that is gender-neutral and intolerant of such acts. However, by codifying an age of consent at eighteen years and rendering any minor's consent legally irrelevant, the legislation has, in effect, ensnared thousands of minors in a net of criminalisation.⁷ The legislative design, ostensibly based on a 'noble intent' to protect vulnerable minors from predatory adults, has now increasingly been misappropriated. The current socio-legal scenario has resulted in a significant number of Protection of Children from Sexual Offences cases involving consensual romantic relationships between teenagers, often at the instance of disapproving families to prevent elopements between members of different castes and religions.⁸ The consequence has been a 'constitutional paradox' wherein a legislation intended to protect children has resulted in the incarceration of adolescent boys, the traumatising of adolescent girls, and an overburdened judiciary with cases wherein the 'victim' invariably testifies in favour of the 'accused'.⁹ The 'Romeo Juliet clause' assumes critical importance as an essential legalistic tool to resolve this dilemma. The clause, named after Shakespeare's archetypal lovers, has been incorporated to acknowledge sexual exploration as an essential component of adolescent development. The Supreme Court of India has recently highlighted an urgent need for such an exemption to 'curb the menace' of legal misappropriation. This report undertakes an exhaustive scholarly examination of its theoretical underpinnings.

RESEARCH METHODOLOGY:

The current study is conducted using a two-pronged methodological approach in which a rigorous study of the doctrinal contents of the applicable statutes in India is supplemented by a comparative study of the Indian legislative framework¹⁰ with other jurisdictions to come up with an all-inclusive framework of reforming the Indian legislation. In the context of the latter, the research will be the systematic study of the POCSO Act 2012, Juvenile Justice (Care and

⁶ POCSO Act, 2012, Statement of Objects and Reasons

⁷ Project 39A, The Impact of Mandatory Minimums: A Study of POCSO Sentencing (2024)

⁸ Shruti Ramakrishnan & Swagata Raha, *Rethinking the Age of Consent in India*, THE INDIA FORUM(2022)

⁹ Sabari v. Inspector of Police, (2021) 1 M.L.J. (CrI) 517 (Mad) (India)

¹⁰ C.R. Kothari, *Research Methodology: Methods and Techniques* (4th ed. 2019)

Protection of Children) Act 2015,¹¹ and the newly enacted Bharatiya Nyaya Sanhita 2023.¹² Besides that, the research will be a judicial review of the pronouncements of the Supreme Court and other High Courts of India to establish the boundaries of adolescent sexual agency and evolving capacity doctrine enshrined in the United Nations Convention on the Rights of the Child (UNCRC).¹³

The research undertakes a comparative research methodology wherein the parameters of "adolescent sexual agency" are analysed in the global sphere. In this regard, the research undertakes an in-depth analysis of the "tiered consent" approach in Canada, the "public interest" prosecution approach in the United Kingdom, and the "defence of similar age" approach in Australia.¹⁴ In addition, the research undertakes an in-depth analysis of the various parameters set in different jurisdictions,¹⁵ including the age gaps and thresholds, which have successfully addressed the issue of minor protection and adolescent flexibility in different civil-law and common-law jurisdictions.¹⁶

CONCEPTUALISING THE ROMEO-JULIET CLAUSE:

Conceptualising "Romeo and Juliet clause", means defining a narrowly-crafted statutory exception aimed at shielding consensual, age-proximate adolescent relationships from the blanket criminalisation that characterises statutory rape laws. Unlike general age-of-consent laws which criminalise all sexual activities involving a minor, even where there is mutual consent and developmental similarity, this clause makes a principled distinction between sexual predation and genuine adolescent intimacy. The clause must be proportionate.

In countries like the USA, Canada and Australia, the fact of defence or exemption binds both parties being a minor and consequently, an age gap of two to five years is usually permissible.¹⁷ According to this framework, adolescents have "evolving capacities". It was noted that those aged sixteen to eighteen have moral agency that distinguished their peer-to-peer interactions

¹¹ Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2016 (India)

¹² Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023 (India)

¹³ UN Convention on the Rights of the Child art. 12, Nov. 20, 1989, 1577 U.N.T.S. 3

¹⁴ Crimes Act 1900 (ACT) § 55(3) (Austl.); Crimes Act 1900 (NSW) § 66C (Austl.).

¹⁵ Age of Consent in the USA, IPLEADERS (2026)

¹⁶ When Young Love Becomes a Crime: Why India Needs a Romeo-Juliet Clause, APEX ADVOCATES (Jan. 30, 2026).

