

MISAPPLICATION OF THE POCSO ACT: ADOLESCENT CONSENSUAL RELATIONSHIPS AND THE NEED FOR A ROMEO AND JULIET EXCEPTION

by

Dr. Prashant Yadav,
Advocate

ABSTRACT

The Protection of Children from Sexual Offences Act, 2012 establishes a strict-liability regime that treats every person below eighteen as a child and renders the minor's consent legally irrelevant to the commission of the offence.¹² While this design has undoubtedly strengthened the State's response to predatory sexual abuse, it has also produced a well-documented and recurring pattern of misapplication in cases involving consensual, age-proximate adolescent relationships, prosecutions that are frequently set in motion not by exploitation but by familial or community opposition to the relationship itself. Drawing on Madras High Court jurisprudence in *Sabari v. Inspector of Police*³ and *Vijayalakshmi v. State*⁴, together with the Supreme Court's post-script observations in *State of Uttar Pradesh v. Anurudh* (2026),⁵ this paper argues that the continued absence of a close-in-age exception converts a child-protective statute into an instrument of private social control. Comparative Romeo-and-Juliet models and the Law Commission of India's 283rd Report (2023)⁶ are examined to demonstrate that a carefully calibrated statutory exception, one bounded by age proximity, genuine consent, the absence of any relationship of authority or exploitation, and adequate procedural safeguards, is both constitutionally defensible and doctrinally overdue. The paper concludes that legislative introduction of such an exception is no

¹Protection of Children from Sexual Offences Act, No. 32 of 2012, § 2(d) (India) (defining “child” as any person below the age of eighteen years).

²Id. §§ 3, 5, 7, 9.

³*Sabari v. Inspector of Police*, CrI. A. No. 490 of 2018 (Madras H.C. Apr. 26, 2019).

⁴*Vijayalakshmi v. State*, CrI. O.P. No. 232 of 2021 (Madras H.C. Jan. 27, 2021).

⁵*State of Uttar Pradesh v. Anurudh*, 2026 INSC 47 (Jan. 9, 2026) [citation and paragraph numbering to be verified against the official Supreme Court Reports before final submission].

⁶Law Commission of India, Report No. 283, Age of Consent under the Protection of Children from Sexual Offences Act, 2012, at [pincite] (Sept. 2023).

longer a matter of policy preference but an institutional imperative flowing directly from the Supreme Court's own invitation to the Union Government.

1. Introduction: Protective Purpose and Unintended Criminalisation

The Protection of Children from Sexual Offences Act, 2012 (“POCSO Act” or “the Act”) was enacted to close a long-standing gap in Indian criminal law by creating a gender-neutral, child-specific offence architecture backed by special courts, in-camera trials, and mandatory reporting obligations. Its animating purpose was unambiguous: to shield children from sexual exploitation and abuse at the hands of adults who occupy positions of power, trust, or physical advantage over them.⁷ That purpose remains as urgent today as it was in 2012. What has changed is the accumulation of thirteen years of application data revealing a second, unintended consequence of the statute's design: the routine criminalisation of consensual, age-proximate relationships between adolescents, prosecutions in which the coercive machinery of the Act is turned not against exploitation but against the adolescents' own romantic or sexual autonomy, typically at the instance of disapproving parents. This paper's central thesis is that the absence of a close-in-age exception is not a peripheral drafting gap but a structural defect that, left unaddressed, undermines the very protective purpose the Act was designed to serve. The argument proceeds doctrinally, through the statutory text; judicially, through the accumulating body of High Court and Supreme Court decisions that have diagnosed the problem; institutionally, through the Law Commission's considered but incomplete response; and comparatively, through jurisdictions that have already built calibrated exceptions without weakening protection against genuine exploitation.

1.1 The Legislative Architecture of Strict Liability

Section 2(d) of the Act defines a “child” as any person below the age of eighteen years, a single bright-line threshold that admits no internal gradation.⁸ Sections 3, 5, 7 and 9, which create the substantive offences of penetrative and non-penetrative sexual assault and their aggravated forms, do not condition liability on the absence of consent because consent given by a child is treated as legally void ab initio.⁹ The result is a strict-liability regime in which the prosecution

⁷Protection of Children from Sexual Offences Act, supra note 1.

⁸Id. § 2(d).

⁹Id. §§ 3, 5, 7, 9.

need prove only the act and the age of the complainant; the quality of the relationship, the presence of genuine and informed consent, and the age proximity of the parties are, on the text of the statute, wholly irrelevant.

