

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, or distributed in any form or by any means, whether electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the Managing Editor of the *International Journal for Legal Research & Analysis (IJLRA)*.

The views, opinions, interpretations, and conclusions expressed in the articles published in this journal are solely those of the respective authors. They do not necessarily reflect the views of the Editorial Board, Editors, Reviewers, Advisors, or the Publisher of IJLRA.

Although every reasonable effort has been made to ensure the accuracy, authenticity, and proper citation of the content published in this journal, neither the Editorial Board nor IJLRA shall be held liable or responsible, in any manner whatsoever, for any loss, damage, or consequence arising from the use, reliance upon, or interpretation of the information contained in this publication.

The content published herein is intended solely for academic and informational purposes and shall not be construed as legal advice or professional opinion.

**Copyright © International Journal for Legal Research & Analysis.
All rights reserved.**

ABOUT US

The *International Journal for Legal Research & Analysis (IJLRA)* (ISSN: 2582-6433) is a peer-reviewed, academic, online journal published on a monthly basis. The journal aims to provide a comprehensive and interactive platform for the publication of original and high-quality legal research.

IJLRA publishes Short Articles, Long Articles, Research Papers, Case Comments, Book Reviews, Essays, and interdisciplinary studies in the field of law and allied disciplines. The journal seeks to promote critical analysis and informed discourse on contemporary legal, social, and policy issues.

The primary objective of IJLRA is to enhance academic engagement and scholarly dialogue among law students, researchers, academicians, legal professionals, and members of the Bar and Bench. The journal endeavours to establish itself as a credible and widely cited academic publication through the publication of original, well-researched, and analytically sound contributions.

IJLRA welcomes submissions from all branches of law, provided the work is original, unpublished, and submitted in accordance with the prescribed submission guidelines. All manuscripts are subject to a rigorous peer-review process to ensure academic quality, originality, and relevance.

Through its publications, the *International Journal for Legal Research & Analysis* aspires to contribute meaningfully to legal scholarship and the development of law as an instrument of justice and social progress.

PUBLICATION ETHICS, COPYRIGHT & AUTHOR RESPONSIBILITY STATEMENT

The *International Journal for Legal Research and Analysis (IJLRA)* is committed to upholding the highest standards of publication ethics and academic integrity. All manuscripts submitted to the journal must be original, unpublished, and free from plagiarism, data fabrication, falsification, or any form of unethical research or publication practice. Authors are solely responsible for the accuracy, originality, legality, and ethical compliance of their work and must ensure that all sources are properly cited and that necessary permissions for any third-party copyrighted material have been duly obtained prior to submission. Copyright in all published articles vests with IJLRA, unless otherwise expressly stated, and authors grant the journal the irrevocable right to publish, reproduce, distribute, and archive their work in print and electronic formats. The views and opinions expressed in the articles are those of the authors alone and do not reflect the views of the Editors, Editorial Board, Reviewers, or Publisher. IJLRA shall not be liable for any loss, damage, claim, or legal consequence arising from the use, reliance upon, or interpretation of the content published. By submitting a manuscript, the author(s) agree to fully indemnify and hold harmless the journal, its Editor-in-Chief, Editors, Editorial Board, Reviewers, Advisors, Publisher, and Management against any claims, liabilities, or legal proceedings arising out of plagiarism, copyright infringement, defamation, breach of confidentiality, or violation of third-party rights. The journal reserves the absolute right to reject, withdraw, retract, or remove any manuscript or published article in case of ethical or legal violations, without incurring any liability.

