

Criminalising Consent: A Research for Reforming POCSO's Age Threshold

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Abstract—The Protection of Children from Sexual Offences Act, 2012 (POCSO) was enacted in the light of growing cases related to child sexual abuse and exploitation. However, the legislation didn't always function the way its drafters imagined. After more than a decade into its enforcement, the statute revealed many troubling paradoxes due to its rigid frameworks, which was often struggled by the court to be ignore. The main problem lies in the question that how the act handles adolescent consensual relationships. The act works on strict liability principle, leaving no room for consent of below the age of eighteen years. In practice, this means consensual relationship with person even slightly below the age of eighteen could land him/her in prison. Even the families not behind to use the statute as a tool of exploitation. NCRB data and judicial pronouncements from Supreme Court and various High Courts have recognise the growing pattern of using the POCSO Act, not to report genuine exploitation but to punish adolescent relationships that cross caste, communities and religious boundaries. The paper examines this paradox and issue through various judicial pronouncements, legal statistics and comparative legal frameworks, and aims to focus upon the sexual autonomy of adolescents. It argues for the introduction of a close-in-age exception, which in the recent trend, was itself flagged by the honourable Supreme court in recent proceedings of 2026, which aims to protect consensual teenage intimacy while prosecuting the genuine abuse.

Keywords- POCSO, Age of Consent, Adolescent, Sexual Autonomy, Familial Misuse, Romeo Juliet Clause.

1. Introduction

Historically and statistically, sexual abuse and exploitation is the most heinous crimes against any human. It becomes even more grisly, when it is committed against children, and when a child is truly exploited the law must respond to it without compromise. That's why the protection of children from sexual offences act, 2012 was enacted with exactly the same purpose, and to the extent, it has achieved it due to its robust frameworks. The objective of these Act was to criminalize the act of sexual abuse and sexual exploitation against children. However, over time, the application of this act has revealed a travelling paradox, which was never the intended by the parliament. The law that was once designed to shield children from abuse, is now increasingly invoked in cases involving consensual relationships between adolescents, particularly where the male partner is below or just above the age of eighteen years. The strict liability principle of this act is now producing unintended consequences, thus curbing the adolescents from their sexual autonomy. By treating all sexual activities involving individuals under the age of 18 as criminal the act fails to distinguish between exploitative abuse and consensual intimacy.

Also, in many instances families have used POCSO provisions to criminalise relationships they disapprove of, often targeting male partners from different castes, religions or social economic backgrounds. Although POCSO is formally considered gender-neutral, its enforcement patterns raise serious concern about implicit gender bias and selective prosecution. That's the paradox this paper set out to examine. POCSO applies strict liability and leaves no room for consent, exceptions and acknowledgement that a 17-year-old entering a romantic relationship is meaningfully different from an adult exploiting a child. This paper mentions several judicial pronouncements which are acknowledging that adolescents have a right to coercion free romantic relationships, yet the court is forced to proceed on strict liability ground because the statute permits nothing else.

This paper argues for a close-in-age exception that would protect the consensual relationship between adolescents near in age, while preserving POCSO real intent against sexual exploitation and coercion. The supreme court also in recent ruling considered a Romeo-Juliet clause to safeguard the genuine romantic intimacy.

2. Literature Review

i. Critical Analysis of POCSO: In Light of The Rights of The Adolescents by Ishita Sinha, Ritwik Singh¹

The purpose of the paper was to critically examine the Protection of Children from Sexual Offences Act, 2012 especially its impact on adolescents. Authors main contention was on POCSO's Intent Vs. Impact that's the act was originally designed to provide protection to children but it fails to distinguish between consensual and non-consensual act, thus treating all sexual activities as crime.

This paper provides an in-depth analysis about the enactment and features of POCSO act, also it tries to show the loopholes of the act arguing that it increased the age of consent to 18 thus, restricting the sexual autonomy of children is seen as a failure to acknowledge the sociological, biological and psychological changes.