1.2 Scope, Methodology and Structure of the Argument

This paper adopts a doctrinal-comparative-normative method. It begins from a close reading of the statutory text and its interaction with the Juvenile Justice (Care and Protection of Children) Act, 2015, before moving to an analysis of the judicial record, the Law Commission's 283rd Report, and comparative close-in-age exemptions in the United States, Canada and the United Kingdom. The principal counter-argument, that any narrowing of the Act's absolute protection risks diluting safeguards against genuine predation and grooming, is not confined to a single rebuttal section but is engaged directly within each analytical part, most fully in the discussion of the Law Commission's caution against lowering the age of consent and in the design of safeguards against malicious invocation of the proposed exception. The paper's conclusion is accordingly earned cumulatively rather than asserted at the outset.

2. Doctrinal Rigidity of the POCSO Framework and Adolescent Developmental Reality

The POCSO Act's bright-line definition of childhood was a deliberate legislative choice, and for the overwhelming majority of cases it functions exactly as intended: it removes any evidentiary or argumentative space in which an adult abuser could claim that a child "consented." The difficulty arises at the statute's margin, in cases where both parties are themselves adolescents, one or both below eighteen, engaged in a relationship that is mutual, non-exploitative, and often continues into adulthood or marriage. Developmental research consistently shows that romantic and sexual interest between peers is a normative feature of middle-to-late adolescence rather than a deviation from it, yet the Act's architecture treats a seventeen-year-old's relationship with a eighteen- or nineteen-year-old partner in precisely the same doctrinal terms as an adult's predatory exploitation of a young child. This section demonstrates that the collision between the statute's bright-line rule and adolescent developmental reality is structural, not incidental, and that it is this structural mismatch that creates the conditions for systemic misapplication documented in Section 3.

2.1 Section 2(d) and the Absolute Exclusion of Consent

A close reading of Sections 2(d), 3 and 5 shows that the statute admits no internal mechanism by which a court, at the threshold stage, can distinguish a predatory relationship of authority or exploitation from a peer relationship between age-proximate adolescents.¹⁰ Both fact patterns are captured by identical offence language, carry identical mandatory minimum sentences under the aggravated provisions, and trigger identical procedural consequences, including compulsory registration of a first information report, arrest, and trial before a Special Court. The absence of any statutory differentiation means that the distinguishing work, where it occurs at all, is performed informally and inconsistently by investigating officers and prosecutors rather than through a principled legislative standard.

2.1.1 Interaction with the Juvenile Justice (Care and Protection of Children) Act, 2015

Age determination in POCSO proceedings is governed by the hierarchical framework in Section 94 of the Juvenile Justice Act, which prioritises school records and birth certificates over medical ossification tests.¹¹ Because ossification tests carry a margin of error of up to two years in either direction, borderline cases routinely turn on contested age findings, a further layer of uncertainty that compounds the rigidity of the underlying offence provisions rather than mitigating it.

2.1.2 Empirical Patterns of Prosecution Triggered by Familial Opposition

A recurring fact pattern across the reported decisions discussed in Section 3 is that the complainant is not the adolescent alleged to be the victim but a parent or guardian who objects to the relationship on grounds of caste, community, or personal disapproval, and who invokes the Act after the relationship becomes known, often once the couple has eloped or married. In such cases the adolescent complainant frequently resiles from the allegation at trial, yet the statute's design leaves the prosecution no principled off-ramp once the machinery has been set in motion.

2.2 Constitutional Stakes: Privacy, Dignity and Proportionality under Articles 14, 15 and 21

¹⁰Id. §§ 2(d), 3, 5.

¹¹Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, § 94 (India) (prescribing the hierarchy of documents and, failing those, ossification tests for age determination).

The doctrinal rigidity described above is not merely a matter of statutory drafting; it engages fundamental rights. The Supreme Court's recognition in *Justice K.S. Puttaswamy v. Union of India* that privacy, including decisional and sexual autonomy, is a facet of the right to life and personal liberty under Article 21¹² sits uneasily alongside a statutory scheme that criminalises non-exploitative intimate association between persons who, but for an age differential of months, would face no criminal consequence at all. Article 14's guarantee against arbitrary classification and Article 15's prohibition on discrimination reinforce the point: a classification that fails to distinguish exploitative from non-exploitative conduct, despite the difference being both real and administrable, is difficult to justify as a proportionate means of achieving the Act's protective end.¹³ This is not an argument that the age of consent itself should fall; it is an argument that the absence of any close-in-age carve-out renders the statute's application, at its margins, disproportionate to its own stated purpose.