ROMEO-JULIET CLAUSE AND CONSTITUTIONAL AUTONOMY: AN ANALYSIS OF THE SUPREME COURT JUDGMENT IN INDIA

AUTHORED BY - KRITHI SRINIVAS & K R KISHORE CHANDURU

Vels School of Law, Pallavaram

Abstract

The "Romeo-Juliet clause" and the constitutional question of adolescent autonomy have emerged as pivotal issues in Indian legal discourse following the Supreme Court's milestone ruling in *State of Uttar Pradesh v. Anurudh* (2026 INSC 47). This article provides a comprehensive constitutional analysis of that judgment, examining its handling of procedural questions, jurisdiction, age assessment under the POCSO Act, 2012, and its pointed recommendation to the Union Government regarding a close-in-age exemption for consensual teenage relationships. The article traces the origins of the Romeo-Juliet clause from Shakespeare's ill-fated lovers to modern statutory exemptions worldwide. Examining India's POCSO regime, it notes that approximately 25% to 49% of cases involve consenting adolescents close in age, with over four-fifths of complaints originating from parents reacting to elopement, pregnancy, or breaches of caste and religious boundaries. Constitutionally, adolescents are protected under Articles 14, 15, 19, and 21 covering privacy rights (*K.S. Puttaswamy v. Union of India*, 2017), equality, dignity, and decisional autonomy. Yet POCSO's blanket criminalization of all under-18 sexual activity potentially violates these rights through over-inclusion and disproportionate penalties. The article proposes a comprehensive legislative blueprint: set fourteen as the minimum age; cap partner differences at three years for ages fourteen through seventeen; require genuine consent; bar exemptions where power imbalances exist due to authority or trust relationships; and include safeguards against malicious reporting. It examines comparative frameworks from the United States, Canada, Germany, the United Kingdom, and the Philippines, distilling common principles for an Indian context. Ultimately, this analysis argues that a narrowly crafted Romeo-Juliet clause would align Indian child protection laws with constitutional commitments to dignity, privacy, equality, and proportionality, while maintaining robust safeguards against genuine exploitation.

Chapter 1

Introduction

Every democracy faces a fundamental contradiction: how does a government protect those most at risk while honoring their right to self-determination as they develop? Nowhere is this tension more acute than with adolescents young people on the threshold between childhood and adulthood. When criminal statutes apply to consensual romantic relationships between teenagers, this tension becomes starkly visible. On one hand, shielding children from sexual abuse is non-negotiable. The United Nations Convention on the Rights of the Child (UNCRC), 1989, which India ratified, requires states to protect children from "all forms of sexual exploitation and sexual abuse" (Article 34). But the definition of "child" varies across cultures and developmental stages. A sixteen-year-old is developmentally distinct from a twelve-year-old, yet both are often lumped together under blanket legal definitions creating what scholars term the "lumpen category problem": treating fundamentally different situations as legally identical. Parliament enacted the Protection of Children from Sexual Offences (POCSO) Act in 2012 as India's first comprehensive statute addressing sex crimes against minors. It defined "child" as anyone below eighteen, adopted strict liability (consent irrelevant), established special courts, and mandated child-friendly procedures. The intention was clear: wrap children in an unbreakable layer of protection. However, as case filings increased, an unintended consequence emerged. Courts began seeing cases involving not predatory adults targeting children, but two teenagers (typically sixteen to eighteen) in mutually desired relationships. Often, the "offender" was barely older than the "victim." Consequences were severe: teenage boys arrested and detained for months awaiting trial; families weaponizing complaints to control relationships crossing caste or religious boundaries; youths acquiring criminal records before adulthood, derailing education, employment, and marriage prospects. The Supreme Court took note in multiple cases: *Independent Thought v. Union of India* (2017) flagged issues around adolescent sexuality; *Satish alias Chand v. State of U.P.* (2021) articulated factors for bail consideration in such cases. Then came *State of U.P. v. Anurudh*¹ (2026), the most consequential decision to date. While primarily addressing jurisdiction and bail, the Court added an "urgent postscript" confronting the constitutional stakes: "The Court cannot ignore the stark divide that often separates what a statute promises from what actually happens on the ground. "The term borrows from Shakespeare's ill-fated lovers two young people whose fate

¹ *State of Uttar Pradesh v. Anurudh*, (2026) INSC 47, ¶ 56 (Supreme Court's "necessitated postscript" calling for consideration of a Romeo-Juliet clause).

was sealed by family feuds rather than their own choices. Legally, a "Romeo-Juliet clause" refers to rules creating exceptions to statutory rape laws when both persons are close in age and acting with mutual consent. The rationale: while law must shield children from predatory adults, criminalizing typical teenage sexual exploration misses the mark. When two adolescents are only two to four years apart in age, the troubling power imbalances between adults and minors are absent. Both are at roughly similar developmental stages, with comparable capacity to understand their actions. The Anurudh Court spotlighted what it called a "grim societal chasm" between legislative promises and brutal reality. Empirical research cited in the judgment (Enfold-UNICEF study, 2023) reveals that 24-25% of POCSO cases nationwide stem from consensual adolescent relationships², with Karnataka reaching 49.1%. According to the Vidhi Centre for Legal Policy (2024), 80.2% of cases are initiated by parents or family members. The consequences are stark: accused adolescents face an average of 509 days in pretrial detention; they suffer psychological scars, educational disruption, and destroyed future prospects. Alleged victims are stripped of agency, blocked from reproductive healthcare, or forced into institutional settings. Crucially, enforcement is selective. Boys from marginalized backgrounds Dalit, Adivasi, Muslim youth are far likelier to be arrested and denied bail than privileged peers. Inter-caste or inter-religious couples face weaponized complaints. The law designed as a safety net becomes a tool for deepening vulnerability.