However, the paper relies heavily on secondary sources and judicial pronouncements but lacks primary data or fieldwork which it's one of the shortcomings, also the paper was of a theoretical view point rather than being analytical or empirical

ii. Right to Sexual Autonomy of Children—Implications of the UNCRC upon the Indian Law on the Age of Consent by Lina Mathew²

The Purpose of the article was to examine how international child rights frameworks, especially the UN Convention on the Rights of the Child (UNCRC), influence Indian laws on age of consent and sexual autonomy and highlight inconsistencies and gaps in Indian law regarding child marriage, sexual consent, and gender equality. This paper also shed the light on the evolution of the laws regarding the age of consent in India before the enactment of POCSO Act 2012.

Author contended that POCSO criminalizes all sexual activity under 18, even if consensual and non-abusive. This leads to unjust prosecution of adolescents in romantic relationships that was never the objective of this act.

However, the case laws of high courts mentioned in the paper were inconsistent and unreasonable in my point of view for the reason of large age gap between the accused and the victim, thus no scope of claiming the defence of Age-Proximity as mentioned under the international perspective of the paper.

iii. Consensual & Non-Exploitative Sexual Acts Under POCSO: An Analysis by Ms Savi Shivashankar³

The author gave us a brief about the background of the act and its salient features. This paper adopts a doctrinal research approach, which means it relies on Legal Textual Analysis such as Examining statutes like the POCSO Act, Indian Penal Code, reviewing judicial precedents and Socio-Legal Perspective by investigating how socio-economic factors influence adolescent maturity and decision-making. Key findings were: 16.2% increase in crimes against children from 2020 to 2021; many involve teenage romantic relationships, in romantic cases, acquittals are common (93.8%), often due to voluntary consent and lack of incriminating testimony. It's also argued by the author in this paper that threshold of legal age are based on presumed mental capacity, and not just physical development

However, the possible shortcomings can be - It generalizes adolescents below 18 lack the mental capacity to consent while ignoring developmental psychology research that shows many 16-year-olds can also possess adequate cognitive and emotional maturity. Also, it is claimed that reducing the age of consent would harm rural minors, but this is theoretical and lacks empirical backing. The arguments can also risks reinforcing stereotypes about rural communities and ignoring the possible safeguards available such as judicial discretion and contextual consent evaluation. The paper mentions but quickly dismisses the recommendations of 2013 to reduce the age of consent to 16 without engaging with its rationale.

3. Research Objectives

- A. Examination of judicial pronouncements related to consensual adolescent relationships under this Act through a doctrinal analysis of Supreme Court and various High Courts judgments.
- B. To investigate the Act's claim of being gender-neutral by examining the patterns of prosecution of individuals involving consensual relationship along with judicial reasonings of the cases
- C. To evaluate the unintended consequences of the current framework, including its potential misuse by families and its effect on adolescent autonomy, privacy, and dignity.
- D. To propose a model legislative safeguard clause that introduces a close-in-age exception and protects consensual adolescent relationships from criminalisation, while preserving the protective intent of the Act.

4. Research Methodology

This research follows a Mix-Method Approach, combining both empirical data with doctrinal legal analysis to critically examine the fundamental questions and loopholes of POCSO Act. Researcher of the paper had analysed different publications, articles, judgements, books, journals and E-resources.

5. Enactment of POCSO and its salient features

The Protection of Children from Sexual Offences Act, 2012 came into force on 14 November 2012 with the objective of curbing and penalising the alarming rise of sexual child abuse. This act deals with different kinds of sexual offences such as sexual assault, harassment and child pornography. The act derives its constitutional authority from article 15(3) of Constitution of India that empower the parliament to from special provisions for women and children. This article work as a foundational basis for this special legislation that address the issue of vulnerability of children. Even despite strong constitutional provisions (article 14, 15, 21, 24 etc) and our penal legislations, Indian justice system lacked specified legislation to tackle the issue of sexual offences against children for a long time. Indian Penal Code 1860 didn't recognise child sexual assault and harassment as a distinct offence, when the issue was examined by the several commissions, proposal for a special legislation was introduced. In 2005, The Department of Women and Child development drafted the Offences Against Children (Protection) Bill, which aimed to address various offences related to children, also including sexual offences. In 2007, the Ministry of Women and Child Development conducted a groundbreaking national study titled The Study of Child Abuse, which surveyed over 12,000 children across 13 states in India. The report revealed that 50.76% of children had experienced some form of sexual abuse⁴ highlighting the severity. Concerns were raised related to protection of children; thus, the Ministry of Women and Child Development prepared the draft Protection of Children from Sexual Offences (POCSO) Bill in September 2010⁵. This draft laid the foundation for the landmark POCSO Act, which was enacted in 2012 to address child sexual abuse in India. According to the survey conducted 99.6% of surveyed individuals expressed the need for a dedicated law to protect children from sexual abuse⁶.

