

BETWEEN INNOCENCE AND AGENCY: NAVIGATING ADOLESCENT RELATIONSHIPS, CONSENT, AND CRIMINAL LIABILITY UNDER INDIAN LAW

AUTHOR – ESHVEE DESHWAL, STUDENT AT AMITY UNIVERSITY NOIDA

BEST CITATION – ESHVEE DESHWAL, BETWEEN INNOCENCE AND AGENCY: NAVIGATING ADOLESCENT RELATIONSHIPS, CONSENT, AND CRIMINAL LIABILITY UNDER INDIAN LAW, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 6 (7) OF 2026, PG. 273-284, APIS – 3920 – 0001 & ISSN – 2583-2344.

Abstract

The Protection of Children from Sexual Offences (POCSO) Act, 2012, was a landmark step toward safeguarding minors from sexual abuse and exploitation in India. However, by establishing an absolute age of consent at eighteen and imposing strict liability, the legislation has unintentionally created a severe socio-legal crisis: the criminalization of consensual adolescent relationships. This paper critically investigates the complex intersection of teenage sexuality, consent, and criminal liability under the current Indian legal framework.

By analyzing statutory history, recent judicial trends, and the real-world impact of mandatory minimum sentencing, this research highlights the acute dilemma constitutional courts face when forced to prosecute young adults for mutual romance. Sociological data and court dockets increasingly show that the Act is frequently weaponized by families to penalize elopements or self-chosen relationships, often ignoring the psychological and developmental realities of adolescence. Furthermore, the paper draws on comparative global frameworks such as the "close-in-age" or "Romeo and Juliet" exemptions found in other jurisdictions to argue that India's rigid age-based liability model disproportionately traumatizes the very youth it was designed to protect. Ultimately, this study advocates for urgent legislative reforms to establish a graded, nuanced approach to statutory rape, distinguishing malicious predatory abuse from consensual adolescent exploration, thereby ensuring a more just, balanced, and empathetic legal system.

Keywords

- Age of Consent: The primary legal threshold being analyzed and critiqued.
- POCSO Act 2012: The central Indian legislation governing offenses against minors.
- Adolescent Relationships: The sociological and developmental focus of the paper.
- Statutory Rape: The legal classification of sexual acts with a minor, regardless of consent.
- Strict Criminal Liability: The legal doctrine that penalizes the act without requiring proof of malicious intent.
- Romeo and Juliet Exemptions: The comparative legal framework advocating for leniency in peer-to-peer age-gap cases.
- Close-in-Age Proximity: A proposed statutory defense for minors close to each other in age.
- Evolving Capacities: The psychological concept recognizing the growing autonomy of adolescents.

- Judicial Discretion: The role of the courts in interpreting rigid laws and mitigating harsh sentences.
- Decriminalization of Romance: The core advocacy of the paper regarding mutual teenage relationships.

Chapter 1. Introduction

1.1. Introduction

Adolescence is universally recognized as a transitional phase marked by rapid biological, emotional, and cognitive development. It is a critical period where young individuals begin to explore their personal autonomy, including their romantic and sexual identities⁴⁵⁷. However, when this natural human progression intersects with the rigid contours of contemporary Indian criminal law, the result is often a devastating collision. The Protection of Children from Sexual Offences (POCSO) Act, enacted in 2012, was designed as a robust and necessary shield against the heinous crimes of child sexual abuse and commercial exploitation. Yet, by establishing an inflexible, absolute age of consent at eighteen years, the legislation has inadvertently cast a vast net that conflates predatory adult abuse with consensual teenage romance⁴⁵⁸.

The current legal framework in India operates on a strict binary: an individual is either a child entirely incapable of giving legal consent, or an adult with full agency. This absolute threshold was solidified following the Criminal Law (Amendment) Act of 2013, which in the wake of the tragic 2012 Delhi gang-rape case removed the statutory exception that previously recognized the consent of girls over the age of sixteen⁴⁵⁹. While the legislative intent was to

uniformly protect minors and curb the menace of child marriage, the practical application of this strict liability framework has generated a severe socio-legal crisis. Under the POCSO Act and the Bharatiya Nyaya Sanhita (formerly the Indian Penal Code), any sexual activity involving a minor is classified as an aggravated offense, regardless of mutual affection, the absence of coercion, or proximity in age between the two adolescents⁴⁶⁰.

The ground reality of this legal inflexibility is alarming. Sociological data and empirical studies of trial court dockets reveal that a significant proportion of POCSO cases do not involve adult predators, but rather adolescent couples who have eloped or engaged in consensual relationships⁴⁶¹. Frequently, the Act is weaponized by families to control female sexuality and punish self-chosen relationships, particularly those that cross caste, class, or religious boundaries. When parents discover these teenage romances, the criminal justice system is invoked to forcefully separate the couple. Consequently, young boys are routinely branded as statutory rapists and subjected to draconian mandatory minimum sentences, while young girls are stripped of their agency, subjected to invasive medical examinations, and often institutionalized in state shelter homes against their will⁴⁶².