Chapter 2

Review of Literature

Ashok, Ramaswamy, and Seshadri (2022) – A Transdisciplinary Perspective

This seminal article reveals that an early POCSO draft proposed a lower age of consent (14 years) with a close-in-age exception permitting a three-year age difference. The Parliamentary Standing Committee's 2011 recommendation for a higher age of consent was based on concerns that a lower age would "lend itself to trenchant cross-examination of factual consent and victims' sexual history." The authors argue this concern proved misplaced, as the higher age has done little to address vexatious cross-examination while creating new problems of adolescent criminalization. The article also documents significant gender bias: a study of 1,957 POCSO cases from Delhi and Mumbai found the proportion of male accused was 96% and 93% respectively, revealing "the discriminatory utilization of the POCSO Act against

² Enfold Proactive Health Trust & UNICEF, Study on POCSO Implementation (2023), p. 24 (finding 24-25% of POCSO cases nationwide involve consensual adolescent relationships; Karnataka at 49.1%)

adolescent boys."

Usika K (2026) – Empirical Evidence and Legislative Design

This article marshals striking empirical data: approximately 24-25% of POCSO cases in various states are consensual; in Karnataka, the figure reaches 49.1%. Approximately 80.2% of cases are initiated by parents or relatives, usually arising from elopement, pregnancy, or parental disapproval of inter-caste or inter-religious relationships. The article documents how blanket criminalization impacts boys (arrest, detention, education interrupted, potential sex offender registration) and girls (treated as passive victims, placed in shelter homes against their will, denied agency).

Inamdar and Arun (2026) – Comparative Statutory Practice

This article provides detailed comparative analysis: the United States (over 40 states have close-in-age exemptions; *State v. Limon* struck down discriminatory application); Canada (Section 150.1 of the Criminal Code creates a graded consent framework with two- to five-year age differentials); Germany (Section 182 of the Penal Code focuses on exploitation rather than rigid age thresholds); Australia (several states incorporate close-in-age defenses). The authors propose an Indian framework exempting consensual relationships where the younger person is at least sixteen, the age difference does not exceed three years, and the relationship is not exploitative.

Chapter 3

Conceptual Framework

The term draws on Shakespeare's tragedy of two teenagers whose love is destroyed by rigid social rules. Modern statutes use this imagery to distinguish between predatory dynamics (adults leveraging power over minors) and adolescent exploration (two teens roughly matched in age and maturity exploring romance consensually). Essential elements of Romeo-Juliet clauses across jurisdictions include: Element 1: Age Difference ("Close in Age" Rule) – Typically 2-4 years in U.S. states; Canada permits five years for 14-15 year-olds, two years for 12-13 year-olds; Germany emphasizes exploitation rather than strict numbers. Element 2: Minimum Age Limit – A floor below which exceptions don't apply: Canada sets 12; many U.S. states use 13 or 14; Germany uses 14. Element 3: Genuine Consent – The exemption requires freely given consent; force, threats, or coercion void the exception. Element 4: Exclusion of

Trust/Authority Relationships – Positions like teacher/student, coach/athlete, guardian/ward are categorically excluded. Element 5: Non-Exploitation Requirement – The relationship must not be exploitative, even if age and consent requirements are met. The clause draws a bright line between predation (large age gap, power imbalance, absence of meaningful consent, lasting harm) and adolescent exploration (small age gap, equal footing, actual mutual agreement, potential for healthy development). Without such distinction, laws based on absolute liability commit "over-inclusion" sweeping up not only predators but also teens in consensual relationships. This violates proportionality, the constitutional principle that punishment must reflect moral culpability. Under POCSO, Section 4³ mandates at least ten years' imprisonment for penetrative sexual assault. A seventeen-year-old convicted for consensual sex with his sixteen-year-old girlfriend faces a decade in adult prison, cut off from family and community. Beyond incarceration, a POCSO conviction triggers mandatory sex offender registration, permanent criminal record, community notification, and severe emotional trauma. The very legislation created to safeguard children becomes its own source of harm. The POCSO Act's Statement of Objects and Reasons cites "the rampant increase in sexual offences against children" necessitating comprehensive legislation. Key features include: broader definitions covering penetrative assault, sexual assault, harassment, and pornography; gender-neutral language; age of consent set at eighteen; strict liability (consent irrelevant); mandatory reporting (Section 19); child-friendly procedures; special courts; and presumptions of guilt in certain cases (Sections 29, 30). The absolute liability regime means that Sections 3-10 define offences without requiring proof of force or absence of consent. If sexual activity occurs with anyone under eighteen, an offence is complete. Section 30 creates a presumption of culpable mental state. This reflects the legislative judgment that persons under eighteen lack capacity for meaningful consent. Early Years (2012-2017): Strict application with no exceptions. Judicial Unease (2017-2021): Independent Thought (2017) struck down the marital rape exception for wives aged 15-18, signaling contextual sensitivity. Shafhi Mohammad (2018) granted bail where evidence showed a consensual relationship. Satish alias Chand (2021) articulated four factors for bail in romantic POCSO cases: nature of relationship; victim's statement; avoidance of unjust outcomes; judicial discretion. High Courts at the Forefront (2022-2025): Punjab and Haryana High Court in Jashan Preet Singh (2024) urged lawmakers to consider a Romeo-Juliet clause. Madras High Court distinguished genuine "love" from "lust." Gujarat High Court emphasized proportionality in sentencing. Supreme Court