Salient Features of the POCSO Act-

- **Comprehensive Definition of Offences:** POCSO categorizes offences into sexual assault, penetrative sexual assault, sexual harassment, and child pornography also recognizes aggravated forms of offences.
- **Presumption of Guilt and Burden of Proof:** Section 29 of the Act reverses the burden of proof, placing it on the accused once the prosecution establishes basic facts. This statutory presumption is designed to strengthen the prosecutorial framework but raises concerns about fairness and misuse of the act.

- **Gender-Neutral Protection:** The Act defines a “child” under section 2(1)(d) as any person below the age of 18 years, irrespective of gender, thereby extending protection to both boys and girls — a departure from earlier laws which focused primarily on female victims.
- **Mandatory Reporting and Penal Consequences:** Section 19 mandates reporting of offences by any person who has knowledge of the commission of a sexual offence against a child. Failure to report is considered as an offence in itself, reinforcing the duty of care across society.
- **Child-Friendly Procedures:** The Act mandates special courts, in-camera trials, and non-intimidating environments for recording the child’s statement. It prohibits aggressive cross-examination and ensures the presence of support persons during proceedings.
- **Protection of Identity:** Section 23 prohibits media from disclosing the identity of the child victim, ensuring right to privacy and dignity throughout the legal process.
- **Override Clause:** POCSO overrides all other laws to the extent of inconsistency, including provisions of the *Bhartiya Nyaya Sanhita, 2023*, thereby asserting its primacy in cases involving child sexual offences.

6. Protection Becomes Prosecution

6.1. The paradox of strict liability

The Protection of Children from Sexual Offences Act, 2012 was conceived as a landmark legislation curb the cases related to sexual assault and harassment of children below the age of 18, basically it’s a statute to shield children from sexual exploitation. This legislation is based on the doctrine of Strict Liability which means holding the individuals liable even without malicious intent thus focusing on child protection over fault. However considering the gravity of the increasing number of cases related to sexual offences against children, it is of no doubt that strict approach is a necessity in the matters related to children. Also, Crime against children records 9.2% rise in 2023⁷ which means cases reported in 2023 were 1,77,335 out of which 67,694 cases were POCSO cases. However same principle that ensures protection also produces unintended consequences, and thus creates a paradox when applied to adolescents by invalidating the consent of children under the age of 18, the law collapses the distinction between exploitative abuse and consensual physical intimacy and romantic relationships. In practice, even the relationships between teenagers marked by mutual consent, affection and willingness are prosecuted and the innocent teenagers (most of the times- Boys) are placed under the same category as perpetrators of serious sexual crimes. In this way paradoxically, a statute intended to shield children from exploitation often ends up criminalizing their autonomy. The worst drawback of this statute is that it leaves no room for the discretion of the judges and they are regularly confronted with cases where both parties admit to a consensual relationship, and the result is very obvious that Protection transforms into Prosecution and the innocent child transform into a perpetrator into the eye of the society.