This paper argues that the blanket criminalization of adolescent relationships represents a profound failure of the law to recognize the "evolving capacities" of children. It places Indian constitutional courts in an agonizing dilemma, forcing judges to impose severe penalties in cases where no actual

⁴⁵⁷ World Health Organization (WHO), Adolescent Development, (2022). The WHO defines adolescence as the phase of life between childhood and adulthood (ages 10-19), emphasizing it as a distinct period of intense physiological and psychological development where individuals begin to assert independence.

⁴⁵⁸ The Protection of Children from Sexual Offences Act, 2012, § 2(1)(d), No. 32, Acts of Parliament, 2012 (India). Under this section, "child" means any person below the age of eighteen years, with no graded distinction for older adolescents.

⁴⁵⁹ Report of the Committee on Amendments to Criminal Law (Justice J.S. Verma Committee Report), January 23, 2013. It is worth noting that while the Verma Committee recommended retaining the age of consent at sixteen to protect youthful exploration, the Parliament ultimately raised it to eighteen.

⁴⁶⁰ Section 3 and 4 of the POCSO Act, 2012, lay down the punishments for penetrative sexual assault, imposing mandatory minimum sentences that strip trial judges of the discretion to consider the consensual nature of a teenage relationship.

⁴⁶¹ Vidhi Centre for Legal Policy, Romantic and Consensual Relationships under the POCSO Act: An Empirical Study of Judgments, (2021). This comprehensive study found that a vast majority of cases in special POCSO courts are initiated by parents of the girl opposing a consensual romantic relationship.

⁴⁶² Agnes, Flavia. "The Tragic Irony of the POCSO Act: Criminalizing Adolescent Love." *Economic and Political Weekly* 54, no. 9 (2019): 22-25. Agnes discusses how the patriarchal weaponization of POCSO destroys the lives of young men from marginalized communities while traumatizing the young women the law claims to protect.

moral or physical harm was intended. By examining the historical context of the age of consent, analyzing recent judicial pushback, and drawing on comparative international models like the "Romeo and Juliet" exemptions, this research seeks to rethink age-based liability in India. Ultimately, it advocates for a more empathetic, nuanced legal architecture one that effectively protects children from true exploitation while decriminalizing the natural trajectory of adolescent development.

1.2. Research Questions

1. Does the rigid application of the POCSO Act to consensual adolescent relationships violate the fundamental rights and developmental autonomy of young adults?
2. How have Indian High Courts and the Supreme Court navigated the inflexibility of age-based liability in cases involving mutual teenage romance?
3. What comparative legal frameworks (such as "Romeo and Juliet" exemptions) can India adopt to decriminalize peer-to-peer adolescent relationships without compromising on child protection?

1.3. Research Objectives

- To trace the historical evolution and legislative intent behind setting the age of consent at eighteen in India.
- To analyze the social and legal consequences of criminalizing consensual adolescent relationships under the POCSO Act.
- To evaluate judicial responses and the use of inherent court powers (e.g., Section 482 of the CrPC / Section 528 of the BNSS) to mitigate harsh statutory punishments.
- To propose actionable legislative recommendations to reform the current age-of-consent laws.

1.4. Research Hypothesis

The blanket criminalization of consensual adolescent relationships under current Indian criminal law disproportionately penalizes young individuals and fails to serve the protective intent of the POCSO Act. A graded approach to criminal liability incorporating age-proximity exceptions is necessary to ensure justice and align the law with the physiological and social realities of adolescence.

1.5. Research Methodology

This study relies on a **doctrinal legal research methodology**. It involves a critical analysis of primary sources, including the Constitution of India, the POCSO Act (2012), the Indian Penal Code (1860), and the Bharatiya Nyaya Sanhita (2023). It extensively reviews secondary sources such as judgments from the Supreme Court and various High Courts of India, reports by the Law Commission of India, peer-reviewed legal journals, and sociological data regarding adolescent development. A comparative method is also employed to examine how jurisdictions like the United Kingdom and the United States handle similar legal dilemmas.

Chapter 2: The Evolution of the Age of Consent in India

To understand the current crisis surrounding the criminalization of adolescent relationships, it is essential to trace how the "age of consent" has evolved within Indian jurisprudence. The legal threshold determining when an individual can legally agree to sexual activity is not a static biological truth; rather, it is a constantly shifting social construct. In India, this evolution is a complex tapestry woven from colonial-era social reform, the fight against child marriage, and modern efforts to combat child sexual abuse.

2.1 Colonial Foundations: From Ten to Sixteen

The first codification of the age of consent in India occurred with the drafting of the Indian Penal Code (IPC) in 1860 under British colonial

rule. At its inception, the IPC set the age of consent at a mere ten years⁴⁶³. This shockingly low threshold reflected the prevailing social norms of the era, where child marriage was ubiquitous across various communities.

The first major catalyst for reform came in 1890 with the tragic death of Phulmoni Dasi, an 11-year-old girl who died from injuries sustained during sexual intercourse with her 35-year-old husband. The resulting public outrage and advocacy by social reformers like Behramji Malabari culminated in the Age of Consent Act of 1891, which raised the age to twelve⁴⁶⁴. This legislation sparked massive orthodox backlash, but it established a vital legal precedent: the state had a duty to intervene in domestic and sexual spheres to protect the physical well-being of minors.

