
WHEN PROTECTION CRIMINALIZES: A DOCTRINAL ANALYSIS OF THE CRIMINALIZATION OF CONSENSUAL ADOLESCENT RELATIONSHIPS UNDER THE POCSO ACT, 2012

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ABSTRACT

The Protection of Children from Sexual Offences Act, 2012 was enacted to address sexual exploitation of minors through a stringent legal framework. However, its uniform application has produced unintended consequences in cases involving consensual relationships between adolescents. By fixing the age of consent at eighteen without accommodating variations in maturity or intent, the law often treats mutually agreed relationships between peers as serious criminal offences.

This article undertakes a doctrinal examination of judicial decisions delivered by the Supreme Court and various High Courts between 2022 and 2026 to analyse how courts have responded to such cases. It highlights that, in the absence of any consideration of intent, the current framework frequently leads to outcomes where individuals are penalised despite the absence of exploitative conduct. The study also engages with recent judicial observations suggesting the need for a limited exception for relationships involving individuals of proximate age.

Further, the paper evaluates the compatibility of mandatory sentencing provisions with the right to personal liberty under Article 21 of the Constitution. It argues that the use of criminal law in family-driven disputes involving adolescent relationships raises concerns about proportionality and individual autonomy. By examining inconsistencies in age determination practices and patterns in judicial intervention, the article concludes that introducing a narrowly tailored close-age exemption would better align the law with constitutional principles while preserving its protective purpose.

Keywords: POCSO Act, 2012; consensual adolescent relationships; Romeo and Juliet Clause, Article 21; Doctrine of Proportionality.

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INTRODUCTION

The Protection of Children from Sexual Offences (POCSO) Act, 2012 was introduced as a comprehensive legislative measure to address the serious problem of child sexual abuse in India, with the primary aim of safeguarding a vulnerable section of society. However, over a decade of its judicial application has exposed a significant tension, wherein the Act's inflexible strict liability framework is increasingly applied in a manner that restricts, rather than protects, adolescent autonomy. This tension becomes most apparent in cases involving relationships between individuals of similar age, where consensual romantic involvement is automatically classified as a serious criminal offence.

At the centre of this legal tension lies the fixed age threshold of eighteen years for consent under Section 2(d) of the Act. While this threshold operates as an essential safeguard against exploitative conduct by adults, it does not adequately reflect variations in maturity or the evolving capacity of adolescents. Consequently, a disconnect emerges between the intended protective purpose of the law and its practical enforcement, where actions lacking any criminal intent or culpable mental state are nevertheless subjected to penal consequences.

The urgency of examining this issue is reinforced by a noticeable trend in recent judicial responses across India. In early 2026, the Supreme Court set aside criminal proceedings in a case involving a consensual relationship and encouraged the consideration of a limited exception for individuals close in age. In a similar vein, the Madras High Court, in March 2026, drew attention to recurring instances where the law is invoked in familial disputes, particularly to oppose consensual relationships, thereby extending its application beyond its original protective purpose.

This article engages with these concerns through four primary objectives. First, it analyses the tension between a strict liability framework and the recognition of adolescent decision-making capacity. Second, it examines whether the imposition of mandatory sentencing aligns with the constitutional guarantee of personal liberty under Article 21¹. Third, it assesses the reliability of age determination methods in disputed cases. Finally, it explores the scope for legislative reform through a narrowly defined close-age exemption. The study concludes that recognising

¹ INDIA CONST. art. 21.

adolescent autonomy is not merely a policy concern but a constitutional necessity to ensure that the law protects without imposing undue punishment.

The fundamental crisis within the POCSO framework is a direct consequence of a "one-size-fits-all" legislative philosophy that fails to distinguish between predatory exploitation and developmental exploration. While the 2012 enactment was a necessary response to a vacuum in child protection laws, its rigid implementation has inadvertently created a secondary crisis of "over-criminalization." By removing the element of *mens rea*—the "guilty mind"—from the statutory definition of the offence, the law effectively creates a class of "individuals prosecuted despite lack of predatory intent." These are individuals whose actions lack any malicious intent or predatory design, yet who find themselves ensnared in a penal system calibrated for the most heinous offenders. The urgency for reform is not merely about leniency; it is about ensuring that the coercive processes of criminal prosecution is reserved for those who pose a genuine threat to the safety of children, rather than being squandered on the policing of adolescent romantic agency.