¹⁷ Age of Consent in the USA, supra note 10.

from their complex relationship with adults above legal age of consent and adult-child abuse.

In *State of Uttar Pradesh v. Anurudh*(2026), the Supreme Court of India conceptualised this clause as a necessary remedy to the “constitutional paradox” resulting from the clash of protective paternalism under the POCSO Act and BNS 2023 with fundamental rights to privacy and personal liberty. With the establishment of a statutory filter, the provision is intended to curb “weaponisation” of the child protection laws by families seeking to punish elopement or socially unacceptable relations.¹⁸

Most importantly, the idea will not diminish child safety. It has strict prohibitions and excludes any relationship that involves coercion, grooming or an abuse of authority. The main aim of the Romeo-Juliet clause is to ensure that the coercive might of the state is reserved for actual harm and not for a phase of growing up when adolescents indulge in sexual activities.

OBJECTIVE OF ROMEO-JULIET CLAUSE:

The first and foremost purpose of including a Romeo Juliet clause is the restoration of proportionality in the application of criminal statutes. An eighteen-year-old in a relationship with a seventeen-year-old would face the same consequences as a forty-year-old predator in a relationship with a child. This clause aims at preventing the sex offender registry and the stigmatisation of young people for engaging in globally defined normal adolescent behaviour.¹⁹

Additionally, the clause aims at protecting the health rights and privacy of adolescents. Mandatory reporting statutes like Section 19 of the POCSO Act in India have a "chilling effect" on teenagers, who are sexually active and are afraid of seeking reproductive healthcare services, contraception, or counseling for fear of being reported for consensual sex. This clause would thus align with the "best interests of the child" principle by providing a "safe harbor" for peer relationships.²⁰

GAPS IN LEGAL FRAMEWORK:

There are three major gaps in the legal system:

¹⁸ When Young Love Becomes a Crime, supra note 11

¹⁹ Romeo-Juliet Clause Under POCSO, SJLC (2026)

²⁰ Protection of Children from Sexual Offences Act, 2012, § 19.

1. Lack of Statutory Distinction: In this fact, no distinction is made between sexual predatory behaviour or sexual behaviour between consenting adolescents that falls into the age restriction. Therefore, any sexual activity between teenagers is put on the same footing.²¹

2. The Juvenile Justice Dilemma: Another contradiction arises in the fact that, although the Juvenile Justice Act considers the juveniles 16-18 years old to be adults under the circumstances of heinous crimes, POCSO/BNS does not permit the minor to have any sexual autonomy.²²

3. Reporting Loop: Section 19 requires reporting of any suspected child abuse case, thus adding an extra liability to institutions and making them accomplices in the crime. As an example, a basic check-up of a medical practitioner turns into a police investigation, at the demand of the parents of a juvenile against the will.²³

BHARATIYA NYAYA SANHITA 2023 AND CONTINUATION OF ABSOLUTISM :

The Bharatiya Nyaya Sanhita (BNS) 2023 largely retains previous reforms on the rigid bar on births at the age 18. The term rape has been defined under section 63 to include sexual acts, with or without consent, if the woman is under the age of eighteen.²⁴ The BNS maintains the base age of eighteen as per the post-2013 Indian Penal Code, but the significant victim centric change is in the marital rape exception. The reference age of fifteen for consent in this exception is increased to eighteen years, meaning that marriage cannot be a shield to sexual offences against minors.

Even with this reform, the consent remains “binary” in BNS, and there continues to be no close-in-age clause. Therefore, this is a missed opportunity for any structural reform regarding adolescents intimacy. Also, the BNS adopts the gender-based definition of ‘rape ’in the IPC whereas the POCSO Act is gender-neutral. This contradiction fortifies a jurisprudence that takes into account the capability of an adolescent to cause harm but refuses to yield should one of the same adolescents be in a position to feel affection.²⁵

²¹ Law Commission Report No. 283, supra note 4.

²² Juvenile Justice (Care and Protection of Children) Act, 2015, § 15.

²³ Protection of Children from Sexual Offences Act, 2012, § 19.

²⁴ Bharatiya Nyaya Sanhita, 2023, § 63.

²⁵ Offences Related to Women Under BNS 2023, RESEARCHGATE (2024).