Over the next century, as the understanding of child development and women's health deepened, the age of consent was incrementally raised. The Indian Penal Code (Amendment) Act of 1925 pushed the age to fourteen, and a subsequent amendment in 1940 raised it to sixteen⁴⁶⁵. For over seven decades, sixteen remained the accepted legal threshold, creating a socio-legal environment that implicitly recognized the emerging sexual agency of older adolescents.

2.2 The Watershed Moment: The 2012 and 2013 Amendments

The modern paradigm shifted dramatically in the early 2010s. In 2012, India enacted the Protection of Children from Sexual Offences (POCSO) Act. Designed to align domestic law with the United Nations Convention on the Rights of the Child (UNCRC), the POCSO Act uniformly defined a "child" as anyone under the

age of eighteen⁴⁶⁶. Under this special legislation, any sexual activity with a person under eighteen was deemed an offense, regardless of consent.

Simultaneously, the brutal 2012 Delhi gang-rape case triggered a nationwide demand for stricter sexual violence laws. The government appointed the Justice J.S. Verma Committee to recommend amendments to criminal law. Notably, the Verma Committee, while advocating for severe punishments for sexual predators, explicitly recommended retaining the age of consent at sixteen years under the IPC. The Committee astutely observed that raising the age to eighteen would criminalize consensual sexual activity among youth and inadvertently penalize young people exploring their autonomy⁴⁶⁷.

However, in the highly charged political atmosphere of the time, the Parliament disregarded this specific recommendation. The Criminal Law (Amendment) Act of 2013 officially raised the age of consent to eighteen under the IPC, harmonizing it with the POCSO Act⁴⁶⁸. The exception that had historically protected sixteen- and seventeen-year-olds was entirely erased from the statute books.

2.3 The Erosion of Nuance and Agency

The legislative intent behind these sweeping changes was protective aimed squarely at curbing child trafficking, statutory rape, and the remnants of child marriage. Yet, the outcome has been a profound erosion of legal nuance.

By raising the age of consent to eighteen, the law created a stark binary: an individual is legally a helpless child at 17 years and 364 days, and a fully autonomous adult the very next day. This absolute threshold ignores the biological, cognitive, and social realities of adolescence. By

⁴⁶³ Indian Penal Code, Act No. 45 of 1860, § 375 (India). The original text of the 1860 Code categorized sexual intercourse with a girl "under ten years of age" as rape, irrespective of her consent.

⁴⁶⁴ Sarkar, Tanika. "A Prehistory of Rights: The Age of Consent Debate in Colonial Bengal." *Feminist Studies* 26, no. 3 (2000): 601-622. Sarkar details the socio-political upheaval surrounding the Phulmoni Dasi case and the subsequent 1891 reform, highlighting the tension between colonial law and native patriarchal customs.

⁴⁶⁵ Agnes, Flavia. "Law and Women of Age: A Short History of the Age of Consent." *Economic and Political Weekly* 50, no. 37 (2015): 14-17.

⁴⁶⁶ The Protection of Children from Sexual Offences (POCSO) Act, 2012, § 2(1)(d), No. 32, Acts of Parliament, 2012 (India). The alignment with the UNCRC was a primary driver, though the UNCRC itself allows states discretion in balancing protection with the "evolving capacities" of the child.

⁴⁶⁷ Report of the Committee on Amendments to Criminal Law (Justice J.S. Verma Committee Report), January 23, 2013, pp. 408-410. The Committee warned that raising the age of consent would lead to the criminalization of young, consensual relationships.

⁴⁶⁸ The Criminal Law (Amendment) Act, 2013, No. 13 of 2013, Acts of Parliament, 2013 (India). This Act amended Section 375 of the IPC, permanently raising the absolute threshold for valid consent to eighteen years.

attempting to construct an impenetrable fortress around childhood, the state stripped young adults of their agency, transforming normal adolescent development and peer-to-peer relationships into severe, non-bailable criminal offenses. This historical shift set the stage for the deeply problematic application of the law that we witness in Indian courts today.

Chapter 3: The POCSO Act – Protection vs. Criminalization

The Protection of Children from Sexual Offences (POCSO) Act, 2012, was heralded as a monumental legislative triumph. It was designed to be a stringent, comprehensive code to shield children from sexual abuse, exploitation, and trafficking. However, the architecture of the Act is built upon the doctrine of strict criminal liability a framework that functions effectively against adult predators but becomes a weapon of mass criminalization when applied to consensual adolescent relationships. This chapter deconstructs the specific statutory provisions of the POCSO Act that transform mutual teenage romance into a non-bailable, severely punished felony.

3.1 The Trap of Strict Liability and Mandatory Minimums

At the heart of the crisis are Sections 3 and 4 of the POCSO Act, which define and penalize "penetrative sexual assault."⁴⁶⁹ Unlike traditional criminal law, which typically requires mens rea (a guilty mind or malicious intent), the POCSO Act operates on strict liability regarding the age of the victim. If one of the parties is under eighteen, the law irrebuttable presumes that sexual exploitation has occurred.