Methodological Note: This study adopts a doctrinal research approach, based on a critical and systematic examination of statutory provisions and judicial decisions. The principal sources analysed include the POCSO Act, 2012, and the Bharatiya Nyaya Sanhita (BNS/CrPC) ² in relation to the inherent powers exercised by High Courts. To examine the gap between legislative intent and its practical application, the study also draws upon secondary materials such as the 283rd Law Commission Report and relevant academic literature. The analysis is primarily qualitative, with particular attention to judicial trends in cases involving consensual relationships between adolescents from 2022 to 2026.

SECTION I: THE DOCTRINAL CONFLICT — STRICT LIABILITY VS. THE MATURE MINOR DOCTRINE

This section explores the fundamental legal friction between the protectionist mandate of the state and the evolving autonomy of adolescents. The "Paradox of Protection" begins with the statutory architecture that removes agency from anyone under eighteen, regardless of their cognitive or social maturation.

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

1. The Mechanistic Application of Section 2(d): The Strict Liability Trap

The POCSO Act, 2012, operates on a framework of strict liability, where the legal focus is shifted entirely away from the intent of the accused to the age of the victim. Under Section 2(d), a "child" is defined by a "bright-line" rule as any person under the age of eighteen.

- **Consent rendered legally invisible in peer relationships:** In cases of "peer-on-peer" relationships, the law treats consent as legally non-existent.
- **Absence of criminal intent:** As observed in *Satish alias Chand v. State of UP (2024)*,³ this framework creates a scenario where a teenager may be prosecuted for "aggravated penetrative sexual assault" despite a complete absence of criminal intent or *mens rea*.
- **Strict statutory structure:** The law does not distinguish between a predatory adult and a romantic peer, leading to what scholarship terms "statutorily presumed victimhood".

This mechanistic application of Section 2(d) operates as a "rigid statutory approach," preventing the court from acknowledging the nuanced context of a relationship. When the law treats consent as "legally invisible," it produces a legal assumption where the adolescent's own desires and agency are discarded by the state in the name of protection. This "Strict Liability Trap" ensures that even in cases where a relationship is healthy, supportive, and mutually desired, the legal outcome is identical to that of a violent sexual assault.

As illustrated in *Satish alias Chand v. State of UP*, the absence of criminal intent currently provides no shield against prosecution, leading to a profound disconnect between the "Harm" the law seeks to prevent and the "Action" it actually punishes. By declaring an adolescent a "victim" against their own will, the law risks alienating the very demographic it intends to safeguard, turning the courtroom into a space of psychological and social harm caused by prosecution.

2. Evolving Autonomy vs. Statutory Rigidity: The Mature Minor Doctrine

- While the statutory framework remains inflexible, the biological and psychological aspects of adolescence are dynamic. This results in a divergence between the formal legal position and the concept of the mature minor, which acknowledges that a young person's capacity for independent decision-making develops progressively over time.

³ *Satish alias Chand v. State of U.P.*, 2024 SCC OnLine All 3357.

- **Psychological Disconnect:** Research published in *A legal paradox: child protection vs child autonomy*⁴ suggests Cognitive development progresses gradually and cannot be reduced to a fixed change at the age of eighteen.
- **Adolescent Agency:** The *NLUO (2026)* study on "*Criminalising Adolescence*"⁵ highlights that by age sixteen, many adolescents possess the capacity to understand the nature and consequences of romantic relationships.
- **The "Implementation Gap":** The refusal of the POCSO Act to acknowledge this maturation results in a legal fiction where the state protects adolescents by criminalizing their autonomous choices, thereby infringing upon their budding right to privacy.

3. The "Judicial Discomfort" and Constitutional Irritants

The friction between strict liability and reality has led to significant "judicial discomfort" across Indian High Courts.

- **Extraordinary Quashing:** Courts are increasingly forced to use inherent powers under Section 482 of the CrPC (now BNSS) to quash FIRs where the "victim" and "accused" are consensual peers.
- **The Misuse Flag:** The *Mahesh v. State of T.N., 2026*⁶ noted that the mechanistic application of the law often ignores the "lived realities" of teenagers, leading to cases where the law is used as a tool for informal social control rather than protection.
- **Constitutional Proportionality:** Applying mandatory minimum sentences to consensual relationships raises serious questions regarding the **Doctrine of Proportionality** under Article 21, as the punishment often far outweighs the "harm" defined by the statute.

⁴ C.R. Simpson, *A Legal Paradox: Child Protection vs Child Autonomy*, 9 HUM. SOC. SCI. COMMUN. 1 (2022).

⁵ NATIONAL LAW UNIVERSITY ODISHA, *Criminalising Adolescence: Misuse of POCSO in Consensual Teenage Relationships and its Impact on Child Rights*, NLUO L.J. (2026).

⁶ *Mahesh v. State of T.N.*, 2026 SCC OnLine Mad 2258.