This paradox is not merely theoretical but it can be witnessed in the real-life scenarios. Courts across the nation have repeatedly encountered situations where the prosecutrix herself admitted that she was in a consensual relationship with the accused, yet the statute compels prosecution. A recent example of the paradox is the Punjab and Haryana High Court’s decision in *X v. State of Punjab*⁸ where the girl had voluntarily accompanied the accused in public, without raising alarm, and medical evidence revealed no injuries. The Court recognized the relationship as “entirely consensual,” and still constrained to acquit only for the undermining of prosecution evidence rather than validating adolescent choice. Such cases illustrate how the doctrine of strict liability, which were designed to protect the adolescents paradoxically transformed the consensual intimacy into criminal liability. However, the paradox not isolated, but repeated across jurisdictions, claim is supported in the Delhi High Court’s decision in *State v. Hitesh*⁹ Here, the prosecutrix herself admitted to a consensual relationship with the accused and she also don’t want the accused to be prosecuted and the criminal proceedings were started against her will. Justice Jasmeet Singh emphasized that adolescents have the right to consensual and coercion-free romantic relationships. The law should evolve to respect these connections rather than criminalize them. Yet, despite this recognition, court was constrained to acquit only because of lack of evidence and prosecution not being able to prove the case beyond the reasonable doubt, not because the law respects the sexual autonomy and law permitted adolescent consent. The court observed “*The POCSO Act was promulgated for the protection of children. The Act, however, did not choose to draw any distinction as to a girl of less than 18 who chooses a partner out of her own choice and volition. Therefore, any sexual act or intercourse by a man with such a girl would constitute an offence under various provisions of the POCSO Act of 2012.*” This illustrates how the principle of strict liability under this Act forces the courts to sidestep the idea of justice, while granting relief through technical loophole rather than acknowledging adolescent choice.

6.2. Familial and Social Misuse: POCSO as a Tool of Control

While the doctrine of strict liability under this act creates a legal paradox by criminalizing adolescent intimacy in the name of protection, a grave sociological distortion is witnessed due to its misuse within familial and social structure. In numerous cases, this statute is used by the families of the victim not to shield children from exploitation, but to punish relationships that defy caste boundaries, social norms, religious norms or parental authority. It is often seen that parents acting out of moral outrage, files a complaint under POCSO to criminalize the adolescent relationships that, according to the family, is against the traditional hierarchies. The law made to provide protections to the vulnerable children, is thus weaponized to enforce conformity-transforming teenage love into offence and courtroom into a site of cultural policing.

The honourable high court of Madras during proceedings of *Sabari @ Sabarinathan v. Inspector of Police*¹⁰ observed “*the analysis shows that majority of the cases are elopement cases registered under POCSO. Elopement cases have to be dealt separately since the cases are voluminous. If the boy and a girl belong to the same community then the whole villagers support the child marriage and no case is filed against them, but in the case of different communities’ case is made out against boy which ends up with communal unrest.*” While intra-community child marriages are tolerated, inter-community adolescent relationship led to trigger complaint against the boy. This institutional acknowledgment demonstrates how this act has become tool of a social control, reinforcing the community and caste partition rather than its objective of protecting children. Also, it was noted that POCSO was invoked against the teenagers who don’t even know the severity of the statute

and majority of cases are due to relationship of the adolescents. Justice V. Parthiban observed that any act of innocence and biological attraction should not be dealt under rigorous provisions of such special Act and such type of sexual assault, and suggested the redefining of the term “child” under section 2(d) of POCSO from 18 to 16 years, so that consensual acts between the teenagers are not criminalized under this act. Further the court also directed the authorities to explore whether this suggestion of redefining the age of consent among teenagers can be taken forward.

In *Vijayalakshmi v. State*¹¹, the growing trend of families invoking POCSO to penalize adolescent relationships was recognised by Madras high court. Justice Anand Venkatesh, while supporting the above Sabari judgement, observed: “A reading of the Statement of Objects and Reasons of the POCSO Act would show that the Act was brought into force to protect children from offences of sexual assault, sexual harassment and pornography, pursuant to Article 15 of the Constitution of India, 1950 and the Convention on the Rights of the Child. However, a large array of cases filed under the POCSO Act seems to be those arising on the basis of complaints registered by the families of adolescents and teenagers who are involved in romantic relationships with each other. The scheme of the Act clearly shows that it did not intend to bring within its scope or ambit, cases of the nature where adolescents or teenagers involved in romantic relationships are concerned.” The judge also emphasised on focusing science and psychology of adolescent and young adulthood, and therefore a “biosocial approach” was proposed to conceptualizes the biological and social as mutually constituting with one another.

A troubling pattern is recorded in these cases and institutional reports: POCSO is increasingly invoked not to protect the children but to punish the adolescent relationships that challenges their familial authority or caste, religious or community boundaries. Such a statute should not become the tool of moral policing and rather be a shield against the abuse. Also, most importantly it distracts the judiciary from the genuine cases of criminality and abuse and burdens it with the cases that undermines the autonomy of adolescent. Therefore, a doctrinal and legislative response is urgently needed to enforce the actual legislative intent of this statute without criminalizing consensual intimacy.