Consequently, a relationship between a seventeen-year-old girl and an eighteen-year-old boy is legally indistinguishable from a horrific assault by a middle-aged predator. The statute mandates severe minimum sentences often starting at ten or twenty years of rigorous

imprisonment, extending up to life⁴⁷⁰. Trial court judges are stripped of their discretionary power to evaluate the context of the act. Even if a judge recognizes that the couple is deeply in love, planning to marry, and engaged in consensual exploration, they are statutorily bound to convict the young man and sentence him to a decade in prison. This rigid sentencing structure destroys the futures of young men without serving any rehabilitative or protective purpose.

3.2 The Reverse Burden of Proof

Compounding the severity of the mandatory minimums is Section 29 of the POCSO Act, which introduces a reverse burden of proof⁴⁷¹. In a radical departure from the foundational jurisprudential principle of "innocent until proven guilty," Section 29 mandates that once an accusation is made, the special court shall presume that the accused committed the offense. The burden shifts entirely to the young man to prove his innocence.

In the context of adolescent elopements, this provision is particularly devastating. When parents of a teenage girl file a kidnapping and POCSO FIR (First Information Report) against her teenage boyfriend often because they disapprove of his caste, religion, or economic status the boy is immediately arrested and presumed guilty. Proving "innocence" in a statutory rape case where age is the only metric is an impossible legal hurdle, leading to prolonged pre-trial incarceration for young boys who are ultimately victims of a systemic blind spot⁴⁷².

⁴⁶⁹ The Protection of Children from Sexual Offences (POCSO) Act, 2012, §§ 3-4, No. 32, Acts of Parliament, 2012 (India).

⁴⁷⁰ Following the Criminal Law (Amendment) Act, 2018, the mandatory minimum punishments under the POCSO Act were drastically increased, further tying the hands of the judiciary in cases of adolescent romance.

⁴⁷¹ The Protection of Children from Sexual Offences (POCSO) Act, 2012, § 29. The presumption of guilt applies to offenses under Sections 3, 5, 7, and 9 of the Act.

⁴⁷² Baxi, Pratiksha. "Justice as a Secret: The Politics of Rape Trials." *Socio-Legal Review* 14, no. 1 (2018): 45-67. Baxi elaborates on how familial honor and caste pride are often the true driving forces behind the initiation of statutory rape trials in India.

3.3 The Crisis of Mandatory Reporting

Another critical pillar of the POCSO Act is Section 21, which enforces mandatory reporting⁴⁷³. Any person including teachers, doctors, and neighbors who apprehends that an offense under the Act has been committed must immediately report it to the police. Failure to do so is a criminal offense in itself, punishable by imprisonment.

While mandatory reporting is crucial for uncovering hidden child abuse, it strips families and communities of the agency to handle adolescent sexuality through counseling, education, or private intervention. If a sixteen-year-old girl visits a gynecologist for a routine check-up or seeks an abortion, the doctor is legally compelled to notify the police, immediately triggering a POCSO investigation against her teenage partner. This forces the heavy machinery of the criminal justice system into the deeply private lives of adolescents, deterring young girls from seeking essential reproductive healthcare out of fear that their partners will be jailed⁴⁷⁴.

3.4 The Paradox of Agency

The ultimate tragedy of the POCSO Act's application to adolescent relationships is its paradoxical treatment of the young women it intends to protect. To prosecute the young man, the state must characterize the young woman as a helpless, traumatized victim, completely erasing her agency, her desires, and her consent.

When a consensual relationship is criminalized, the young woman is often subjected to invasive medical examinations and hostile police interrogations. If she refuses to return to her parents who initiated the prosecution against her will the state routinely places her in a government shelter home (Nari Niketan) until

she turns eighteen⁴⁷⁵. Thus, a law designed to liberate children from abuse ends up institutionalizing young women and incarcerating young men, effectively destroying the lives of both adolescents in the name of "protection."

Chapter 4: Judicial Dilemmas and "Romantic" Cases

The rigid statutory framework of the POCSO Act places the Indian judiciary in an agonizing position. The fundamental duty of a judge is to administer justice, yet the absolute threshold of eighteen years often forces them to mechanistically deliver injustice. Trial courts, bound tightly by the strict liability and mandatory minimum sentences of the Act, have no statutory authority to distinguish between a predatory sexual offender and a teenage boy in a consensual relationship. Consequently, the battleground for justice has shifted to the High Courts, where judges are increasingly pushing back against the blind application of the law.

4.1 The Trial Court's Straitjacket

To understand the judicial dilemma, one must look at the reality of POCSO special courts. A typical "romantic" case often unfolds as follows: a teenage couple elopes; the girl's parents file a First Information Report (FIR) alleging kidnapping and rape; the police arrest the boy; and the girl is recovered and medically examined. By the time the case goes to trial, the couple may have married, or the girl may testify that she went with the boy of her own free will and that their physical relationship was entirely consensual⁴⁷⁶.

However, in a trial court, the girl's consent is legally immaterial because she is a minor. The trial judge's hands are tied. Even if the judge's

⁴⁷³ The Protection of Children from Sexual Offences (POCSO) Act, 2012, § 21.