THE CONUNDRUM IN THE CONSTITUTION:

The existing law operates in a space of “Constitutional Paradox” where protective paternalism clashes with the fundamental rights to personal liberty, privacy and autonomy. As per the provisions of the POCSO Act, it is assumed that any person under the age of eighteen is incapable of making valid decisions regarding their sexual behaviour. Therefore, a complete ban on the ascription for this category is justified.²⁶ This is in conflict with the 2017 judgment which recognised the right to privacy under Article 21 which extends to choice of sexual relationships. To treat a 17-year-old in a consensual relationship as a serious crime is an instance of a "punitive social regulation". Moreover, India's uncompromising rule disregards the UNCRC's principle of “evolving capacities”, essentially “infantilising” young adults close to achieving legal majority.²⁷

EVIDENCE OF MISUSE: THE ENFOLD AND PROJECT 39A REPORTS:

Statistical reports show that the judicial concerns as to the criminalisation of over-criminalisation of adolescent romance. An analysis of 7064 judgments by Enfold showed that 23.4% of POCSO cases were ‘romantic.’ The parents of the girl lodge 80.2% of these cases.²⁸ The report by Enfold and Project 39A in 2024 revealed that 25.4% of the cases were due to consensual relationships.²⁹

According to the National Law School (NLSIU), studies across five states showed variations in consensual cases ranging from 15.69% in Assam to 21.58% in Delhi. Social workers attribute 25.0% to 40.0% of the juvenile homes' burden to parties relating to "love affairs" and not sexual abuse. The above figures depict that the POCSO Act is often weaponised for collateral family purposes. For instance, to control a daughter's choices or punish elopement among others.³⁰

THE PROBLEM OF THE “VICTIM” AND “OFFENDER”:

The strict implementation of POCSO results in a unique problem for both the victim and

²⁶ The Constitutional Paradox of POCSO, LIVE LAW (2026).

²⁷ K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India).

²⁸ Enfold Proactive Health Trust, Study of 7,064 POCSO Judgments (2022).

²⁹ Enfold Proactive Health Trust & Project 39A, Romantic Cases under the POCSO Act (2024).

³⁰ NLSIU Centre for Child and the Law, Study on Special Courts in Five States (2017)

offender. Adolescent boys are always regarded as "offenders," and are immediately placed under arrest/apprehension, detained for a long time before being tried, and sentenced to at least ten to twenty years if tried as adults. This makes education and employment impossible, causing them to be stigmatised forever.³¹

If adolescent girls choose not to go back to their families, they may be "always institutionalised" in child-care institutions until the age of eighteen. They have no right to choose whom they want to marry. Also, the victims compelled to appear in court proceedings when only 82% will testify against them, resulting in a 74.6% acquittal rate.³²

THE 283RD LAW COMMISSION REPORT: ASSESSMENT OF REFORMS:

In the 2023 Law Commission report, there were three proposed reforms in response to the "uncomfortable position of the judiciary in these matters," which included reducing the age of consent from eighteen to sixteen, which was opposed as it could lead to problems like child marriages and trafficking. The other alternative was a statutory Romeo and Juliet provision that faced criticism over concerns about grooming.³³

The Commission finally found that judicial discretion is the most appropriate solution to this problem, with proposed changes to Sections 4 and 8 of the POCSO Act, giving courts the right to use their discretionary powers in sentencing in consensual cases involving individuals aged 16 to 18 years old. This solution is critiqued by many as a "half-measure."³⁴

GLOBAL PERSPECTIVE: A COMPARATIVE STUDY OF THE ROMEO-JULIET CLAUSE:

The "Romeo Juliet clause" is a well-tested method used in other jurisdictions to avoid punishing excessively. In America, about 26 states have adopted to this. This law provides an opportunity to not to be punished under charges of statutory rape if both individuals are minors and their age difference is minimal - three years in Alaska and four years in Colorado.³⁵

³¹ Evaluating the Efficacy of Romeo-Juliet Laws in India, NLUO (2025).

³² Enfold Proactive Health Trust, Balancing Protection and Autonomy (Sept. 2025).

³³ Law Commission Report No. 283, supra note 4.

³⁴ Law Commission of India Report on the Age of Consent: Denying Justice and Autonomy to Adolescents, INDIAN J. MED. ETHICS (2024).

³⁵ Age of Consent in the USA, supra note 10.

Canadian Bill C-22³⁶ has introduced the so-called “tiered” exemption, according to which 12-13 year olds may consent to sexual relations with partners older by not more than two years, and 14-15 year olds to partners older by no more than five years in case of lack of any authority relationships.