3. Judicial Recognition of Misapplication: From High Courts to the Supreme Court

Indian courts have not been silent on this structural mismatch. Over the past six years, a discernible line of authority has emerged in which High Courts, and now the Supreme Court, have expressly acknowledged that the Act is being used to criminalise adolescent relationships that fall outside its protective purpose. This section traces that judicial recognition from the Madras High Court's early diagnoses through to the Supreme Court's 2026 invitation to the Union Government, and argues that while this line of authority is doctrinally significant, it also exposes the structural limits of case-by-case judicial improvisation as a substitute for legislative reform.

3.1 Madras High Court Jurisprudence: Sabari and Vijayalakshmi

The Madras High Court has been at the forefront of judicial recognition of this problem. In *Sabari v. Inspector of Police*¹⁴, the Court confronted a case in which a teenage relationship, initiated with the knowledge of the families and later formalised in marriage, had nonetheless

¹²Justice K.S. Puttaswamy v. Union of India, (2017) 10 S.C.C. 1 (recognising privacy and autonomy, including sexual and decisional autonomy, as facets of Article 21).

¹³India Const. arts. 14, 15, 21.

¹⁴Sabari v. Inspector of Police, supra note 3.

resulted in prosecution under the Act once the relationship soured. In *Vijayalakshmi v. State*¹⁵, a similarly patterned prosecution arising from a consensual adolescent relationship was placed before the Court after the parties had subsequently married. Both decisions reflect a judiciary confronting the same underlying structural problem identified in Section 2: a statute that offers no textual space to distinguish protection from control.

3.1.1 Sabari's Call for Redefinition or Liberal Provisions

In *Sabari*¹⁶, the Madras High Court went beyond disposing of the individual case to call on the legislature to consider either redefining the categories of offence under the Act or introducing more liberal provisions to exempt genuine, consensual teenage relationships from its ambit, an early and explicit judicial recognition that the problem could not be solved through interpretation alone.

3.1.2 Vijayalakshmi's Quashing on Grounds of Personal Nature and Subsequent Marriage

In *Vijayalakshmi*¹⁷, the Court exercised its inherent power to quash the proceedings, reasoning that the relationship was essentially personal in nature and that the parties' subsequent marriage removed any residual protective purpose that continued prosecution could serve. The decision illustrates both the judiciary's willingness to intervene and the ad hoc, fact-specific nature of the relief available, quashing depends on the fortuity of a subsequent marriage or a sympathetic bench rather than on any predictable statutory standard.

3.2 State of Uttar Pradesh v. Anurudh (2026): The Supreme Court's Post-Script Invitation

The most significant recent development is the Supreme Court's decision in *State of Uttar Pradesh v. Anurudh*¹⁸, which addressed, as its operative holding, a dispute over age determination at the bail stage under the Juvenile Justice Act's hierarchy of evidence. What elevates the decision beyond a routine bail matter is its post-script: the Court expressly recorded its concern at the recurring pattern of POCSO prosecutions arising from consensual adolescent relationships and invited the Union Government to consider the introduction of a close-in-age, or Romeo-and-Juliet,

¹⁵*Vijayalakshmi v. State*, supra note 4.

¹⁶*Sabari v. Inspector of Police*, supra note 3.

¹⁷*Vijayalakshmi v. State*, supra note 4.

¹⁸*State of Uttar Pradesh v. Anurudh*, supra note 5.

clause, together with complementary mechanisms to deter malicious or retaliatory invocation of the Act.¹⁹ Although framed as an observation rather than a binding direction, the post-script is best read as the Court signalling the outer limit of what judicial interpretation can achieve within the confines of the existing statutory text, and as a deliberate transfer of institutional responsibility to the legislature.²⁰

3.3 Limits of Judicial Improvisation and the Persistence of Foundational Criminality

A natural objection is that the accumulating body of quashing decisions and bail orders already provides adequate relief, rendering legislative reform unnecessary. This objection understates the residual harm. Quashing under Section 482 of the Code of Criminal Procedure, or its successor provision, occurs only after arrest, remand, and often months of investigation; it does not undo the registration of a first information report, the stigma of a criminal case, or the psychological toll on adolescents who may already be navigating a difficult family situation. Bail and sentence mitigation operate later still, at or after trial. Judicial relief, however sympathetically exercised, addresses the consequences of an unwarranted prosecution; it cannot prevent the prosecution from being initiated in the first place, because the underlying offence, on the statute's text, has already been made out. Only a threshold statutory exception can perform that preventive function.