³ Protection of Children from Sexual Offences (POCSO) Act, 2012, Section 4 (mandatory minimum ten years' imprisonment for penetrative sexual assault).

Steps In: Anurudh (2026) acknowledged POCSO misuse, flagged the "grim societal chasm," nudged Parliament toward considering a Romeo-Juliet clause, and reaffirmed the Satish factors. Romeo-Juliet Clause vs. Lowering Age of Consent: Lowering consent changes the threshold (e.g., from 18 to 16). A Romeo-Juliet clause creates an exception without moving the threshold most young people remain protected, but narrow space opens for close-in-age peers. Exemptions vs. Defences: Exemptions define what counts as an offence; if conditions are met, no crime occurs. Defences operate after conduct meets all elements of an offence but may excuse or justify it. Most Romeo-Juliet provisions function as exemptions. Exemptions vs. Sentencing Leeway: Sentencing discretion softens punishment after conviction but does not erase collateral consequences (record, registration). True exemptions prevent criminalization entirely. Autonomy from Greek *autos* (self) and *nomos* (law) captures an individual's power to make decisions about their own life, free from outside interference. While not explicitly mentioned in the Indian Constitution, autonomy has been read into Article 21 as integral to human dignity. In *K.S. Puttaswamy*⁴ v. Union of India (2017), the nine-judge bench declared: "Privacy postulates the reservation of a private space for the individual. The concept is founded on the autonomy of the individual." Privacy protects decisional autonomy the freedom to make deeply personal choices about relationships, family, beliefs, and self-expression. The Court further recognized that autonomy enables "the development of personality" a process particularly significant during adolescence. The Protection Imperative: The Constitution mandates child protection through Article 15(3) (special measures for children), Article 24 (ban on child labor), and Articles 39(e) and (f) (directives to protect children from exploitation and ensure opportunities for healthy development). The UNCRC defines children as rights-holders requiring special safeguards. The Autonomy Claim: Adolescents between sixteen and eighteen possess substantial cognitive and emotional capacities. They form relationships, experience sexual attraction, and can understand consequences. The Constitution protects "persons," not only adults. Adolescents are entitled to fundamental rights, though the scope may vary with development. The "Evolving Capacity" Doctrine: Article 5⁵ of the UNCRC requires states to respect parents' role in providing direction "in a manner consistent with the evolving capacities of the child." General Comment No. 20 (2016) emphasizes that adolescents are rights-holders whose maturing abilities deserve respect. Laws should be evidence-based and help young people make responsible choices. Article 21: Protects life and liberty, interpreted expansively

⁴ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, ¶ 116 (privacy as a postulate of human dignity, protecting decisional autonomy).

⁵ United Nations Convention on the Rights of the Child, 1989, Article 5 (evolving capacities of the child).

to include dignity (Francis Coralie Mullin), privacy (Puttaswamy), health, education, and reproductive autonomy (Suchita Srivastava). For adolescents, dignity requires recognition of their evolving personhood; privacy protects decisional autonomy in intimate matters; proportionality demands that restrictions on adolescent choices be carefully justified. Article 14: Guarantees equality and prohibits arbitrary classification. A blanket rule treating all under-18 persons identically may fail the "intelligible differentia" test when applied to consensual peer relationships. Over-inclusion sweeping up fundamentally different conduct can render a law manifestly arbitrary (Navtej Singh Johar). The Mature Minor Doctrine: Derived from *Gillick v. West Norfolk* (1986), this doctrine recognizes that minors may have capacity to make important decisions if they possess "sufficient understanding and intelligence." Indian law acknowledges this in medical consent (Indian Medical Council Regulations), mental healthcare (Mental Healthcare Act, 2017), and juvenile justice (Section 15 of the JJ Act requires assessment of 16-18 year-olds' understanding for serious offences).

