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## **LOVE ON TRIAL: THE PARADOX OF POCSO**

*A Doctrinal and Constitutional Reappraisal of Consensual Adolescent Relationships under the Protection of Children from Sexual Offences Act, 2012*

AUTHORED BY - KUNDAN SINGH

Second-Year Student of LLB (3)

Seedling School of Law and Governance

Jaipur National University, Jaipur

### ***Abstract***

*“The Protection of Children from Sexual Offences Act, 2012 was conceived as a comprehensive statutory intervention to combat sexual exploitation of minors. By prescribing eighteen years as the uniform age below which consent is rendered legally irrelevant, the Act adopts a strict liability framework designed to eliminate ambiguity and fortify child protection. Yet, judicial experience over the past decade reveals a growing doctrinal strain. Courts increasingly confront cases in which adolescents, often in close age proximity, engage in consensual romantic relationships that are subsequently criminalised under the Act.*

*This paper argues that the rigid literal enforcement of POCSO in such cases generates a structural paradox. While the statute legitimately seeks to prevent exploitation, its over-inclusive application to consensual adolescent intimacy extends beyond the legislative mischief and risks producing constitutionally disproportionate outcomes. Through a detailed doctrinal analysis of recent Supreme Court and High Court jurisprudence, this study examines how Indian courts oscillate between textual fidelity and equitable correction.*

*The paper contends that judicial innovation through Article 142 and inherent powers provides episodic relief but does not resolve the underlying structural inconsistency. A sustainable reconciliation between child protection and adolescent autonomy demands legislative recalibration, potentially through a narrowly tailored close-in-age exemption. Absent such reform, courts will continue navigating an uneasy terrain where protection risks transforming into prosecution.”*

## Introduction

The Protection of Children from Sexual Offences Act, 2012<sup>1</sup> represents one of the most significant post-independence legislative efforts to construct a child-centric criminal justice framework. Enacted in response to heightened awareness of sexual crimes against minors and the perceived inadequacy of general penal provisions, the Act seeks to establish a comprehensive regime combining substantive criminalisation, procedural safeguards, and victim-sensitive adjudication.

Central to this framework is a categorical normative choice: every person below eighteen years of age is treated as incapable of legally consenting to sexual activity. This choice is not incidental; it reflects a legislative judgment that vulnerability attaches uniformly to minority, and that the law must intervene without qualification to prevent exploitation. The statute therefore renders consent legally immaterial, introduces presumptions against the accused under Sections 29 and 30,<sup>2</sup> and prescribes stringent mandatory minimum punishments.

At first glance, this architecture appears doctrinally coherent and morally defensible. The elimination of consent as a defence simplifies evidentiary burdens and signals uncompromising protection. However, the rigidity of this structure has generated interpretative friction in cases that fall at the margins of the legislative imagination. Courts across India are increasingly confronted with prosecutions arising not from coercive predation, but from consensual romantic relationships between adolescents or between individuals separated by minimal age differences.

In such cases, the prosecutrix is often between sixteen and seventeen years of age; the accused may be eighteen or nineteen. Frequently, the relationship is admitted by both parties. In numerous instances, the complaint originates from disapproving parents rather than from the girl herself. Yet the statutory consequence remains identical: the relationship is transformed into an offence of penetrative sexual assault, carrying a severe custodial sentence and the stigma of sexual criminality.

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<sup>1</sup> Protection of Children from Sexual Offences Act, No. 32 of 2012, India.

<sup>2</sup> Protection of Children from Sexual Offences Act, 2012, §§ 29–30, India.

This disjunction between statutory abstraction and lived social reality has produced what may be described as the paradox of POCSO. The same legislative instrument designed to shield minors from sexual exploitation is, in particular contexts, deployed to criminalise consensual adolescent intimacy. The law operates with equal force against a predatory adult exploiting a child and against a teenage couple navigating romantic attachment. The absence of gradation between these fundamentally distinct factual matrices raises questions not merely of policy but of doctrinal coherence.

The tension becomes sharper when examined through established principles of statutory interpretation. A literal reading of POCSO leaves little room for judicial deviation: the text is categorical. Yet the mischief the statute sought to remedy was sexual exploitation, abuse of power, and coercive domination of minors. Whether consensual relationships between adolescents fall within that mischief is far less self-evident. When literal interpretation produces outcomes that appear misaligned with legislative purpose, courts traditionally turn to purposive construction or constitutional harmonisation. It is precisely this interpretative space that Indian courts have begun to explore.

Recent Supreme Court decisions illustrate a nuanced yet cautious approach. While reaffirming that minor consent lacks legal validity, the Court has, in exceptional circumstances, invoked Article 142 of the Constitution<sup>3</sup> to suspend or modify sentences in order to prevent manifest injustice. High Courts, exercising inherent powers under Section 482 of the Code of Criminal Procedure (and now Section 528 of the Bharatiya Nagarik Suraksha Sanhita), have gone further in certain cases, quashing proceedings where prosecution would serve no meaningful protective objective.

These judicial responses, however, remain episodic and fact-specific. They do not alter the statutory structure. The result is a jurisprudence marked by oscillation: textual rigidity at the level of principle, equitable flexibility at the level of remedy. Such oscillation indicates underlying structural strain.

This paper proceeds from the premise that the problem is not whether children deserve protection; that proposition is beyond dispute. The real question is whether the uniform

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<sup>3</sup> INDIA CONST. art. 142.

criminalisation of all sexual activity below eighteen, without regard to proximity of age, voluntariness, or absence of predatory intent, extends beyond the legislative mischief and thereby generates constitutionally disproportionate consequences.