Australia³⁷ represents the country offering the most complex tiered structure in its various states. The age of consent in act is 16, but there is a defence for offenders being no more than two years older than the victim who must be at least 10 years old. The threshold in New South Wales equals 16, and if the offenders are 14-15 year olds and their partner is less than two years older, there is a defence. In Victoria, if the minor is 12 or above and the offender is 2 years or less older than the minor, there is a defence. In Tasmania, where the general age is 17, there are defences for minors 12 or above (age gap of 3 years) and minors 15 or above (age gap of 5 years).

In the United Kingdom, there has been an introduction of the Romeo and Juliet clause that helps professionals such as teachers exercise their own discretion in dealing with sexually active teenagers in between ages 13 to 17.³⁸

EFFECT OF JUDICIARY AND CLOGGING OF SPECIAL COURTS:

The burden on the judiciary as far as “romantic cases” is concerned is rather high. As per reports, by 2025, there have been 773 Fast Track Special Courts (FTSCs) set up out of which 400 have been for POCSO alone. These courts have disposed of more than 350,000 cases. But the conviction rate has fallen from 35% to 29% from 2019 to 2023. Even though the disposal rate was 109% in 2025, the problem is that the courts are clogged with teenage romance cases which has made them “weaker as justice.”³⁹

SOCIO-LEGAL COMPLEXITIES: PATRIARCHAL IDEALS AND SELF-MARRIAGES:

A significant number of cases reported under POCSO have been termed as "self-marriages" wherein adolescents leave their homes to avoid being forced into marriage or to dodge parental

³⁶ Tackling Violent Crime Act, S.C. 2008, c. 6 (Can.).

³⁷ Crimes Act 1958 (Vic) § 49B (Austl.); Criminal Code 1924 (Tas) § 124 (Austl.).

³⁸ Harriet Cross, *supra* note 2.

³⁹ Fast Track Special Courts Progress Report, PIB DELHI (2025).

objection. According to a study conducted by Enfold, in romantic cases,⁴⁰ 46.5% of the girls had been married to the accused either at the time of filing of the FIR or later on. In such situations, parents resort to using the apparatus of the state to exercise their patriarchal power over their daughter's honour.

STRATEGIES FOR REFORM:

In order to tackle the constitutional dilemma without undermining the welfare of children while protecting their freedom, some of the reforms include:

1. Statutory Romeo Juliet Exception:⁴¹ Enact a narrow provision regarding consensual sex between adolescents (16-18 years old), provided that the age difference does not exceed 3-4 years. This clause shall not apply to grooming, power imbalances, and human trafficking situations.
2. Repeal the Compulsion of Mandatory Reporting of Peers:⁴² Revise Section 19 to ensure that medical/educational professionals do not report consensual peer interactions as a means of promoting barrier-free access to SRH programmes.
3. "Mandate Best Interest Determination": Conduct a "best interest determination" before making an arrest/apprehension in order to ascertain whether the romantic relations are consensual, thereby preventing unnecessary detention of adolescents.
4. Employ Para-Legal Volunteers (PLVs): Place PLVs in each police station to serve as the first point of contact in recognising consensual affairs, as ordered by the Supreme Court in 2025.
5. Promote Comprehensive Sexuality Education (CSE): Drift away from the approach of over-criminalisation towards empowerment through school-based CSE programme.

CONCLUSION:

Although the process of development of criminal law in India has resulted in creating a solid

⁴⁰ Romantic Cases Make Up Nearly 20% of POCSO Cases, THE NEWS MINUTE (Dec. 14, 2022).

⁴¹ State of Uttar Pradesh v. Anurudh, 2026 INSC 47.

⁴² Law Commission Report No. 283, supra note 4.

shield to secure children,⁴³ the dogmatism involved in adhering to the age of 18 years as an absolute measure has led to the creation of a weapon which is harming those it was supposed to protect. The present approach of having one rule for all under POCSO Act and Bharatiya Nyaya Sanhita creates devastating results like arrest/apprehension of teenagers due to their decisions and overburdening of courts with cases having no meaning in enhancing the safety of children.

Observations by the Supreme Court of India in *Anurudh*⁴⁴ in 2026 were a landmark in this field because it clearly stated that law must be able to offer protection to individuals while not causing destruction in their lives. Punishment by law cannot destroy their humanity. Reform will not come from making less rules but by balancing them with justice. Implementation of "Romeo Juliet clause" along with the concept of "evolving capacities" of children can result in moving towards a new era in legal practices.

⁴³ Reassessing Age under POCSO: A Step Forward, SCC ONLINE (Apr. 5, 2023).

⁴⁴ *State of Uttar Pradesh v. Anurudh*, 2026 LiveLaw (SC) 29.