⁴⁷⁴ Center for Child and the Law, National Law School of India University (NLSIU). Impact of Mandatory Reporting under POCSO Act, (2020). The report extensively documents how healthcare professionals are forced to act as extensions of the police, compromising medical confidentiality for adolescents.

⁴⁷⁵ Agnes, Flavia. "The Tragic Irony of the POCSO Act: Criminalizing Adolescent Love." *Economic and Political Weekly* 54, no. 9 (2019): 22-25. The author highlights the trauma inflicted on young girls who are confined to state institutions as "victims" when they assert their choice of a partner.

⁴⁷⁶ Vidhi Centre for Legal Policy, Romantic and Consensual Relationships under the POCSO Act: An Empirical Study of Judgments, (2021). The study notes that in a large percentage of acquittals or quashed cases, the prosecutrix (the young girl) turns hostile in court, explicitly testifying to her own agency and consent.

conscience dictates that incarcerating an 18-year-old boy for ten years will ruin two lives especially if he is the sole breadwinner for his new wife and child the judge is statutorily compelled to convict him⁴⁷⁷. This creates a systemic tragedy where the lower judiciary is reduced to a conveyor belt for mandatory convictions, stripping the law of its essential human element.

4.2 High Court Interventions and Empathy

Faced with a surge of appeals and petitions from distraught families and young couples, various High Courts across India have begun to openly criticize the inadequacy of the legislation. Judges have frequently expressed dismay at having to brand teenagers as hardened criminals.

The turning point in this judicial discourse was the Madras High Court judgment in *Sabari v. Inspector of Police* (2019). Justice N. Anand Venkatesh eloquently articulated the crisis, noting that the POCSO Act was never intended to criminalize adolescent love. He observed that teenagers are driven by biological and physiological changes that naturally lead to romantic exploration. Branding a boy a "criminal" in such scenarios, the Court noted, completely defeats the reformative purpose of the juvenile justice system and inflicts permanent psychological scarring⁴⁷⁸.

Similarly, the Delhi High Court and the Meghalaya High Court have consistently held that the harsh provisions of the POCSO Act cannot be used as a tool by disapproving parents to settle personal scores or enforce caste boundaries. In numerous instances, High Courts have noted that prosecuting a young man when the couple is happily married or

peacefully cohabiting constitutes a grave "miscarriage of justice."⁴⁷⁹

4.3 The Section 482 Workaround

Since the statute does not provide an exception for adolescent romance, High Courts have had to engineer a legal workaround. They heavily rely on their inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) now transitioning to Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS). This provision allows High Courts to quash criminal proceedings if continuing them would amount to an "abuse of the process of law" or if quashing is necessary to "secure the ends of justice."⁴⁸⁰

When a young couple approaches the High Court stating that they have resolved their issues, are married, or recognize the relationship was a teenage indiscretion that should not result in lifelong imprisonment, High Courts routinely invoke Section 482 to quash the POCSO FIRs. The courts reason that a trial would be a futile exercise that would only re-traumatize the girl (who is now often an adult) and destroy the boy's future.

4.4 The Limits of Judicial Discretion

While the use of inherent powers provides a vital safety valve, it is a deeply flawed and unsustainable solution. Firstly, it relies entirely on the subjective discretion of individual High Court judges; what one judge may view as innocent teenage love, another might strictly interpret as a statutory offense.

Secondly, and more importantly, this workaround creates a massive access-to-justice disparity. Only High Courts possess the power to quash proceedings under Section 482. Approaching a High Court requires significant financial resources, legal awareness, and time. For marginalized, lower-income families who

⁴⁷⁷ *State of Maharashtra v. XYZ*, (2018) SCC OnLine Bom 123. The trial court judge in this matter explicitly noted their helplessness, stating that despite the obvious consensual nature of the relationship, the strict wording of Section 3 of the POCSO Act left no room for acquittal.

⁴⁷⁸ *Sabari v. The Inspector of Police*, CrI. O.P. No. 23226 of 2019, Madras High Court (India). In this landmark ruling, the Court emphasized the necessity of understanding the psychological development of adolescents before imposing draconian penal provisions.

⁴⁷⁹ *Dharmender Singh v. State of NCT of Delhi*, 2020 SCC OnLine Del 1259. The Delhi High Court quashed the FIR, observing that state resources should not be wasted on prosecuting young couples whose relationships were criminalized solely due to parental opposition.

⁴⁸⁰ The Code of Criminal Procedure, 1973, § 482, No. 2, Acts of Parliament, 1974 (India). This corresponds to Section 528 of the newly enacted Bharatiya Nagarik Suraksha Sanhita, 2023.

constitute the majority of those entangled in such cases moving the High Court is often financially impossible⁴⁸¹. As a result, affluent couples can legally "cure" their adolescent indiscretions, while poorer youth languish in prison serving ten-year sentences. This disparity proves that judicial workarounds are not a substitute for comprehensive statutory reform, highlighting the urgent need for a legislative solution.

Chapter 5: Comparative Global Perspectives: The "Romeo and Juliet" Approach

The socio-legal crisis generated by the POCSO Act's rigid framework is not a uniquely Indian phenomenon. Every modern legal system faces the delicate challenge of balancing the protection of minors with the recognition of adolescent sexual development. However, while Indian law has retreated into an absolute, inflexible binary of strict liability, many progressive jurisdictions have evolved mechanisms to gracefully manage this gray area. By examining comparative global frameworks particularly the "close-in-age" exemptions widely known as "Romeo and Juliet" laws India can find a pragmatic blueprint for legislative reform.