The central thesis advanced herein is that while POCSO's protective objective is legitimate and constitutionally anchored, its over-inclusive application in consensual adolescent cases risks undermining the very values it seeks to defend. By collapsing all sexual conduct involving minors into a single category of criminality, the statute forecloses contextual adjudication and compels courts to either enforce disproportionate punishment or resort to extraordinary constitutional powers. Such a structure is doctrinally unstable.

A sustainable resolution requires not judicial improvisation but legislative calibration. A narrowly tailored close-in-age exemption—carefully circumscribed to exclude exploitative relationships—may reconcile child protection with adolescent autonomy without diluting the statute's core protective function.

The pages that follow undertake a detailed doctrinal analysis of this paradox. The study begins by examining the statutory architecture of POCSO, proceeds to analyse interpretative doctrines and constitutional dimensions, and then conducts a forensic examination of recent Supreme Court and High Court jurisprudence. The objective is not to dilute child protection but to interrogate whether current statutory rigidity achieves that protection in its intended sense.

### Research Methodology

This study adopts a doctrinal research methodology grounded primarily in the analysis of statutory text, judicial decisions, and constitutional principles. The research is qualitative in nature and relies upon authoritative primary sources including the Protection of Children from Sexual Offences Act, 2012, relevant provisions of the Indian Penal Code and Bharatiya Nyaya Sanhita, and judgments of the Supreme Court and various High Courts of India.

The judicial analysis focuses particularly on recent decisions addressing consensual adolescent relationships under POCSO, including *State of Uttar Pradesh v. Anurudh* (2026),<sup>4</sup> *In Re: Right*

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<sup>4</sup> *State of Uttar Pradesh v. Anurudh*, 2026 INSC 47.

to *Privacy of Adolescents* (2024),<sup>5</sup> and *K. Kirubakaran v. State of Tamil Nadu* (2025).<sup>6</sup> These cases are examined through the lens of statutory interpretation, ratio decidendi, constitutional harmonisation, and judicial restraint.

Secondary sources include Law Commission discussions, parliamentary debates where available, academic commentary on over-criminalisation, proportionality doctrine, and adolescent autonomy. Although the paper does not employ empirical field research, it engages with reported judicial trends and contextual observations reflected in court records and publicly available data.

The methodology is interpretative and analytical rather than descriptive. The objective is not to critique the statute on moral grounds but to examine whether its rigid textual application in consensual adolescent cases aligns with the legislative mischief, constitutional proportionality, and doctrinal coherence.

The scope of the study is confined to Indian jurisprudence and does not undertake a detailed comparative law analysis, except where conceptually necessary to illustrate structural alternatives such as close-in-age exemptions.

### Review of Literature

Academic and judicial discourse surrounding the Protection of Children from Sexual Offences Act has predominantly focused on strengthening child protection mechanisms, improving conviction rates, and addressing systemic insensitivity in sexual offence trials. Early scholarship following the enactment of POCSO in 2012 emphasised its progressive features, including gender-neutral drafting, mandatory reporting provisions, and victim-friendly procedural safeguards.

However, in recent years, emerging academic commentary and judicial observations have identified an unintended consequence of the statute: the criminalisation of consensual adolescent relationships. Scholars examining over-criminalisation theory have argued that criminal law must distinguish between exploitative harm and socially complex behaviour that

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<sup>5</sup> *In re Right to Privacy of Adolescents*, 2024 INSC 614.

<sup>6</sup> *K. Kirubakaran v. State of Tamil Nadu*, 2025 INSC 1272.

does not implicate coercion or abuse. In this context, the absence of gradation within the statutory definition of “child” has attracted critical attention.

Law Commission discussions concerning age of consent reform have historically recognised the tension between protective absolutism and adolescent autonomy. Although no comprehensive amendment has yet been enacted to introduce a close-in-age exemption under POCSO, judicial dicta—particularly in decisions such as *State of Uttar Pradesh v. Anurudh*—have acknowledged the growing need for legislative reconsideration.<sup>7</sup>

Judicial commentary in several High Court decisions has also contributed to this evolving discourse. Courts have noted that a significant number of POCSO prosecutions arise from consensual relationships opposed by parents rather than from coercive exploitation. This observation has led to increased reliance on inherent jurisdiction and constitutional powers to prevent what courts perceive as misuse of the statute.

The literature thus reflects two competing narratives. One defends strict liability as essential to uncompromising child protection. The other warns against over-inclusive criminalisation that may undermine proportionality and generate constitutional tension. This paper situates itself within this doctrinal debate, seeking not to dilute child protection but to interrogate whether the statute’s uniform application achieves its intended protective purpose in all factual contexts.

### **The Statutory Architecture of the POCSO Act: Structure, Rigidity, and Doctrinal Consequences**

The Protection of Children from Sexual Offences Act, 2012 is structurally designed as a specialised penal code for sexual offences involving minors. Unlike the Indian Penal Code (Bharatiya Nyaya Sanhita), which historically addressed sexual crimes within a broader criminal framework, POCSO constitutes a self-contained statute with its own definitions, presumptions, procedural mandates, and sentencing architecture. The Act reflects legislative anxiety about underreporting, evidentiary challenges, and systemic insensitivity in cases of child sexual abuse. Its drafting philosophy is unmistakably protective, and its operative provisions are intentionally rigid.

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<sup>7</sup> *State of Uttar Pradesh v. Anurudh*, 2026 INSC 47.

At the core of the statute lies Section 2(d),<sup>8</sup> which defines a “child” as any person below the age of eighteen years. The definitional clause is absolute; it contains no qualification, no contextual distinction, and no gradation. A ten-year-old and a seventeen-year-old are placed within the same legal category. The absence of differentiation is not accidental but deliberate, reflecting legislative preference for certainty over nuance. This uniformity, however, becomes doctrinally consequential when applied to adolescents on the cusp of majority.