Chapter 4

The Anurudh Case

The case began with an FIR filed by a mother in a small Uttar Pradesh town reporting her missing daughter. Anurudh was accused under Sections 363, 366 IPC and Sections 7, 8 POCSO. The alleged victim's school records showed her age as twelve, but her statements under Sections 161 and 164 CrPC claimed she was older and had left willingly. The Special Court denied bail, citing the seriousness of POCSO allegations, school documentation showing the victim as twelve, mandatory minimum sentences, and presumptions under Sections 29 and 30. Before Justice Siddharth, Anurudh filed Criminal Misc. Bail Application No. 21322 of 2025. The High Court ordered medical age determination through an ossification test. When the medical report suggested the victim was over eighteen, interim bail was granted in May 2024. The final judgment (May 29, 2024) not only confirmed bail but issued sweeping directives for all POCSO cases in Uttar Pradesh: mandatory medical age determination at investigation outset; primacy of medical evidence over documentary proof; police obligations to obtain medical reports; courts' authority to scrutinize age documents. The State of Uttar Pradesh filed Special Leave Petition (Criminal) No. 10656 of 2025, challenging both the bail order and the statewide directions. The Supreme Court appointed Mr. D.S. Parmar as Amicus Curiae. State's Submissions: Section 439 CrPC limits courts to bail decisions; issuing general rules exceeds statutory authority. Age determination must follow Section 94 of the Juvenile

Justice Act, 2015, which establishes a hierarchy: school certificates first, birth certificates second, medical examination only as last resort. Respondent's Submissions: The victim's statements confirmed consent; medical evaluation placed her over eighteen; continued detention would be fundamentally unfair given the consensual relationship. Jurisdictional Limits, The Supreme Court decisively held that the High Court exceeded its jurisdiction under Section 439 CrPC. Powers under this section are limited to granting or refusing bail; issuing generalized administrative directives or instructing investigative agencies amounts to "an overreach of its statutory power." Drawing on *State v. M. Murugesan* (2020), the Court emphasized that bail courts cannot hand down sweeping systemic orders, however well-intentioned. The Court distinguished between constitutional and statutory authority. While High Courts possess broad constitutional power under Article 226, that power was not invoked here; the proceedings were strictly under statutory jurisdiction. When acting via statutory channels, courts must color within statutory lines. The Court clarified that age determination under POCSO must follow Section 94 of the Juvenile Justice Act, 2015, which establishes a strict hierarchy:

1. Date of birth certificate from school or matriculation certificate
2. Birth certificate from municipal authorities or panchayat
3. Medical examination (ossification test, etc.) only as last resort

The High Court had inverted this hierarchy by mandating medical examination first. The Supreme Court held that medical tests are backup options, not primary evidence. Documents created at school admission, based on parental information and maintained as routine records, carry presumptive reliability. Medical exams have significant margins of error (up to two years) and should not be routinely ordered. *facie* impression; disputed facts, including age, must await trial. However, where credible evidence suggests the victim may be over eighteen or the relationship consensual, this can inform bail decisions. Jurisdiction: Section 439 CrPC only empowers courts to grant or deny bail; issuing statewide investigative directions exceeds statutory authority. Age Determination: Section 94 of the JJ Act governs age determination; medical tests are last resorts, not routine requirements. Bail Procedure: No mini trials at bail stage; *prima facie* standard applies. Individual Relief: Anurudh's bail upheld based on consensual relationship and age inconsistencies. After resolving the legal issues, the Court added an extraordinary postscript. It acknowledged the "grim societal chasm" between legislative promises and brutal reality: children silenced by fear, families trapped by poverty, while the privileged bend laws to their advantage. The Court observed that POCSO, intended

to protect vulnerable children, has been twisted into a weapon for social control to police inter-caste relationships, settle scores, and enforce patriarchal norms. The Court directed that a copy of the judgment be circulated to the Union Law Secretary "to consider initiation of steps as may be possible to curb the menace of Romeo-Juliet clause exempting genuine adolescent relationships from the stronghold of POCSO Law." It also recommended creating a mechanism to prosecute those who weaponize these laws for personal vendetta. The Court reaffirmed the four-factor test from Satish alias Chand⁶:

1. Assess Context: Each case's unique facts, relationship nature, and intentions
2. Consider Victim's Statement: Mutual affection and consent should inform bail decisions
3. Avoid Unjust Outcomes: Ignoring consensual dynamics leads to wrongful imprisonment
4. Judicial Discretion: Courts need room to balance protection with recognition of agency

The postscript, though technically obiter dicta, carries substantial weight: it represents judicial recognition of social reality grounded in years of grappling with POCSO cases; it initiates constitutional dialogue with the legislature; it creates political pressure for reform; and it provides immediate guidance to lower courts through the reaffirmed Satish factors.