6.3. Adolescents in the Crossfire

The cumulative effect of strict liability under POCSO and its familial misuse places adolescents in a legal and social crossfire. In this situation on the one hand, law invalidates the consents of adolescents, thus creating biologically driven intimacy as offence. On the other, families weaponize the law to punish relationships that challenges their community, caste or religious norms. The adolescents, in both the scenarios, find themselves in the middle of the chaos and reduced to either a victim or a perpetrator — never a participant with volition.

The trouble situation of the adolescents caught between the law and society is reflected across jurisdictions. In Sabari case (2019), High court of Madras lamented that most POCSO cases are elopement cases, often weaponized by family members to invoke boundaries. This concern was also highlighted in the Vijayalakshmi case (2021) where Justice Anand Venkatesh stressed that this act was never intended to prosecute adolescent love. The Delhi High court in *State v. Hitesh* (2025) Justice Jasmeet Singh emphasised that adolescents have the right to coercion free romantic relationship, however the act didn't choose to draw any distinction as of a girl or boy who is below 18 and choose a partner of their own choice. Yet now as the Bombay High Court's Aurangabad Bench in *Aakash S/o Nana Saheb Waghmare v. State of Maharashtra & Others*¹² shows, statutory rigidity continues to trap adolescents in criminal proceedings. In this case the FIR was lodged at Killari Police Station after the hospital reported that a minor girl (17 years, 6 months) is pregnant. Victim stated she married Aakash at Tuljabhawani Temple in 2023, lived with him, and delivered a child in January 2024. The case formally started on 30 January 2024 against Aakash Waghmare under IPC, POCSO Act, and Prohibition of Child Marriage Act. The accused filed an application before the Bombay High Court, Aurangabad Bench seeking relief under Section 482 of the Code of Criminal Procedure. The ground was raised that if the FIR is not quashed then there may be chance of conviction and it that case the victim and daughter has to suffer, also the victim filed an affidavit saying she had no objection if proceedings were quashed, as punishment would harm her and her child. Various High courts and Supreme Court judgement were referred by the accused to support his claim; He relies on the decision in *K. Dhandapani v. State by the Inspector of Police*¹³ wherein the Honourable Supreme Court quashed and set aside the conviction of the accused when he married the prosecutrix and in that case the girl was a minor. He also relies on decision of the Honourable Himachal Pradesh High Court in *Ranjeet Kumar vs. State of H.P. and others*¹⁴ where the powers under section 492 of CrPC were exercised when there was a compromise. It is observed that: “The compromise, in a modern society, is the sine qua non of harmony and orderly behaviour. It is the soul of justice and if the power under Section 482 of the Cr.P.C. is used to enhance such a compromise which, in turn, enhances the social amity and reduces friction, then it truly is ‘finest hour of justice’.” Thus, in the present application, the case was of adolescent love, and not exploitation. Here even the prosecutrix is opposing the ongoing proceedings as it would affect her and her child. the Court nevertheless refused to quash proceedings, citing the statutory mandate of strict liability under POCSO. This decision highlights that how adolescents remain trapped in this legal war to prove their innocence even when the prosecutrix herself refuse the continuation of prosecution — a stark reminder of the rigidity of the statute.

The supreme court too has shown concern on the rigidity of POCSO in *Suo Motu Writ Petition of In Re: Right to Privacy of Adolescents*¹⁵ where involve a girl (victim) of 14 years who left her home to marry the accused and subsequently gave birth to a child, and after FIR was lodged by her mother, the accused was convicted by the special judge under section 6 of POCSO Act and section 363 and 366 of Indian Penal Code. The court had to invoke its power under Article 142 to pardon the accused from a sentence, noting that the punishment would harm the welfare of the adolescent mother and child, which would shift our focus from the victim centric justice and only make the situation even worse by sending the accused husband behind the bars. The Supreme Court underscored the importance of expert guidance, thus and expert committee was appointed by the court which concluded in their report that although the incident was a crime but the victim herself didn't treat it as one and the trauma inflicted on the victim is not from “crime itself” but from subsequent “legal proceedings”. Here the court too clarified that its order was not a precedent, but it was the act of departing from statutory sentencing, thus reflects judicial recognition that adolescents are caught in the crossfire of law and society, where rigid application of POCSO would defeat the very idea of justice and would too deprive the teenagers of their sexual autonomy