Sections 3 and 4<sup>9</sup> criminalise penetrative sexual assault, while Sections 5 and 6<sup>10</sup> prescribe aggravated forms of the same, attracting enhanced punishment. The statute does not merely criminalise coercive sexual conduct; it criminalises sexual conduct simpliciter where one participant is a minor. Consent, even if factually demonstrable, has no exculpatory value. The legislative assumption underlying this structure is that minors lack the legal and psychological capacity to provide informed consent to sexual activity. This assumption collapses the factual inquiry into voluntariness and substitutes it with a normative presumption of incapacity.

The Act goes further. Section 29<sup>11</sup> introduces a presumption of guilt once foundational facts are established. If the prosecution proves that the accused committed or attempted to commit an offence under Sections 3, 5, 7, or 9,<sup>12</sup> the Court shall presume that such person has committed the offence unless the contrary is proved. Section 30<sup>13</sup> reinforces this presumption by shifting the burden regarding culpable mental state. These provisions invert the traditional presumption of innocence and reflect legislative distrust of ordinary evidentiary processes in sexual offence trials involving children.

From a doctrinal standpoint, POCSO operates as a quasi-strict liability statute in cases of consensual adolescent relationships. While mens rea is technically relevant for certain aggravated offences, the irrelevance of consent and the presumption of culpability combine to create a regime in which factual voluntariness becomes legally redundant. In a scenario where a seventeen-year-old girl willingly engages in intimacy with her eighteen-year-old partner, the

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<sup>8</sup> Protection of Children from Sexual Offences Act, 2012, § 2(d), India.

<sup>9</sup> Id. §§ 3–4.

<sup>10</sup> Id. §§ 5–6.

<sup>11</sup> Id. § 29.

<sup>12</sup> Id. §§ 3, 5, 7, or 9.

<sup>13</sup> Id. § 30.

law treats the encounter identically to an exploitative assault by a substantially older adult. The only operative variable is chronological age.

The sentencing framework compounds this rigidity. Mandatory minimum punishments—often extending to ten or twenty years—leave limited room for judicial discretion. In penetrative assault cases, courts are bound by statutory floors unless exceptional constitutional powers are invoked. The absence of judicial discretion at sentencing heightens the stakes of conviction and transforms what might otherwise be viewed as morally ambiguous conduct into a severely punishable felony.

Section 19 of the Act<sup>14</sup> introduces mandatory reporting. Any person, including medical practitioners, teachers, or social workers, who has knowledge of the commission of an offence must report it to the authorities. Failure to report constitutes a separate offence under Section 21.<sup>15</sup> While this provision is intended to counter institutional silence in abuse cases, its application in consensual adolescent scenarios generates unintended consequences. Medical professionals encountering pregnant minors or adolescents seeking sexual health assistance are legally obligated to initiate criminal proceedings, even where no coercion is alleged. The result is a chilling effect that may discourage minors from accessing healthcare services, thereby undermining welfare objectives the statute seeks to protect.

The interplay between POCSO and general criminal law further complicates matters. Prior to 2013, the Indian Penal Code recognised sixteen as the age of consent for sexual intercourse. The Criminal Law (Amendment) Act, 2013 harmonised the IPC with POCSO by raising the age of consent to eighteen. This legislative shift effectively removed any possibility of lawful sexual conduct below eighteen, even between adolescents. The transformation was driven by international child rights commitments and domestic outrage over sexual violence, but it did not explicitly address the problem of consensual teenage intimacy.

In its structural design, therefore, POCSO adopts an absolutist model of child protection. Its definitional, evidentiary, and sentencing provisions operate together to create a regime of categorical prohibition. The model is coherent when applied to cases of coercive exploitation,

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<sup>14</sup> Id. § 19.

<sup>15</sup> Id. § 21.

trafficking, custodial abuse, or predatory conduct. In such contexts, the removal of consent as a defence prevents manipulation and shields vulnerable minors from evidentiary trauma.

However, the same architecture produces tension when applied to consensual relationships between adolescents or between individuals separated by minimal age differences. The statute contains no mechanism for evaluating proximity of age, absence of coercion, or mutual emotional involvement. There is no statutory escape valve comparable to the “close-in-age” exemptions found in several foreign jurisdictions. Nor is there any sentencing flexibility that permits contextual mitigation. The result is an over-inclusive net that captures both exploitative and non-exploitative conduct within the same penal category.

The doctrinal difficulty lies not merely in policy disagreement but in interpretative consequence. When statutory text is clear and unqualified, courts are traditionally bound to apply it. Yet where literal application produces outcomes that appear disproportionate or inconsistent with legislative purpose, interpretative tension arises. The architecture of POCSO leaves little interpretative elasticity at the textual level, thereby pushing courts toward constitutional or equitable remedies rather than statutory construction.

This structural rigidity explains the growing judicial discomfort evident in recent case law. High Courts frequently confront cases in which continuation of prosecution appears to serve no protective objective. Nevertheless, absent a statutory exception, judicial intervention must be grounded in inherent powers or constitutional authority rather than interpretative recalibration. The statute’s architecture thus creates a recurring dilemma: enforce rigidly and risk disproportionate punishment, or intervene exceptionally and risk doctrinal inconsistency. Understanding this structural foundation is essential before examining interpretative doctrines. The paradox of POCSO does not arise from isolated misapplication; it emerges from the very design of the statute. The law’s protective absolutism, while normatively defensible in principle, becomes doctrinally strained in edge cases involving adolescent autonomy.