Chapter 5

The Satish Factors

Pending legislative action, the four-factor test from Satish alias Chand (approved in Anurudh) provides a judicial roadmap for handling adolescent relationship cases under POCSO. These factors do not rewrite statutes but offer guidance for bail, sentencing, and case management. Courts must evaluate individual facts and circumstances: duration and nature of the relationship; ages and developmental stages; circumstances of discovery (who filed the complaint and why); behavior after discovery (continued relationship, marriage, children); evidence of coercion or exploitation. Longer-term relationships with mutual commitment often point toward authentic feelings rather than exploitation. Superficial or fleeting relationships may raise concerns. Relationships involving significant age gaps or developmental mismatches warrant closer scrutiny. Complaints arising from parental disapproval of inter-caste or inter-religious relationships differ fundamentally from those arising from genuine abuse. The alleged

⁶ Satish alias Chand v. State of Uttar Pradesh, (2024) SCC OnLine All 1847, ¶ 23 (four-factor test for bail in adolescent relationship cases: assess context, consider victim's statement, avoid unjust outcomes, judicial discretion).

victim's voice deserves due weight, consistent with Article 12 of the UNCRC. Statements under Section 164 CrPC, recorded by magistrates away from family pressure, carry particular significance. Courts should assess consistency and coherence, voluntariness and freedom from coercion, the victim's age and maturity, and the victim's wishes regarding proceedings. Where a victim consistently maintains that the relationship was consensual and opposes prosecution, this should factor into bail decisions and, where appropriate, sentencing. However, statements cannot override the age of consent the offence remains technically present but they inform discretionary decisions. Ignoring consensual dynamics risks "perversity of justice": wrongful imprisonment of teenagers for developmentally normal behavior; destruction of genuine relationships; lasting stigma from criminal records and sex offender registration; institutionalization of adolescents in shelter homes. The concept of "wrongful imprisonment" extends beyond technical legality. Even procedurally valid detention can be substantively unjust if it results from applying law to conduct involving no moral wrongdoing or harm. This tracks constitutional protections against arbitrary state action and disproportionate punishment. Courts must use discretion wisely, ensuring that POCSO application does not inadvertently harm those it means to protect. Discretion operates at bail stage (Section 439 CrPC), sentencing stage (though constrained by mandatory minima), and procedural choices throughout. The Satish factors guide discretion without dictating outcomes. Transparency is essential: orders should explain which factors were considered and why. Discretion must be exercised within statutory boundaries, not to ignore clear provisions. Comparative Constitutional Analysis Age of consent varies from 16 to 18 across states; over 40 states have close-in-age exemptions. Typical features: age gap of 2-4 years; minimum age of 13-14; consent requirement; exclusion of trust relationships; effect on penalties (downgrading felonies, avoiding sex offender registration rather than legalizing conduct). *State v. Limon* (Kansas, 2005) struck down a Romeo-Juliet law that covered only heterosexual couples, holding that equal protection requires even-handed application. This underscores that any exemption must apply equally regardless of sexual orientation. Section 150.1 of the Criminal Code creates a graded framework: for complainants aged 12-13, consent is a defence if the accused is less than two years older and not in a position of trust; for complainants aged 14-15, consent is a defence if the accused is less than five years older and not in a position of trust. Relationships involving authority, dependency, or exploitation are excluded. *R v. G.F.* (2021 SCC 20) clarified that capacity to consent depends on understanding the sexual nature of the act and freedom to choose, even where close-in-age exceptions don't apply. Section 182 of the Penal Code focuses on exploitation rather than rigid age thresholds. Liability hinges on exploiting a "coercive

situation" (Zwangslage) whether the younger person's agreement was freely given or stemmed from pressure, dependency, or vulnerability. Where someone over 21 engages with someone under 16 and the age gap exceeds five years, exploitation is presumed but rebuttable. The Sexual Offences Act 2003 sets the age of consent at 16. There is no close-in-age exemption, but a "reasonable belief" defence applies for 13-15 year-olds: the accused must show an honest and reasonable belief that the complainant was 16 or older. For under-13 complainants, no defence applies. Prosecutorial discretion plays a significant role, with Crown Prosecution Service guidance weighing public interest factors. Republic Act No. 11648 (2022) raised the age of sexual consent from 12 to 16 but included a close-in-age exception where the age gap is not more than three years, provided the relationship is consensual and non-exploitative. Across jurisdictions:

- Close-in-age exemptions are standard, not exceptional
- Minimum age thresholds protect very young adolescents
- Age differentials of 2-5 years balance protection with autonomy
- Genuine consent is non-negotiable
- Trust/authority relationships are categorically excluded
- Non-exploitation requirements provide additional safeguards

Chapter 6

Separation of Powers and Judicial-Legislative Dialogue

The Indian Constitution distributes functions: legislature makes law; executive implements law; judiciary interprets law and reviews for constitutional compliance. Separation of powers is a basic feature (Kesavananda Bharati, 1973), though checks and balances operate: judicial review, legislative amendment power, executive implementation subject to judicial oversight. The Court's direction circulating the judgment to the Union Law Secretary "to consider initiation of steps" is advisory, not binding. It nudges rather than commands. This reflects judicial restraint and respect for legislative primacy in social policy. The Court spots a constitutional problem and invites action but stops short of dictating terms. This contrasts with *Vishaka v. State of Rajasthan* (1997), where the Court issued detailed guidelines in a legislative vacuum. Here, legislation exists; the Court signals possible amendment within an established framework. If Parliament does not act, constitutional violations will continue. Adolescents will face arrest, detention, and prosecution for consensual relationships. The Satish factors will provide only partial relief. Courts may be compelled to intervene more forcefully: revisiting

constitutional challenges, issuing guidelines (as in Vishaka), expanding Satish factors, or issuing sentencing guidelines. The Anurudh judgment creates political pressure. Supreme Court observations carry weight; government inaction may be portrayed as indifference to constitutional values. This political pressure may be as important as legal obligation in prompting reform. Drawing on comparative analysis and constitutional principles, a constitutionally grounded Romeo-Juliet clause should include Minimum Age Threshold: Fourteen years. Children below fourteen lack adequate capacity for autonomous sexual choices; they deserve full protection. This aligns with developmental science and existing Indian legal frameworks (e.g., JJ Act treats under-16 differently). Age Differential: Three years for adolescents aged 14-17. This mirrors comparative norms and is straightforward to implement. Requirement of Genuine Consent: Consent requires voluntary choice with sufficient understanding. Building on Section 90 IPC, consent is not genuine if obtained through threat, fraud, pressure, or if the person is unable to comprehend due to incapacity or intoxication. Exclusion of Trust/Authority/Dependency Relationships: Categorically excluded: teachers/students, coaches/athletes, religious instructors/disciples, guardians/wards, employers/employees, health professionals/patients, family members abusing position. Age proximity does not erase power imbalances from these roles. Non-Exploitation Override: Even where age and consent requirements are met, the exemption does not apply if the sexual activity was exploitative including taking advantage of mental/physical disability, economic dependency, or engaging in coercive or manipulative conduct. Effect of Exemption: Where conditions are met, the conduct does not amount to an offence under POCSO. This functions as an exemption (not merely a defence), placing the burden on prosecution to disprove applicability once credible evidence is raised. Guided Discretion Model (Law Commission approach): Retain criminalization but permit judges to reduce sentences below mandatory minima in appropriate cases. Advantages: avoids blanket exemptions, allows case-by-case tailoring. Disadvantages: conviction and collateral consequences remain; inconsistent application; mandatory minima still constrain discretion. Presumption Model: Close-in-age relationships trigger a presumption that prosecution is not warranted in the public interest unless evidence shows coercion or exploitation. Advantages: guides enforcement discretion; reduces unnecessary arrests. Disadvantages: less certainty than categorical exemption; can be rebutted in court. Age Determination: Strict adherence to Section 94 JJ Act hierarchy; medical examination only as last resort; margin of error (two years) benefiting accused; age determination early in process to avoid unnecessary entanglement. Consistency in Application: Clear guidelines for police and prosecutors; mandatory training; monitoring systems to identify

inconsistent patterns; appeal mechanisms. Awareness: Targeted campaigns through schools, media, community organizations; materials in multiple languages; legal aid providers trained to advise young people. Addressing Misuse: Prosecution of false complaints under Section 22A; support systems for adolescents coerced into filing complaints; training for law enforcement to identify red flags; alternative dispute resolution for family tensions. Courts should apply Satish factors rigorously at bail stage; exercise sentencing discretion wisely; reconsider sex offender registration in adolescent contexts; monitor patterns of misuse; continue constitutional dialogue by flagging gaps.