7. The Myth of Gender Neutrality in Adolescent Prosecutions

POCSO Act is best known for its feature of gender neutrality which meant that this statute will not discriminate on the basis of gender. However, the ground reality is very different and its enforcement reveals. In cases of consensual physical intimacy, both the parties are minor, yet only the male adolescent alone is prosecuted while the girl is treated as “Victim”. This practice collapses the statutory claim of neutrality and emphasise the patriarchal control over female sexual autonomy, and criminal liability falling disproportionately on male.

An ironic inconsistency emerges in the enforcement of POCSO. When both are minor — for instance, both aged 17 — criminal liability may fall on the male, who is prosecuted as “accused”, while the female is treated as the “victim”, regardless of her consent. Yet, if we reverse the situation and the female partner is above 18, and the male adolescent is suddenly re-classified as a “child victim” under this statute, and thus entitled to protection rather than punishment. In December 2024, *The Hindu* reported the arrest of a women aged 19 years who elope with a boy aged 16 years. She was charged with POCSO and the matter subsequently being placed before a local court¹⁶.

The issue of Whether a minor boy, who enters into a consensual relationship with a minor girl, can be punished for offences under the POCSO Act was addressed by the Madras High Court in the case of *Maruthupandi vs. State*¹⁷, where the court held that even if both parties were minor, the male adolescent could still be prosecuted under POCSO Act, also the high court refused to compound the offence even when both the parties and their parents agreed, reiterating that the statute imposes strict liability and does not permit judicial discretion based on mutual consent.

Scenario	Girl's Age	Boy's Age	Legal Status of Boy	POCSO Outcome
A	17	17	Accused	Prosecuted under POCSO
B	18+	17	Victim	Protected under POCSO

Table 1: Gender differentiation in POCSO enforcement

Also, the National Crime Record Bureau (NCRB)¹⁸ data for period of 2018-2022 show a steady increase in the arrest of juveniles in the age group of 16 to 18 under POCSO, however the rate of conviction has been hovered between 11 and 12 percent. Total of 6892 juveniles aged between 16 to 18 were charged with POCSO and 4924 juveniles were booked under serious sexual offence charge, and out of the listed numbers, most of them were male adolescents. The listed data was submitted by the centre authorities to the apex court in response to public interest litigation filed by advocate Nipun Saxena¹⁹. Referring to the said data, even if the conviction rate is less, still the arrest and prosecution of the adolescents could have serious consequences which can include social stigma, disruption of education and long-term psychological impact — thereby raising serious concern about proportionality and fairness of enforcement under POCSO Act.

8. The Emerging Debate on the Romeo–Juliet Clause

In recent times, India has witnessed outrage on the growing misuse of POCSO Act in prosecuting consensual adolescent relationships, where parents often invoke this statute against the boy in cases of elopement or intercommunity romance and frequently the statute is even invoked not due to actual exploitation, but due to fear of social stigma and to preserve the girl's perceived honour, even when both the parties are minor.

This grave issue is now been recognised by the honourable Supreme Court in January 2026 in the case of *The State Of Uttar Pradesh vs Anurudh*²⁰ where the Government of India is now asked to consider the introduction of Romio-Juliet clause exempting the genuine cases of adolescent relationships from criminal prosecution, thereby preventing the families or communities from further misusing the statute to “settle scores”. At the end of judgement, Supreme court cited many precedents where it underscored the recurring concern that POCSO Act is often invoked in cases involving consensual adolescent relationships. To highlight this misuse and to reinforce the need for judicial discretion, the Court referred to several precedents from the High Courts and Supreme Court itself. These authorities collectively demonstrate how court across the country have grappled with balancing the protective intent of the act against the autonomy of the adolescents. In *Satish alias Chand v. State of U.P.*²¹, the Allahabad High Court laid down four guiding factors for judicial discretion, those are assessing the context, considering the victim's statement, necessity for establishing justice and exercising careful discretion. Similarly, in *Mrigraj Gautam @ Rippu v. State of U.P.*²², same court noticed the statutory misuse of POCSO in consensual adolescent relationship. The Delhi High Court in *Sahil v. State (NCT of Delhi)*²³, observed that most of the POCSO cases stems from the familial objections, which often result in landing the male in prison. The Gujarat High Court in *Jayanti Bhai Babulbhai Alami v. State of Gujarat*²⁴, emphasised on the closeness of age and voluntary departure of the prosecutrix, contending that such circumstances must be considered for bail. Finally, the Supreme Court in *Rajesh Chaddha v. State of U.P.*²⁵ drew parallels with the misuse of Section 498A of IPC and the Dowry Prohibition Act, and stress of the need of judicial vigilance and the ethical responsibility of lawyers in preventing misuse of protective laws.