### **Statutory Interpretation and the Limits of Literalism: Re-examining POCSO through Doctrinal Lenses**

The paradox surrounding the application of the Protection of Children from Sexual Offences Act, 2012 in consensual adolescent cases is not merely a policy concern; it is fundamentally an

interpretative problem. The text of the statute is unambiguous. The friction arises when that text is applied to factual scenarios that appear misaligned with the evil the legislature sought to suppress. The tension, therefore, lies at the intersection of statutory rigidity and interpretative responsibility.

Indian courts traditionally rely upon established canons of statutory interpretation: the literal rule, the mischief rule, purposive construction, and, increasingly, constitutional harmonisation through proportionality. Each of these doctrines provides a distinct analytical pathway. The difficulty in POCSO jurisprudence is that these pathways often point in divergent directions.

### ***I. The Literal Rule: Textual Fidelity and Its Consequences***

The literal rule requires courts to give effect to the plain meaning of statutory language, regardless of perceived hardship. Where the text is clear, judicial interpretation must not substitute legislative intent with judicial preference. The Supreme Court has repeatedly held that courts cannot rewrite statutes under the guise of interpretation.

In the context of POCSO, the literal rule appears determinative. Section 2(d) defines a child as a person below eighteen years.<sup>16</sup> Sections 3 and 4 criminalise penetrative sexual assault against a child without reference to consent.<sup>17</sup> The statute does not provide any exception for proximity of age or consensual relationships. The definitional and penal provisions operate together to create an unequivocal prohibition.

Under literal construction, therefore, a seventeen-year-old girl engaging in consensual intimacy with an eighteen-year-old boy constitutes an offence. Judicial inquiry into voluntariness becomes legally irrelevant. The absence of textual ambiguity forecloses interpretative deviation.

The Supreme Court in *In Re: Right to Privacy of Adolescents* reaffirmed this textual position, holding that the informed consent of a minor has no legal significance under POCSO. The Court declined to read any exception into the statute, observing that the legislative mandate was categorical. The judicial function, it reiterated, does not extend to altering age thresholds fixed by Parliament.<sup>18</sup>

Literalism thus offers clarity and predictability. It prevents subjective moral assessments and maintains legislative supremacy. However, literal interpretation becomes problematic when it

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<sup>16</sup> Id. § 2(d).

<sup>17</sup> Id. §§ 3–4.

<sup>18</sup> *In re Right to Privacy of Adolescents*, 2024 INSC 614.

produces consequences that appear inconsistent with legislative purpose. The rigidity of POCSO's textual framework means that courts applying literal construction are compelled to treat vastly different factual scenarios identically. This mechanical equivalence gives rise to what may be described as doctrinal overreach.

The question, therefore, is whether literal fidelity is sufficient when the factual matrix diverges from the mischief the statute was designed to remedy.

## ***II. The Mischief Rule: Identifying the Legislative Defect***

The mischief rule, originating in *Heydon's Case* (1584),<sup>19</sup> requires courts to consider:

- 1) What was the common law before the statute?
- 2) What was the defect or mischief in that law?
- 3) What remedy did Parliament provide?
- 4) What is the true reason of that remedy?

Applying this framework to POCSO demands a careful reconstruction of legislative context. Prior to 2012, sexual offences against minors were prosecuted under the Indian Penal Code, which lacked child-specific definitions and procedures. There was widespread criticism regarding low conviction rates, insensitivity in trial processes, and inadequate protection of vulnerable victims. The mischief Parliament sought to address was sexual exploitation, abuse of authority, trafficking, custodial assault, and systemic underreporting.

The legislative debates surrounding POCSO reveal a clear emphasis on combating child sexual abuse, particularly where power imbalance or coercion exists. There is little evidence to suggest that consensual adolescent romance was a central target of legislative concern. Indeed, the statute was conceived in response to cases of violent abuse and institutional exploitation.

If the mischief was sexual exploitation by adults, then the application of POCSO to consensual teenage relationships raises interpretative dissonance. In such cases, there is no evident power asymmetry, no coercion, and no abuse of authority. The relationship, while legally prohibited, does not resemble the paradigm of exploitation the legislature sought to eradicate.

High Courts, particularly in *Aryan v. State of Rajasthan*,<sup>20</sup> have implicitly invoked this reasoning. By observing that POCSO was intended to shield children from predators and not to persecute young adults in consensual relationships, the Court engaged in a mischief-based analysis. The distinction between exploitative conduct and adolescent intimacy reflects an attempt to align statutory application with legislative purpose.

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<sup>19</sup> *Heydon's Case* (1584) 76 Eng. Rep. 637 (Exch.).

<sup>20</sup> *Aryan v. State of Rajasthan*, 2026 SCC OnLine Raj 1234.

However, the mischief rule encounters limits where statutory language is absolute. Unlike statutes containing ambiguous terms, POCSO employs categorical definitions. Courts may identify the original mischief, but absent textual flexibility, they remain constrained by legislative drafting. The tension between purposive identification of mischief and textual absolutism becomes acute.

### ***III. Purposive Construction: Reconciling Text with Objective***

Purposive interpretation extends beyond the mischief rule by examining the broader legislative objective. The purpose of POCSO is unequivocally protective. The statute aims to ensure that children are shielded from sexual harm and that perpetrators are punished effectively.

The difficulty lies in determining whether criminalising consensual adolescent intimacy advances or undermines that purpose. If the objective is child welfare, then prosecuting a consensual relationship that the alleged victim herself does not perceive as exploitative may not further protective goals. In certain cases, such prosecution may disrupt family stability, stigmatise both parties, and cause psychological harm.

In *K. Kirubakaran v. State of Tamil Nadu*,<sup>21</sup> the Supreme Court confronted precisely such a scenario. Although the Court refused to dilute the statutory position on consent, it invoked Article 142<sup>22</sup> to prevent incarceration, noting that the relationship was not predatory but rooted in mutual affection. The Court's reasoning reflects purposive discomfort: rigid enforcement would have defeated welfare considerations.