4. The Law Commission's 283rd Report and the Inadequacy of Sentencing Discretion Alone

The Law Commission of India directly confronted this debate in its 283rd Report, *Age of Consent under the Protection of Children from Sexual Offences Act, 2012*, published in September 2023.²¹ The Report is an important institutional response, and any argument for reform must engage with it seriously rather than treat it as an obstacle to be circumvented. It is also, this section argues, an incomplete response that leaves the foundational criminality of adolescent intimacy intact even as it seeks to soften its consequences.

¹⁹Id.

²⁰Id.

²¹Law Commission of India, *supra* note 6.

4.1 Rejection of Age Reduction and Limited Exception

The Commission considered and rejected two possible reforms: a general reduction in the statutory age of consent, and a categorical close-in-age exception removing certain adolescent relationships from the Act's ambit altogether.²² Its stated concern was that either reform risked being exploited as a defence in genuine cases of trafficking, grooming, and exploitation dressed up as consensual relationships, particularly given the documented difficulty of proving coercion in intimate-partner contexts. This is a serious concern, and any exception proposed in this paper must be drafted to answer it directly rather than dismiss it, a task taken up in Section 6.

4.2 Guided Judicial Discretion: Scope, Conditions and Residual Harm

In place of a categorical exception, the Commission recommended guided sentencing discretion for cases involving adolescents aged sixteen to eighteen, where the relationship reflected tacit parental or social approval and the age gap between the parties was limited.²³ This recommendation, while a genuine improvement on unguided mandatory minimums, operates exclusively at the sentencing stage, after conviction. It does nothing to prevent the registration of the offence, the arrest, the remand, the trial, or the social and psychological consequences that flow from being formally accused and tried as a sexual offender. A sentencing discretion that produces a lenient or suspended sentence still leaves intact a criminal conviction and, in the interim, the full apparatus of prosecution. The Commission's own caution against a categorical exception is therefore in tension with its own diagnosis of the problem: if the underlying conduct genuinely falls outside the Act's protective purpose, as the Commission itself appears to accept for the sixteen-to-eighteen cohort, then confining the remedy to sentencing discretion addresses only the last stage of a process whose earlier stages remain the primary source of harm.

5. Comparative Close-in-Age Exemptions: Models for a Narrowly Tailored Indian Clause

The Law Commission's core concern, that any exception could be manipulated to shield genuine exploitation, is answerable by reference to jurisdictions that have already built close-in-age exemptions into their sexual offence statutes without abandoning robust protection against

²²Id.

²³Id.

predatory conduct. This section surveys three representative models to extract transferable design principles.

5.1 United States State-Level Romeo-and-Juliet Provisions

Several American states have enacted close-in-age affirmative defences of the kind popularly termed “Romeo-and-Juliet” provisions. Texas law provides an affirmative defence where the actor is not more than three years older than the complainant and the complainant is fourteen years of age or older.²⁴ Florida similarly provides a reduced-offence category, rather than a complete defence, where the offender is no more than four years older than a victim aged between fourteen and seventeen, preserving prosecutorial capacity to address the conduct while avoiding the most severe felony classification and mandatory sex-offender registration that would otherwise apply.²⁵ The common design feature across these provisions is a defined age floor below which no exception operates at all, ensuring that the youngest and most vulnerable children remain fully protected.

5.2 Canada's Close-in-Age Framework and the United Kingdom's Age-of-Consent Architecture

Canada's Criminal Code sets a general age of consent of sixteen but carves out structured close-in-age exemptions for adolescents aged twelve to fifteen, permitting sexual activity with a partner less than two years older, while expressly excluding any relationship of trust, authority, or dependency from the exemption's scope.²⁶ The United Kingdom's Sexual Offences Act 2003 sets a general age of consent of sixteen and, while it does not adopt a formal close-in-age defence, its prosecutorial guidelines direct that cases involving consensual activity between similarly aged adolescents close to the age threshold be assessed against the public interest rather than prosecuted as a matter of course.²⁷ Both models share the Canadian statute's explicit exclusion of authority relationships from any exemption, a safeguard central to answering the Law Commission's concern about exploitation dressed up as consent.²⁸

²⁴Tex. Penal Code Ann. § 22.011(e) (West 2023).

²⁵Fla. Stat. § 794.05 (2023).

²⁶Criminal Code, R.S.C. 1985, c. C-46, § 150.1 (Can.).

²⁷Sexual Offences Act 2003, c. 42, § 9 (Eng.).

²⁸Id.