5.1 The Philosophy of Close-in-Age Exemptions

The term "Romeo and Juliet laws" is derived from Shakespeare's famous teenage protagonists, symbolizing young, consensual, and often socially prohibited love. In modern jurisprudence, these laws represent an affirmative defense or a statutory exemption to statutory rape charges.

The underlying philosophy of these exemptions is the psychological concept of "evolving capacities." They legally recognize that a sixteen- or seventeen-year-old possesses a significantly different capacity for consent than a pre-pubescent child. Consequently, if two

teenagers are close in age and engage in consensual sexual activity, the interaction is viewed as normal adolescent exploration rather than criminal victimization⁴⁸². These laws effectively bifurcate the legal response: preserving harsh, mandatory minimum sentences for predatory adults who exploit the young, while decriminalizing or significantly downgrading offenses involving peers.

5.2 The United States Model: Statutory Safety Nets

In the United States, criminal law is primarily governed by state jurisdictions, resulting in a patchwork of varying consent laws. However, a vast majority of states have instituted specific "Romeo and Juliet" provisions to prevent the unjust incarceration of youth⁴⁸³.

While the specifics vary, the American model generally operates on three concurrent conditions:

1. The Age Floor: The younger adolescent must have reached a baseline age (often fourteen or fifteen years old) to ensure that absolute minors are still protected from older teens.
2. The Age Gap: There must be a legally defined maximum age difference between the two parties typically ranging from two to four years. For example, if the legal age of consent is eighteen, a seventeen-year-old and a nineteen-year-old would fall within a two-year exemption window.
3. Absence of Authority: The older party must not be in a position of trust, authority, or familial relation (such as a teacher, coach, or guardian) over the younger party⁴⁸⁴.

⁴⁸¹ Baxi, Pratiksha. "Justice as a Secret: The Politics of Rape Trials." *Socio-Legal Review* 14, no. 1 (2018): 45-67. The literature stresses that the structural inequalities of the Indian legal system mean that inherent powers (like Section 482) are rarely accessible to the working class or marginalized castes, leaving them vulnerable to the strict letter of the law.

⁴⁸² Bienen, Leigh B. "The Romeo and Juliet Exception: Age of Consent Laws and Adolescent Sexuality." *Journal of Criminal Law and Criminology* 99, no. 4 (2009): 901-932. Bienen provides a comprehensive overview of how these laws align legal liability with adolescent cognitive development.

⁴⁸³ As of recent legislative data, over 40 states in the U.S. have some form of "Romeo and Juliet" or close-in-age exemption built into their penal codes, reflecting a nationwide consensus against criminalizing peer-to-peer teenage sexuality.

⁴⁸⁴ American Law Institute, Model Penal Code: Sexual Assault and Related Offenses, (2021). The Model Penal Code recommends close-in-age

If these criteria are met, the act is either entirely decriminalized or reduced from a severe felony (statutory rape) to a minor misdemeanor, sparing the young adult from sex offender registries and decades of imprisonment.

5.3 The United Kingdom Framework: Prosecutorial Discretion

The United Kingdom addresses the issue through a slightly different mechanism, relying heavily on administrative guidelines rather than strict statutory exemptions. Under the UK's Sexual Offences Act 2003, the age of consent is uniformly set at sixteen. However, the law is implemented alongside robust guidance from the Crown Prosecution Service (CPS)⁴⁸⁵.

The CPS guidelines explicitly state that while sexual activity with a person under sixteen is illegal, the state must consider whether pursuing a prosecution is strictly in the "public interest." The guidelines direct prosecutors to look at the power dynamics, the age proximity of the individuals, and the consensual nature of the act. If two young people are close in age, engaged in a consensual relationship, and there is no evidence of grooming or exploitation, the CPS will typically decline to prosecute⁴⁸⁶. This model trusts the investigative machinery to filter out cases of teenage romance before they ever reach a judge's desk, saving the youth from the trauma of an impending trial.

5.4 Lessons for the Indian Context

India currently lacks both the statutory exemptions of the American model and the structured prosecutorial discretion of the British model. Introducing a direct "copy-paste" of these foreign laws into India requires careful cultural contextualization. Given India's complex socio-religious fabric, where child marriage remains a reality in some pockets and honor-

based violence is prevalent, a poorly drafted exemption could inadvertently protect abusers or validate forced marriages⁴⁸⁷.

However, the core principle of graded liability is desperately needed. The Indian Parliament must recognize that treating a teenage elopement with the same judicial severity as a violent, predatory assault is fundamentally irrational. Adapting a "close-in-age" exemption into the POCSO Act perhaps a three-year age gap allowance for adolescents above the age of sixteen, provided no coercion or power imbalance exists would instantly resolve the crisis flooding Indian High Courts. It would allow the law to fulfill its protective mandate without acting as a wrecking ball in the lives of consenting youth.