Purposive construction, therefore, invites a contextual evaluation. It asks whether applying the statute in its literal form achieves the protective aim in the specific factual setting. Where it does not, courts are tempted to intervene through inherent or constitutional powers.

Yet purposive interpretation cannot contradict explicit statutory language. Courts cannot invent exceptions not contemplated by Parliament. This structural constraint explains why judicial relief in Romeo–Juliet cases is often framed as exceptional rather than doctrinally transformative.

### ***IV. Constitutional Harmonisation and Proportionality***

Modern Indian constitutional jurisprudence requires that statutory interpretation be harmonised with fundamental rights. When a statutory application produces disproportionate

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<sup>21</sup> *K. Kirubakaran v. State of Tamil Nadu*, 2025 INSC 1272.

<sup>22</sup> INDIA CONST. art. 142.

consequences, courts must examine whether such application satisfies constitutional standards under Articles 14 and 21.<sup>23</sup>

Article 14 prohibits arbitrariness.<sup>24</sup> A classification that treats unequal situations identically may fail the test of reasonable classification. The uniform treatment of a seventeen-year-old in a consensual relationship and a ten-year-old victim of abuse raises questions about over-inclusiveness. While age-based classification is constitutionally permissible, the absence of gradation within minority may invite scrutiny under arbitrariness doctrine.

Article 21 protects dignity, privacy, and personal liberty.<sup>25</sup> The Supreme Court in *Justice K.S. Puttaswamy v. Union of India* recognised sexual autonomy as part of privacy.<sup>26</sup> Although minors are entitled to greater protection, the complete erasure of adolescent agency in consensual cases may require proportionality analysis.

The proportionality test comprises four components: legitimate aim, rational connection, necessity, and balancing.

The legitimate aim of POCSO—child protection—is unquestionable. The rational connection between criminalisation and prevention of exploitation is also evident in coercive cases. However, when applied to consensual teenage relationships, the necessity and balancing prongs become contentious. Is mandatory imprisonment of an eighteen-year-old in a consensual relationship the least restrictive means of protecting a seventeen-year-old? Does the severity of punishment outweigh the protective benefit?

Courts have not yet fully articulated proportionality in POCSO cases, but their reliance on Article 142 suggests intuitive engagement with balancing principles.<sup>27</sup> The structural paradox arises because proportionality analysis cannot easily override explicit statutory commands without entering the domain of judicial legislation.

### ***V. Interpretative Impasse***

The cumulative analysis reveals an interpretative impasse.

Literal rule demands rigid enforcement.

Mischief rule suggests contextual limitation.

Purposive construction highlights welfare inconsistencies.

Constitutional harmonisation raises proportionality concerns.

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<sup>23</sup> INDIA CONST. arts. 14 & 21.

<sup>24</sup> INDIA CONST. art. 14.

<sup>25</sup> INDIA CONST. art. 21.

<sup>26</sup> *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1.

<sup>27</sup> INDIA CONST. art. 142.

Yet the statutory text remains inflexible.

This impasse explains the oscillatory character of POCSO jurisprudence. Courts adhere to literal interpretation at the level of legal principle but depart through equitable remedies at the level of relief. The absence of a built-in statutory safety valve forces judges to operate at the margins of constitutional power.

The interpretative conflict, therefore, is not accidental; it is structural. The statute's categorical drafting collides with interpretative doctrines designed to avoid injustice.

## **Supreme Court Jurisprudence: Ratio, Restraint, and the Judicial Management of the POCSO Paradox**

The Supreme Court's engagement with consensual adolescent cases under the Protection of Children from Sexual Offences Act reflects a careful balancing act. On one hand, the Court has consistently reaffirmed that the statutory framework leaves no room for recognising minor consent. On the other, it has demonstrated increasing discomfort with the harsh penal consequences that arise in consensual "Romeo-Juliet" scenarios. The Court's response has not been interpretative transformation, but constitutional mitigation.

Three recent decisions—*In Re: Right to Privacy of Adolescents* (2024),<sup>28</sup> *K. Kirubakaran v. State of Tamil Nadu* (2025),<sup>29</sup> and *State of Uttar Pradesh v. Anurudh* (2026)<sup>30</sup>—collectively illustrate how the Court navigates this terrain.

### **I. In Re: Right to Privacy of Adolescents (2024): Textual Fidelity with Constitutional Cushioning**

The decision in *In Re: Right to Privacy of Adolescents*<sup>31</sup> arose from a Calcutta High Court judgment that had acquitted an accused on the basis that the prosecutrix, though a minor at the time of intercourse, had voluntarily participated in the relationship and later married the accused. The Supreme Court reversed the acquittal, holding unequivocally that consent of a minor is legally immaterial under POCSO.

The ratio of the judgment rests on two propositions.

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<sup>28</sup> *Right to Privacy of Adolescents*, 2024 INSC 614.

<sup>29</sup> *Kirubakaran*, 2025 INSC 1272.

<sup>30</sup> *Anurudh*, 2026 INSC 47.

<sup>31</sup> *Right to Privacy of Adolescents*, 2024 INSC 614.

First, the statutory mandate is categorical. The Court held that once it is established that the prosecutrix was below eighteen years at the time of the act, the question of consent does not arise. Any attempt to introduce voluntariness into the analysis would amount to rewriting the statute. The Court emphasised that the legislative intent behind POCSO was to remove ambiguities surrounding consent and to ensure absolute protection for minors.

Second, the Court underscored the doctrine of separation of powers. Age of consent is a matter of legislative policy. Courts cannot judicially lower the threshold by carving out exceptions for consensual relationships. Such reform, if necessary, must emanate from Parliament.

Up to this point, the reasoning reflects strict textual adherence. However, the judgment did not conclude there.