Beyond its introduction, this clause has been invoked in later cases, such as *Meghalaya High Court “Romeo-Juliet” POCSO case*²⁶ decision permitting quashing of proceedings under the POCSO Act, invoking supreme court's “Romeo-Juliet” jurisprudence to quash the proceedings to prevent the manifested injustice and secure the end of justice to parties. Court also acknowledged that such prosecutions and destroy the future of young individuals and adversely affect children born from such union. The honourable court discussed the safeguards before quashing the proceedings to prevent the misuse, and laid down key safeguards including verification of victim consent, filing of no-objection affidavit and individual assessment by legal services authorities.

Before concluding, it's important to explain the concept of “Romio-Juliet Clause” which is already been adopted in several jurisdiction such as United States which creates a “close-in-age” exception to statutory rape laws. It ensures that consensual sexual relationship between the adolescents who are close in age (for example- 16 and 17 years old) are not automatically prosecuted. The purpose of this special clause is distinguished the exploitation from teenage consensual relationship,

thereby preventing the law from being misused against young people. Supreme court itself acknowledge the possibility of this clause and draw parallels with misuse of other protective legislation such as Section 498A IPC, the court has signalled that legislative and professional responsibility must work hand in hand.

In light of judicial observations and societal outrage, a possible legislative solution is the incorporation of a Romeo–Juliet clause, as adopted by several jurisdiction across the worldwide. A suggestive draft of a Romeo–Juliet clause is proposed below—

Proposed Section X: Close-in-Age Exception. — (1) Notwithstanding anything contained in this Act, consensual sexual activity between two persons shall not constitute an offence under this Act if—

- both persons are above the age of sixteen years; and
- age difference between the persons does not exceed 3 years; and
- sexual intercourse is voluntary, without coercion, undue influence, or exploitation.

(2) This exception shall not apply where —

- act involves force, threat, or abuse of authority; or
- the person is in fiduciary or custodial relationship with other; or
- consent is obtained on the context of false promise to marriage

Explanation. — For the purposes of this section, “consensual sexual activity” means physical intimacy undertaken voluntarily by both parties, without inducement or compulsion, and must not be of exploitative nature.

This proposed clause provides for a balanced approach that protects adolescents without criminalizing their sexual autonomy. It also prevents the misuse of POCSO Act while keeping the safeguards against exploitation, coercion, and abuse of authority.

9. Possible questions and conflicts in reducing the POCSO age threshold

i. Conflict with Independent Thought v. Union of India — The Supreme Court in *Independent Thought v. Union of India*²⁷ read down Exception 2 to Section 375 of IPC, and held that sexual intercourse with a wife who is below the age of 18 years would amount to rape. If the age of consent is reduced to 16, this judgment risks being undermined. The exception that was set aside could re-emerge indirectly, creating doctrinal inconsistency. This raises the question: would marital rape of a 16–17-year-old again be shielded by law?

ii. Undermining Legislative Intent — Another question that arises is that, would lowering the age of consent undermine the original legislative intent of the POCSO Act which was designed to provide absolute protection to all children below 18 years of age?

iii. Protection Concerns — Would reducing the age of consent weaken the protection available to adolescents aged 16 to 18, thus making them more vulnerable to exploitation in the name of consensual relationships?

iv. Teen Pregnancy Concerns — Does reducing the age of consent also imply legal acceptance of teen pregnancy? If not, how should the law respond when a teenager below 18 becomes pregnant? (in terms of medical termination, guardianship, and welfare).