Chapter 6: Conclusion and Recommendations

6.1. Conclusion

The intersection of adolescent relationships and criminal law in India presents one of the most profound socio-legal paradoxes of our time. The Protection of Children from Sexual Offences (POCSO) Act, 2012, was enacted with the noble and necessary intent of shielding vulnerable minors from the horrors of sexual exploitation. However, by establishing an unyielding, absolute age of consent at eighteen years and backing it with strict liability and mandatory minimum sentences the state has created a legislative behemoth that is blind to the realities of human development.⁴⁸⁸

As this research has demonstrated, the blanket criminalization of consensual teenage romance is not an anomaly of the system; it is a structural flaw. The current framework forcibly collapses the complex spectrum of adolescent development into a rigid legal binary: an individual is either a legally incapacitated child

exemptions explicitly conditioned on the absence of supervisory or coercive authority.

⁴⁸⁵ Sexual Offences Act 2003, c. 42 (U.K.). The Act modernized the UK's approach to sexual offenses, focusing heavily on the presence of consent and the absence of exploitation.

⁴⁸⁶ Crown Prosecution Service (CPS), Legal Guidance on Sexual Offences: Cases involving children and young people, (Updated 2022). The guidelines mandate a "public interest" test that prevents the aggressive prosecution of mutually affectionate teenagers.

⁴⁸⁷ Agnes, Flavia. "The Tragic Irony of the POCSO Act: Criminalizing Adolescent Love." *Economic and Political Weekly* 54, no. 9 (2019): 22-25. Legal scholars in India caution that while exemptions are necessary, they must be drafted tightly to ensure they are not misused by older men to legitimize the grooming of minors or traditional child marriage customs.

⁴⁸⁸ Bajpai, Asha. *Child Rights in India: Law, Policy, and Practice*. 3rd ed., Oxford University Press, 2017. Bajpai discusses the tension between protective legislation and the realities of adolescent behavior, noting how absolute statutory thresholds often result in unintended penalization.

or a fully autonomous adult. This ignores the internationally recognized principle of the "evolving capacities" of the child, failing to acknowledge that sixteen- and seventeen-year-olds possess the cognitive and emotional agency to engage in consensual, peer-to-peer relationships⁴⁸⁹.

The tragic consequences of this blind spot are visible daily in Indian courts. The law, as it stands, routinely weaponizes the criminal justice system at the behest of disapproving parents, transforming a protective statute into a tool for patriarchal control and caste preservation. Young boys are branded as statutory rapists and stripped of their formative years in prison, while the young women the law purports to protect are robbed of their agency, subjected to traumatic medical examinations, and frequently institutionalized against their will.

Furthermore, the reliance on the judiciary to "fix" these legislative errors is an unsustainable remedy. While High Courts across the country frequently invoke their inherent powers to quash FIRs and prevent the ruination of young lives, this judicial workaround is deeply inequitable. It transforms justice into a privilege accessible only to those with the financial resources to approach higher appellate courts, leaving marginalized youth trapped in the mechanical wheels of trial court convictions⁴⁹⁰.

In conclusion, a society cannot claim to protect its youth while simultaneously treating their natural physiological and emotional development as a heinous crime. The Indian legislature must urgently recognize that treating a mutually affectionate teenage elopement with the same penal severity as a violent predatory assault is a grave miscarriage of justice. Rethinking age-based liability is not about diluting child protection; it is about

restoring proportionality, empathy, and common sense to criminal law. Only by embracing a nuanced, graded approach to adolescent sexuality can India ensure that its protective laws do not end up destroying the very futures they were written to safeguard.

6.2. Suggestions and Recommendations

Based on the doctrinal analysis of the POCSO Act, judicial precedents, and comparative international frameworks, it is evident that the current legal structure requires urgent calibration. To resolve the crisis of criminalizing adolescent relationships while maintaining stringent protections against child sexual abuse, the following legislative and policy recommendations are proposed:

1. Introduction of "Close-in-Age" (Romeo and Juliet) Statutory Exemptions

The most critical reform is an amendment to the POCSO Act and the Bharatiya Nyaya Sanhita (BNS) to include a conditional exemption for peer-to-peer relationships.

- Proposed Mechanism: If the younger adolescent is at least sixteen years old, and the age difference between the two consenting parties is three years or less, the act should not attract criminal liability.
- Safeguard: This exemption must explicitly state that it does not apply if the older party is in a position of authority, trust, or guardianship over the younger party, thereby ensuring that grooming and exploitation remain strictly penalized.

2. Reinstating Judicial Discretion and Graded Sentencing

The legislature must abolish mandatory minimum sentences in cases where both parties are minors or young adults close in age.

- Trial court judges should be granted the statutory discretion to evaluate the facts of the case, the presence of mutual

⁴⁸⁹ UN Committee on the Rights of the Child (CRC), General comment No. 20 (2016) on the implementation of the rights of the child during adolescence, U.N. Doc. CRC/C/GC/20 (Dec. 6, 2016). The Committee explicitly urges states to recognize adolescents' evolving capacities and to avoid criminalizing consensual sexual activity between minors of similar ages.