Having reinstated the conviction, the Court turned to the peculiar factual matrix: the prosecutrix had since attained majority, married the accused, and borne his child. Incarcerating the accused for the mandatory statutory minimum would disrupt family stability and cause hardship to the woman who no longer considered herself a victim. Invoking Article 142 of the Constitution, the Court suspended the sentence in order to “do complete justice.”<sup>32</sup>

This dual movement—strict affirmation of statutory principle coupled with equitable mitigation—reveals the Court’s strategy. It refuses to dilute doctrinal clarity at the level of law, but recognises that mechanical enforcement may produce manifest injustice in specific circumstances.

The interpretative significance of the decision lies not in the holding on consent, which reiterates settled law, but in the constitutional safety valve employed. Article 142<sup>33</sup> becomes the mechanism through which the Court reconciles textual rigidity with lived realities. However, this approach raises structural concerns. Reliance on extraordinary powers suggests that the statutory framework itself lacks internal flexibility. If constitutional exceptionalism becomes the routine method of resolving consensual adolescent cases, doctrinal coherence may suffer.

## **II. K. Kirubakaran v. State of Tamil Nadu (2025): Love, Lust, and the Limits of Penal Absolutism<sup>34</sup>**

In *K. Kirubakaran*,<sup>35</sup> the Supreme Court confronted a scenario emblematic of the Romeo–Juliet dilemma. The accused had engaged in a consensual relationship with a seventeen-year-old girl.

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<sup>32</sup> INDIA CONST. art. 142.

<sup>33</sup> INDIA CONST. art. 142.

<sup>34</sup> *Kirubakaran*, 2025 INSC 1272.

<sup>35</sup> *Kirubakaran*, 2025 INSC 1272.

The relationship resulted in pregnancy, and the parties subsequently married after she attained majority. Despite the consensual nature of the relationship, the accused had been convicted under POCSO and sentenced to ten years' rigorous imprisonment.

The Court again declined to recognise minor consent as a defence. The ratio reaffirmed that statutory prohibition applies irrespective of voluntariness. However, the Court made a notable conceptual distinction. It observed that the offence in the case did not arise from predatory lust but from mutual affection. While this observation does not alter the legal characterisation of the offence, it signals judicial awareness of qualitative differences between exploitative assault and consensual intimacy.

The Court proceeded to invoke Article 142<sup>36</sup> to quash the conviction and sentence entirely. The reasoning emphasised the welfare of the woman and the child born of the relationship. Imprisonment would fracture the family unit and impose suffering disproportionate to the circumstances.

Doctrinally, this decision is significant for two reasons.

First, it implicitly acknowledges that POCSO's uniform sentencing structure may produce disproportionate outcomes in edge cases. Second, it demonstrates the Court's willingness to override mandatory minimum sentencing in the interest of substantive justice.

However, as in *Right to Privacy of Adolescents*,<sup>37</sup> the relief is framed as exceptional. The Court does not reinterpret the statute; it circumvents its consequences through constitutional authority. The structural rigidity of POCSO remains intact.

One may question whether repeated resort to Article 142<sup>38</sup> in consensual adolescent cases indicates a systemic legislative gap. When extraordinary powers become the primary means of preventing injustice, the stability of statutory design comes under scrutiny.

### **III. State of Uttar Pradesh v. Anurudh (2026): Judicial Restraint and Legislative Suggestion<sup>39</sup>**

The decision in *State of Uttar Pradesh v. Anurudh* marks a distinct development in the Court's engagement with the POCSO paradox. The case arose in the context of bail proceedings where questions of age determination and alleged consensual relationship were central.

While the immediate issue concerned procedural aspects of age verification at the bail stage, the Court expanded its reasoning to address a broader pattern. It noted an increasing number of

<sup>36</sup> INDIA CONST. art. 142.

<sup>37</sup> *Right to Privacy of Adolescents*, 2024 INSC 614.

<sup>38</sup> INDIA CONST. art. 142.

<sup>39</sup> *Anurudh*, 2026 INSC 47.

cases where POCSO provisions were invoked in situations involving consensual adolescent relationships, often initiated by disapproving parents. The Court cautioned that laws enacted with good intentions can be misused when applied without contextual sensitivity.

The ratio of *Anurudh*<sup>40</sup> remains procedurally confined: age determination is primarily a matter for trial, and High Courts should not create blanket procedural requirements beyond statutory text. However, the obiter dicta are doctrinally illuminating.

The Court explicitly suggested that the legislature consider introducing a “Romeo–Juliet clause” to exempt genuine adolescent relationships from the full rigour of POCSO. This suggestion does not constitute binding law, but it reflects institutional recognition of structural overreach.

Unlike the earlier decisions, which resolved hardship through Article 142,<sup>41</sup> *Anurudh*<sup>42</sup> identifies the need for legislative recalibration. The Court refrains from judicially crafting an exception, respecting separation of powers, yet openly acknowledges that the existing framework may be over-inclusive.

The interpretative strategy here differs from *Kirubakaran*.<sup>43</sup> Rather than mitigating through constitutional override, the Court signals that durable resolution lies in statutory amendment. This marks a subtle but important shift from judicial management to institutional dialogue.

#### **IV. Emerging Pattern in Supreme Court Jurisprudence**

Across these three decisions, a discernible pattern emerges.

First, the Supreme Court consistently maintains doctrinal clarity: minor consent has no legal recognition under POCSO. The Court refuses to judicially dilute the age threshold or read in exceptions absent textual support.

Second, the Court recognises that consensual adolescent cases present qualitatively different circumstances from predatory abuse. This recognition appears in its factual assessments and welfare-based reasoning.