10. Addressing the Counterarguments

i. Judicial Consistency — The judgment in *Independent Thought v. Union of India* will most probably not be overruled merely by reducing the age of consent, it is because the Court’s reasoning was rooted in protecting minors within marriage. However, to reduce any doctrinal inconsistency, it is necessary to introduce necessary statutory amendments to clarify marital rape of a minor remains criminalized.

ii. Legislative intent — Reducing the age of consent would not undermine the legislative intent of POCSO; rather, it would reinforce it. The Act was conceived to protect adolescents from sexual exploitation, but in practice it has often become a double-edged sword, criminalizing consensual teenage relationships and disproportionately targeting boys. Introducing the close-in-age exception would also protect the feature of Gender-Neutrality. In this way, reform would support the legislative intent of safeguarding adolescents, instead of punishing them for their consensual choice.

iii. Applicability to the 16–18 Age Group — Reducing the POCSO age threshold would not exclude adolescents aged 16 to 18 from the protective ambit of this act. Act will continue to apply in case of coercion, exploitation or abuse of authority. What reform would achieve is a clear distinction between consensual and non-consensual relationship between adolescents. Consensual relationships between adolescents close-in-age would be shielded from prosecution while the predatory conducts would still remain punishable. In this way the law would be avoided to be used blindly against teenage intimacy and instead focus on genuine harm.

iv. Teenage pregnancy not encouraged — Reducing the age of consent do not automatically imply the legal acceptance or encouragement of teenage pregnancy. The purpose is to prevent criminalization of consensual intimacy, not to normalize early motherhood. In case, if a teenager below 18 becomes pregnant, the law would respond through welfare and healthcare frameworks rather than criminal law. The Medical Termination of Pregnancy Act²⁸ governs abortion, requiring guardian consent for minor, while family law addresses guardianship and custody.

11. Conclusion

POCSO is one of the significant legislations in the history of Indian child protection law with robust frameworks which covers almost everything from special courts to mandatory reporting, thus reflecting a genuine commitment of legislation to shield children from sexual abuse and exploitation. However, that foundational purpose is not in question here, what is in question is whether the Act serves that purpose in every case it touches? The answer is that it does not, as demonstrated in this paper itself. The strict liability framework that makes POCSO so effective against its abuse is the same mechanism that make it incapable of creating a difference between exploitation and consensual adolescent intimacy. This inability is

not just a minor drafting oversight, but it has produced real and measurable harm which is also documented in NCRB data and reflected in thousands of juvenile arrests annually, and also acknowledged repeatedly by honourable Supreme Court and High Courts through various judicial pronouncements.

The pattern of familial misuse adds another discomfort where parents invoke POCSO, not to report abuse, but to punish relationships that cross caste or communal lines, here the statute transforms from a shield into a weapon and cases of several High Courts and the Supreme Court have each flagged this distortion in their own way. Three levels of the judicial hierarchy have raised the same concern is not coincidental, but it's diagnostic. The myth of gender neutrality compounds the problem further. POCSO's formal gender-neutrality couldn't survive contact with its enforcement reality. Male adolescents bear a disproportionate prosecutorial burden in consensual relationship cases, while female adolescents are considered as victims regardless of their own stated position. This asymmetry is not what was expected by legislative intent of the statute.

Against this backdrop, the case for a close-in-age exception is neither radical nor novel but a necessity. Several jurisdictions across the world have already recognised this exception and also suggested by honourable Supreme Court, by name of "Romeo-Juliet clause", for consideration by legislation. It does not weaken POCSO's force against exploitation. It simply ensures that the Act's protective mandate is not turned against the adolescents of which it was intended to defend. The question is no longer whether this act needs refinement in this respect because that much has been settled by judicial consensus. The question is how quickly Parliament will act on it. Every year of delay is another year in which teenage relationships are prosecuted as crimes and young lives are destroyed by the system. Child protection and adolescent autonomy are not considered as opposing values, but a reformed statute, one that retains its full protective force while carving out a carefully defined space for consensual teenage intimacy would honour both.

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