SECTION II: CONSTITUTIONAL CONCERNS AND MISUSE IN FAMILIAL CONTEXTS

This section shifts from the formal legal framework to its practical application, focusing on how the rigid structure of the POCSO Act interacts with constitutional protections and prevailing social realities.

1. Mandatory Sentencing and the Doctrine of Proportionality (Article 21)

The mandatory minimum sentences prescribed under the POCSO Act (often 10 to 20 years or life) are designed to deter heinous crimes, yet they apply equally to consensual peer relationships.

- **The Proportionality Gap:** In cases involving "technical victimhood," the punishment fails the test of proportionality because the state's punitive response is grossly excessive compared to the "harm" caused—which, in consensual cases, is often zero.
- **Violation of Liberty:** As argued in the research objectives, this creates a conflict with Article 21, as it deprives young adults of their liberty for engaging in autonomous, albeit legally premature, acts.
- **Judicial Workarounds:** Rajasthan High Court on *Sachin Bhoora v. State of Rajasthan, 2026*⁷ have frequently used bail as a "palliative" measure because the substantive law offers no room for leniency during sentencing.

2. Informal social control: The Instrumentalization of Safeguarding

Perhaps the most "irritating" aspect of the implementation gap is the frequency with which the POCSO Act is invoked not by a victim, but by their parents.

- **Parental Vetos:** In elopement cases, parents often utilize the POCSO Act to criminalize their child's partner as a means of social control.

⁷ S. Singh, *Rajasthan High Court Grants Bail to Accused in POCSO Case Where Victim Allegedly Eloped Willingly*, SCC TIMES (Jan. 31, 2026).

- **The Madras HC Critique:** The *Mahesh v. State of T.N.,(March 2026)*⁸ explicitly flagged this trend, noting that the law is being "misused" to separate young couples and settle familial scores.

The "weaponization" of the POCSO Act by parents transforms a protective statute into a tool for informal social control and familial policing. In elopement cases, the Act is frequently instrumentalized to enforce traditional social structures or settle familial scores rather than to ensure the safety of the minor. This "instrumentalization" leads to a paradox where the legal process itself becomes the primary source of harm for the adolescent. By being forced into a trial where they must testify against a chosen partner, the "victim" is subjected to a state-sanctioned interrogation that often ignores their emotional maturity and psychological well-being. As flagged by the Madras High Court in *Mahesh v. State of T.N.*, this shift in the law's application—from protecting children to policing relationships—erodes the constitutional promise of personal liberty and undermines the credibility of the entire POCSO framework.

- **Impact on Child Rights:** Paradoxically, this familial misapplication often causes more trauma to the "victim" (the adolescent) than the relationship itself, as they are forced to testify against a partner they chose, often while being pressured by their own family.

3. Evidentiary Unreliability: The Fallacy of "Strict" Age Determination

Your Objective 3 highlights a technical "grey area" that is often overlooked: the accuracy of the methods used to determine a minor's status.

- **Margin of Error:** Medical age-estimation techniques, such as ossification or dental tests, possess a significant error margin (often +/- 2 years).
- **Life-Altering Consequences:** In a "strict liability" framework, a two-year error is the difference between a stable relationship and a twenty-year prison sentence.

⁸ R. Patel, "Young Boys Bear Consequences": Madras HC Flags Misuse of POCSO in Teenage Relationships; Calls for Awareness Campaigns, SCC TIMES (Mar. 9, 2026)

- **The Scientific Gap:** Research from the "*A legal paradox: child protection vs child autonomy*".⁹ study underscores that biological indicators are not precise enough to support the "bright-line" threshold currently used by Indian courts in contested cases.

SECTION III: THE WAY FORWARD — LEGISLATIVE AND JUDICIAL REFORM

This section transitions from the "Crisis" to the "Solution," providing a roadmap for harmonizing the POCSO Act with the constitutional realities of the 21st century.

1. The Romeo and Juliet Clause: Mechanics of a "Close-Age Exemption"

- The most effective solution to this issue is the introduction of a "Romeo and Juliet" clause—a legislative provision that allows exemption or reduced penalties for consensual sexual acts between adolescents of similar age.
- **The Supreme Court's Mandate:** In *State of Uttar Pradesh v. Anurudh & Anr* (January 2026)¹⁰, the Supreme Court of India explicitly urged the Union Government to introduce such a clause, recognizing that the current law inadvertently "persecutes" genuine teenage relationships.
- **Defining "Close-Age":** Research articles on *Evaluating the efficacy of Romeo-Juliet laws in India (NLUO, 2025)*¹¹ and *The "Romeo-Juliet" Clause: A Necessary Amendment to the POCSO Act*¹² suggests a threshold of a 2-to-4-year age gap (e.g., both parties between 15 and 18) to differentiate between "peer-on-peer" intimacy and "predatory" grooming.
- **Decriminalizing Intent:** Implementing this clause would fulfill Objective 4 by legally acknowledging that consensual peer relationships lack the *mens rea* (criminal intent) required for the severe penalties currently mandated by POCSO.