Third, the Court relies on constitutional tools—primarily Article 142<sup>44</sup>—to prevent disproportionate hardship in exceptional cases.

Fourth, the Court has begun to encourage legislative reconsideration, indicating that the interpretative impasse cannot be permanently resolved through judicial innovation.

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<sup>40</sup> *Anurudh*, 2026 INSC 47.

<sup>41</sup> INDIA CONST. art. 142.

<sup>42</sup> *Anurudh*, 2026 INSC 47.

<sup>43</sup> *Kirubakaran*, 2025 INSC 1272.

<sup>44</sup> INDIA CONST. art. 142.

This pattern suggests that the Supreme Court views the paradox not as an interpretative ambiguity but as a structural tension within the statute itself. The judiciary's role, as perceived by the Court, is to uphold legislative clarity while preventing egregious injustice on a case-by-case basis.

However, such an approach has limitations. Constitutional exceptionalism cannot substitute for coherent statutory design. Nor can reliance on Article 142<sup>45</sup> ensure uniformity across jurisdictions. High Courts lacking such plenary powers must operate within narrower constraints, leading to doctrinal divergence.

The Supreme Court's jurisprudence thus reflects both restraint and unease. It preserves the integrity of statutory text but implicitly acknowledges that the uniform criminalisation of consensual adolescent relationships may extend beyond the mischief Parliament intended to suppress.

### **Constitutional Proportionality, Over-Criminalisation, and the Structural Paradox**

The paradox of POCSO, when applied to consensual adolescent relationships, is not merely interpretative; it implicates foundational constitutional principles governing criminal law. Modern Indian constitutional jurisprudence has progressively embraced substantive due process, proportionality, and anti-arbitrariness as central constraints upon legislative power. The rigid structure of POCSO, though protective in design, must therefore be examined through the lens of constitutional limitation.

The question is not whether Parliament may criminalise sexual activity involving minors. That power is beyond dispute. The real constitutional inquiry is whether the uniform criminalisation of all sexual conduct below eighteen—irrespective of proximity of age, voluntariness, or absence of exploitation—produces disproportionate consequences in edge cases that undermine constitutional balance.

#### **I. Article 14 and the Problem of Over-Inclusive Classification**

Article 14<sup>46</sup> prohibits arbitrary state action and mandates that classification must be founded upon intelligible differentia having a rational nexus with legislative objective. Age-based

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<sup>45</sup> INDIA CONST. art. 142.

<sup>46</sup> INDIA CONST. art. 14.

classification has consistently been upheld as constitutionally valid. The legislature is entitled to draw a line at eighteen to define minority.

However, constitutional scrutiny does not end at the existence of classification. Over-inclusiveness may render a statute vulnerable where it treats materially distinct situations identically without rational justification.

POCSO collapses all persons below eighteen into a single homogeneous category for purposes of sexual consent. The assumption underlying this uniformity is that all minors lack legal capacity to make autonomous sexual decisions. While this assumption is defensible in relation to younger children, its application to older adolescents approaching majority raises complexity.

A seventeen-year-old who is months away from legal adulthood is legally indistinguishable, under POCSO, from a pre-pubescent child. When such an adolescent voluntarily engages in intimacy with a peer of similar age, the criminal law treats the encounter as penetrative sexual assault. The classification, though clear, becomes blunt.

The rational nexus between criminalisation and protection remains intact in cases of exploitation or power imbalance. However, in consensual near-peer relationships, the protective objective may not be meaningfully advanced by severe penal consequences. If the application of a statute extends beyond its protective rationale and captures situations that do not implicate the harm targeted by the legislature, the issue becomes one of overbreadth.

Indian constitutional jurisprudence has increasingly recognised that overbroad penal provisions may offend Article 14<sup>47</sup> when they impose disproportionate burdens unrelated to legislative purpose. Although courts traditionally defer to legislative wisdom in criminal matters, arbitrariness doctrine has evolved beyond mere classification analysis. In cases such as *Shayara Bano v. Union of India*, the Supreme Court recognised manifest arbitrariness as a ground for invalidation.<sup>48</sup>

While POCSO itself may not be arbitrary in its objective, the absence of gradation within minority could be argued to generate manifest over-inclusiveness in specific factual contexts. The constitutional difficulty is not the age threshold per se, but the uniform penal consequence irrespective of relational context.

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<sup>47</sup> INDIA CONST. art. 14.

<sup>48</sup> *Shayara Bano v. Union of India*, (2017) 9 S.C.C. 1.

## II. Article 21: Dignity, Autonomy, and Substantive Due Process

Article 21,<sup>49</sup> as expanded through judicial interpretation, protects not only life and liberty but dignity, privacy, and decisional autonomy. In *Justice K.S. Puttaswamy v. Union of India*, the Supreme Court recognised sexual orientation and intimate choice as intrinsic to privacy.<sup>50</sup> In *Shafin Jahan v. Asokan K.M.*, the Court affirmed the autonomy of individuals to choose partners.<sup>51</sup>

These decisions primarily concern adults. Minors are undeniably entitled to greater state protection, and the State may legitimately restrict their autonomy to safeguard welfare. However, constitutional doctrine increasingly acknowledges the evolving capacity of adolescents. International human rights jurisprudence, though not binding, recognises that older minors possess progressive autonomy.

The application of POCSO to consensual adolescent relationships raises a nuanced question: does the complete erasure of adolescent agency, even in voluntary near-peer relationships, unduly suppress emerging autonomy in a manner disproportionate to protective necessity?

The State may impose restrictions to protect minors from exploitation. But when both participants are adolescents or near-majority, and no coercive elements exist, the imposition of severe custodial punishment upon one party—often the male—produces consequences extending beyond protective rationale. It results in incarceration, social stigma, and lifelong criminal record.