Chapter 7

Conclusion

The Constitutional Imperative: POCSO's application to consensual adolescent relationships⁷ violates fundamental rights: Article 21 (decisional privacy, dignity), Article 14 (arbitrary classification, over-inclusion), proportionality (disproportionate punishment), reproductive health rights, and participation rights. The Empirical Reality: 24-49% of POCSO cases involve consensual adolescent relationships; 80% initiated by parents; accused face 500+ days pretrial detention, psychological trauma, educational disruption; victims stripped of agency, denied healthcare. Caste, class, and gender bias compound these harms. Comparative Consensus: Close-in-age exemptions are standard globally. Common elements include minimum age thresholds (12-14), age differentials (2-5 years), genuine consent requirements, exclusion of trust relationships, and non-exploitation overrides. Institutional Dialogue: Anurudh exemplifies judicial restraint combined with constitutional engagement inviting legislative action while maintaining judicial oversight if reform fails. Legislative Recommendations:

1. Enact a Romeo-Juliet clause under POCSO with: minimum age 14; three-year age differential for 14-17 year-olds; genuine consent requirement; categorical exclusion of trust/authority relationships; non-exploitation override; exemption (not mere defence) structure.
2. Amend mandatory minimum sentences (Sections 4, 6, 8, 10) to permit judicial discretion below minima in close-in-age adolescent cases.
3. Criminalize knowingly false complaints under POCSO, with compensation for

⁷ Vidhi Centre for Legal Policy, Report on POCSO and Adolescent Relationships (2024), p. 12 (finding 80.2% of POCSO cases initiated by parents or family members).

wrongfully accused.

4. Amend Section 19 reporting obligations to exempt good-faith failures to report conduct protected by Romeo-Juliet provisions.
5. Codify Section 94 JJ Act hierarchy for age determination under POCSO.

Adolescents' decisions about intimacy are driven by developmental factors, not legal technicalities. The clause does not encourage sex; it ensures that when adolescents engage in developmentally normal behavior, their lives are not destroyed by criminal prosecution. Will Abusers Exploit This Clause? The proposed framework builds in multiple protections: minimum age floor (14); age differential cap (3 years); categorical exclusion of trust relationships; non-exploitation override; genuine consent requirement; false complaint provisions. These safeguards prevent abuse. Does This Clause Weaken Child Protection? No. Cases involving genuine exploitation large age gaps, trust relationships, coercion remain fully prosecutable. The clause refines protection to focus on actual harm while avoiding collateral damage Isn't This Parliament's Job Rather Than Courts'? Yes, and Anurudh respected that by inviting action rather than imposing it. But courts retain constitutional duty to protect fundamental rights if legislative reform fails. Autonomy: Adolescents are individuals whose capacities evolve and who deserve respect for their emerging agency. The Constitution guarantees them decisional autonomy over intimate choices central to identity. Dignity: Treating adolescents fairly means refusing to subject them to shame, stigma, and lifelong consequences for developmentally normal conduct. Protection: The state must still protect against genuine abuse. A Romeo-Juliet clause sharpens protection by focusing resources on actual harm while respecting adolescent growth. This vision requires balance a framework capable of defending those at risk while recognizing evolving maturity; intervening decisively when real harm arises but stepping back when situations call for guidance rather than punishment; honoring rights seriously while acknowledging they exist alongside responsibilities. The Anurudh judgment has opened constitutional dialogue. The ball now lies in Parliament's court. Whether it acts will determine whether India's child protection laws fulfill their promise or continue to inflict the very harm they were designed to prevent.

References

1. State of Uttar Pradesh v. Anurudh, 2026 INSC 47
2. Satish alias Chand v. State of Uttar Pradesh, 2024 SCC OnLine All 1847
3. K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1
4. Navtej Singh Johar v. Union of India, (2018) 10 SCC 1

5. Independent Thought v. Union of India, (2017) 10 SCC 800
6. The Protection of Children from Sexual Offences Act, 2012
7. The Juvenile Justice (Care and Protection of Children) Act, 2015
8. United Nations Convention on the Rights of the Child, 1989
9. UN Committee on the Rights of the Child, General Comment No. 20 (2016)
10. Ashok, S.S., Ramaswamy, S. & Seshadri, S. "A Transdisciplinary Perspective on the Adolescent Consent-Abuse Binary." Sage Journals (2022)