5.3 Design Principles Transferable to the Indian Statutory Context

Three design principles recur across these comparative models and are directly transferable to the Indian context. First, a fixed statutory age floor beneath which the exemption never operates, preserving absolute protection for younger children. Second, a narrow maximum age differential between the parties, typically two to four years, calibrated to distinguish peer relationships from adult predation. Third, an express and non-waivable exclusion of any relationship involving a position of trust, authority, dependency, or care, ensuring that teachers, coaches, relatives in loco parentis, and similar figures can never invoke the exemption regardless of age proximity. Together, these principles demonstrate that the Law Commission's caution and a calibrated exception are not mutually exclusive.²⁹

6. Towards a Constitutionally Defensible Romeo-and-Juliet Exception

Synthesising the doctrinal analysis of Section 2, the judicial record of Section 3, the Law Commission's institutional caution in Section 4, and the comparative design principles of Section 5, this section sets out the precise contours of an exception capable of satisfying both the Supreme Court's invitation in *Anurudh* and the constitutional requirements of Articles 14, 15 and 21.³⁰

6.1 Essential Elements: Age Threshold, Proximity, Genuine Consent and Absence of Authority

An Indian close-in-age exception should, at minimum, incorporate four cumulative elements. First, an age floor of sixteen years, below which the exception is categorically unavailable and the existing strict-liability regime continues to apply in full, consistent with the Law Commission's rejection of any general reduction in the age of consent.³¹ Second, a maximum age differential of two to three years between the parties, drawn from the comparative models surveyed in Section 5, narrow enough to exclude adult predation while capturing genuine peer relationships. Third, a requirement of demonstrably voluntary and informed consent, assessed as a question of fact rather than presumed, placing the evidentiary burden on the party invoking the exception. Fourth, an absolute and non-derogable exclusion of the exception wherever any relationship of authority,

²⁹Law Commission of India, supra note 6.

³⁰India Const. arts. 14, 15, 21.

³¹Protection of Children from Sexual Offences Act, supra note 1, § 2(d); Law Commission of India, supra note 6.

trust, dependency, or care exists between the parties, including but not limited to teacher-student, coach-athlete, and custodial relationships.

6.2 Safeguards against Dilution and Mechanisms to Deter Malicious Invocation

The Law Commission's central objection, that any exception could be misused to shield exploitation, must be answered structurally rather than dismissed. The exception proposed here is designed as a narrow affirmative defence to be raised and proved by the accused, rather than as an *ex ante* bar to registration of a complaint, ensuring that investigating officers retain full authority to register and investigate every complaint in the ordinary course. A false or fraudulent invocation of the exception should itself attract liability under the general provisions governing false evidence, preserving a deterrent against its abuse. Judicial oversight at the framing-of-charge stage, guided by binding sentencing and charge-framing guidelines of the kind the Law Commission has already begun to develop, would allow courts to filter out cases that do not genuinely meet the exception's cumulative conditions before trial proceeds to its full, adversarial length. Structured in this way, the exception preserves rather than dilutes the Act's core protective mandate.

7. Conclusion: Legislative Imperative and Institutional Cost of Inaction

The argument advanced in this paper is cumulative rather than assertive. Section 2 demonstrated that the POCSO Act's bright-line definition of childhood collides structurally, not incidentally, with the developmental reality of adolescent relationships. Section 3 traced a consistent line of judicial recognition of that collision, culminating in the Supreme Court's own invitation, in *Anurudh*, to the Union Government to consider a close-in-age exception.³² Section 4 showed that the Law Commission's guided-discretion response, though a genuine improvement, operates only at sentencing and therefore leaves the earlier and more damaging stages of prosecution untouched. Section 5 demonstrated, through the experience of the United States, Canada, and the United Kingdom, that narrowly tailored close-in-age exceptions are both administrable and compatible with robust protection against exploitation. Section 6 translated those lessons into concrete statutory contours designed specifically to answer the Law Commission's own stated concerns. The conclusion that follows is therefore not a policy

³²State of Uttar Pradesh v. Anurudh, *supra* note 5.

preference but an institutional obligation: the Supreme Court has already identified the problem and named the remedy; what remains is legislative action. Continued inaction carries a real and mounting cost, measured in adolescents who acquire criminal records, and families who are drawn into years of litigation, for conduct that the Act was never designed to punish. A carefully bounded Romeo-and-Juliet exception, limited by age proximity, genuine consent, and the absolute exclusion of any relationship of authority or exploitation, would allow the POCSO Act to perform the protective function for which it was enacted without continuing to serve, at its margins, as an instrument of private social control.



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