⁹ Simpson, *supra* note 4.

¹⁰ *State of Uttar Pradesh v. Anurudh & Anr.*, 2026 SCC OnLine SC 450.

¹¹ NATIONAL LAW UNIVERSITY ODISHA, *Evaluating the Efficacy of Romeo-Juliet Laws in India*, NLUO L.J. (2025).

¹² *The "Romeo-Juliet" Clause: A Necessary Amendment to the POCSO Act?*, LIVELAW (2026)

A "Romeo and Juliet" clause would serve as a vital "corrective mechanism" in the current rigid system. By acknowledging a narrow age gap—specifically between peers within a 2-to-4-year difference—the law could legally differentiate between predatory "grooming" and biological adolescence. This is not a proposal to dilute child safety; rather, it is a proposal for the rationalization of the state's punitive response. Without such a clause, the judiciary is left in a state of "doctrinal inconsistency," where some High Courts use their inherent powers under Section 528 of the BNSS¹³ to quash cases while others feel strictly bound by the mechanistic text of the statute. Standardizing this relief through legislative reform would ensure that "Personal Liberty" under Article 21 is not a lottery dependent on a specific judicial bench, but a consistently protected constitutional right.

2 International Comparisons and Global Best Practices

India's current "bright-line" rule at 18 is an outlier compared to several advanced legal systems that already utilize close-age exemptions.

- **The UK and Canada Models:** These jurisdictions have long utilized "close-age" provisions to ensure that the law targets predators while respecting the evolving autonomy of adolescents.
- **Universal Lessons:** Adopting a similar model would align Indian law with international child rights standards that emphasize "the best interests of the child" as a primary consideration, which includes respecting their budding autonomy.¹⁴

3 Standardizing Judicial Guidelines for Quashing FIRs

Until legislative reform is achieved, the judiciary must address the "Judicial Inconsistency" identified in Hypothesis 2 through standardized guidelines.

- **Invoking Inherent Powers:** High Courts should continue to exercise their inherent powers under **Section 528 of the BNSS** (formerly CrPC) to quash FIRs in clearly consensual "peer-on-peer" cases.

¹³ The Bharatiya Nagarik Suraksha Sanhita, 2023, § 528, No. 46, Acts of Parliament, 2023 (India).

¹⁴ NLUO, *supra* note 13

- **Beyond Bail:** As seen in the *Sachin alias Bhoora v. State of Rajasthan, 2026*¹⁵ and *Mahesh v. State of T.N., 2026*¹⁶ cases, bail is a temporary fix; courts need a standardized protocol to quash proceedings early to prevent the trauma of a prolonged trial for the "victim".
- **Age Determination Certainty:** Following Objective 3, courts must adopt a "benefit of the doubt" approach when medical age estimation falls within the margin of error (e.g., if the ossification test shows 17-19 years) to prevent wrongful convictions.¹⁷

SECTION IV: CONCLUSION

The POCSO Act, 2012 continues to serve as a vital framework for child protection in India; however, its strict liability approach has become increasingly difficult to justify in cases involving adolescent relationships. This study has shown that the fixed age threshold of eighteen often leads to outcomes where the law, instead of offering protection, results in the penalisation of the very individuals it intends to safeguard.

Examined through the lens of Article 21 and the principle of proportionality, the use of the Act in situations resembling social control raises serious constitutional concerns. Judicial responses observed in early 2026 reflect a growing recognition within the courts that the present legal approach requires reconsideration and reform.

The introduction of a narrowly tailored "Romeo and Juliet" clause should not be viewed as diluting protections against exploitation, but rather as a necessary adjustment to prevent disproportionate consequences in consensual adolescent cases. By addressing the disconnect between legislative intent and its practical application, the legal system can better uphold the best interests of young persons while preserving both their rights and dignity.

¹⁵ *Sachin alias Bhoora v. State of Rajasthan, 2026 SCC OnLine Raj 472.*

¹⁶ *Mahesh v. State of T.N., 2026 SCC OnLine Mad 2258.*

¹⁷ NATIONAL LAW UNIVERSITY ODISHA, *Criminalising Adolescence: Misuse of POCSO in Consensual Teenage Relationships and its Impact on Child Rights*, NLUO L.J. (2026).

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