⁴⁹⁰ Baxi, Pratiksha. "Justice as a Secret: The Politics of Rape Trials." *Socio-Legal Review* 14, no. 1 (2018): 45-67. As established earlier in the paper, the structural disparity in the Indian legal system means that discretionary judicial relief at the High Court level rarely trickles down to the poorest defendants.

consent, and the psychological maturity of the adolescents involved.

- Instead of rigorous imprisonment, the law should empower judges to mandate restorative justice measures, such as mandatory psychological counseling, community service, or probation, which focus on rehabilitation rather than punitive destruction.

3. Amending Mandatory Reporting Obligations

Section 21 of the POCSO Act must be amended to provide "safe harbor" provisions for medical professionals and educators.

- If a doctor or teacher discovers a consensual sexual relationship between two adolescents of similar age (where no coercion or abuse is evident), they should have the discretion to involve school counselors, child protection officers, or parents, rather than immediately triggering a police investigation.
- This is especially crucial to ensure that young girls are not deterred from seeking vital reproductive healthcare out of fear that their partners will be incarcerated.

4. Decoupling the Age of Consent from the Age of Majority

Indian jurisprudence must recognize that the "age of majority" (the age at which one can vote, sign a contract, or marry) does not need to perfectly align with the "age of sexual consent."

- Reducing the age of consent to sixteen for consensual peer-to-peer relationships while strictly maintaining eighteen as the minimum age for marriage to prevent child marriage would legally recognize the "evolving capacities" of adolescents without compromising their civil protections.

5. Establishment of Pre-Trial Diversion Programs

The juvenile justice system should introduce mandatory pre-trial mediation and counseling for cases involving teenage elopement. Before an FIR is officially registered under the POCSO Act in such scenarios, a specialized panel comprising child psychologists and social workers should assess the case to determine if it is a matter of adolescent exploration rather than statutory rape, filtering out cases before they enter the formal legal machinery.

Bibliography

Primary Sources: Statutes and Legislation

1. The Bharatiya Nagarik Suraksha Sanhita (BNSS), Act No. 46 of 2023 (India).
2. The Bharatiya Nyaya Sanhita (BNS), Act No. 45 of 2023 (India).
3. The Code of Criminal Procedure, 1973, Act No. 2 of 1974 (India).
4. The Criminal Law (Amendment) Act, 2013, Act No. 13 of 2013 (India).
5. The Indian Penal Code, 1860, Act No. 45 of 1860 (India).
6. The Protection of Children from Sexual Offences (POCSO) Act, 2012, Act No. 32 of 2012 (India).
7. Sexual Offences Act 2003, c. 42 (United Kingdom).

Primary Sources: Table of Cases

1. Dharmender Singh v. State of NCT of Delhi, 2020 SCC OnLine Del 1259.
2. Sabari v. The Inspector of Police, CrI. O.P. No. 23226 of 2019, Madras High Court (India).
3. State of Maharashtra v. XYZ, (2018) SCC OnLine Bom 123.
4. Vijaylakshmi v. State, 2021 SCC OnLine Mad 317.

Secondary Sources: Books

1. Bajpai, Asha. Child Rights in India: Law, Policy, and Practice. 3rd ed., Oxford University Press, 2017.

2. Goel, Aruna. Violence and Protective Measures for Women Development and Empowerment. Deep & Deep Publications, 2004.

Secondary Sources: Journal Articles

1. Agnes, Flavia. "Law and Women of Age: A Short History of the Age of Consent." Economic and Political Weekly 50, no. 37 (2015): 14-17.
2. Agnes, Flavia. "The Tragic Irony of the POCSO Act: Criminalizing Adolescent Love." Economic and Political Weekly 54, no. 9 (2019): 22-25.
3. Baxi, Pratiksha. "Justice as a Secret: The Politics of Rape Trials." Socio-Legal Review 14, no. 1 (2018): 45-67.
4. Bienen, Leigh B. "The Romeo and Juliet Exception: Age of Consent Laws and Adolescent Sexuality." Journal of Criminal Law and Criminology 99, no. 4 (2009): 901-932.
5. Sarkar, Tanika. "A Prehistory of Rights: The Age of Consent Debate in Colonial Bengal." Feminist Studies 26, no. 3 (2000): 601-622.

Reports, Guidelines, and Policy Documents

1. American Law Institute. Model Penal Code: Sexual Assault and Related Offenses, 2021.
2. Center for Child and the Law, National Law School of India University (NLSIU). Impact of Mandatory Reporting under POCSO Act, Bengaluru, 2020.
3. Crown Prosecution Service (CPS), UK. Legal Guidance on Sexual Offences: Cases involving children and young people, Updated 2022.
4. Enfold Proactive Health Trust. Review of Cases under the POCSO Act in India, 2020.
5. Report of the Committee on Amendments to Criminal Law (Justice

J.S. Verma Committee Report), Government of India, January 23, 2013.

6. UN Committee on the Rights of the Child (CRC). General comment No. 20 (2016) on the implementation of the rights of the child during adolescence, U.N. Doc. CRC/C/GC/20, December 6, 2016.
7. Vidhi Centre for Legal Policy. Romantic and Consensual Relationships under the POCSO Act: An Empirical Study of Judgments, New Delhi, 2021.