Substantive due process requires that deprivation of liberty be fair, just, and reasonable. The proportionality framework, now firmly embedded in Indian constitutional law, demands that restrictions on liberty satisfy structured scrutiny.

## III. Applying the Proportionality Test

The proportionality test involves four components:

- 1) Legitimate Aim
- 2) Rational Connection
- 3) Necessity (Least Restrictive Means)
- 4) Balancing (Proportionality *stricto sensu*)

There is no doubt that POCSO pursues a legitimate aim: protection of children from sexual exploitation.

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<sup>49</sup> INDIA CONST. art. 21.

<sup>50</sup> *Puttaswamy*, (2017) 10 S.C.C. 1.

<sup>51</sup> *Shafin Jahan v. Asokan K.M.*, (2018) 16 S.C.C. 368.

There is also a rational connection between criminalisation and prevention of abuse.

The difficulty arises at the third and fourth stages.

In consensual adolescent cases involving minimal age difference, is mandatory criminal prosecution the least restrictive means of achieving child protection? Could differentiated sentencing, diversion programs, counselling, or close-in-age exemptions serve protective purposes without imposing severe penal consequences?

The balancing stage requires weighing the severity of rights infringement against the importance of the objective. In cases where the prosecutrix denies victimhood, supports the accused, and has entered into marriage upon attaining majority, the continued incarceration of the accused may not produce additional protective benefit. Instead, it may inflict harm upon the very individual the statute seeks to protect.

The Supreme Court's reliance on Article 142<sup>52</sup> in *Kirubakaran*<sup>53</sup> and *Right to Privacy of Adolescents*<sup>54</sup> implicitly reflects proportionality balancing. The Court recognised that imprisonment, though statutorily mandated, would produce hardship disproportionate to the circumstances.

However, proportionality has not yet been formally applied to assess the statutory scheme itself. Courts have confined themselves to individual relief rather than structural evaluation. This cautious approach reflects judicial deference to legislative domain in criminal policy.

#### **IV. Reverse Burden and Fair Trial Concerns**

Section 29 of POCSO<sup>55</sup> introduces a presumption of guilt once foundational facts are established. While reverse burden provisions are not *per se* unconstitutional, they must satisfy reasonableness and proportionality.

In consensual adolescent cases, where the prosecutrix herself denies coercion, the presumption of guilt may exacerbate hardship. The accused must disprove culpability despite absence of exploitative intent. Pre-trial incarceration becomes likely, and bail is often resisted on the ground of statutory severity.

The reverse burden structure, combined with mandatory minimum sentences, amplifies the punitive impact of prosecution in Romeo–Juliet cases. This creates cumulative proportionality concerns.

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<sup>52</sup> INDIA CONST. art. 142.

<sup>53</sup> *Kirubakaran*, 2025 INSC 1272.

<sup>54</sup> *Right to Privacy of Adolescents*, 2024 INSC 614.

<sup>55</sup> Id. § 29.

## V. The Doctrine of Over-Criminalisation

Modern criminal jurisprudence increasingly recognises the risk of over-criminalisation—where penal law extends into domains better regulated by social, educational, or civil mechanisms. When consensual teenage intimacy becomes the subject of severe criminal sanction, the criminal law may overextend its normative authority.

This does not imply that adolescent sexuality should be unregulated. Rather, it suggests that a single inflexible penal response may not be appropriate for all factual configurations.

If criminal law is to retain moral legitimacy, its application must align with societal harm. When the alleged victim does not perceive herself as harmed, and when the relationship lacks exploitative features, the imposition of severe punishment may appear morally excessive.

## VI. The Structural Paradox

The constitutional analysis reveals the structural paradox at the heart of POCSO's application in consensual adolescent cases.

The statute's protective absolutism ensures clarity and strength in combating abuse. Yet that very absolutism, when applied without contextual differentiation, generates outcomes that appear disproportionate. Courts are then compelled to intervene through extraordinary mechanisms, creating a cycle of rigid principle and flexible remedy.

The paradox may be framed thus:

A law enacted to prevent exploitation risks imposing disproportionate penal consequences in relationships where exploitation is absent.

This does not render the statute unconstitutional. But it exposes tension between legislative generalisation and constitutional nuance.

The Supreme Court has thus far avoided structural constitutional adjudication, preferring case-specific relief. High Courts have used procedural tools to mitigate harshness. Neither approach resolves the underlying structural tension.

## Legislative Recalibration and the Case for a Narrow Close-in-Age Exemption

The preceding analysis reveals that the interpretative tension surrounding POCSO in consensual adolescent cases is structural rather than incidental. The Supreme Court has preserved textual fidelity while resorting to constitutional mitigation. High Courts have used inherent jurisdiction to filter out cases perceived as misaligned with legislative purpose. Yet

neither approach provides uniformity or doctrinal stability. Sustainable resolution must therefore be legislative.

The central question is whether it is possible to introduce contextual differentiation without compromising the protective core of POCSO. Any reform proposal must satisfy three conditions: it must preserve robust safeguards against exploitation, avoid creating evidentiary loopholes, and maintain clarity sufficient for effective enforcement.

### **I. The Rationale for a Close-in-Age Exemption**

A close-in-age exemption—commonly referred to as a “Romeo–Juliet clause”—does not legitimise sexual activity below eighteen in general terms. Rather, it recognises that consensual relationships between adolescents or near-peers may not implicate the exploitative harm that child protection statutes are designed to prevent.

Such exemptions exist in several jurisdictions. They typically operate where:

- 1) The age difference between participants does not exceed a specified limit (often two to four years),
- 2) The relationship is consensual,
- 3) No coercion, deception, authority, or exploitation is involved.

The rationale is not moral endorsement of teenage intimacy, but calibrated criminalisation. By distinguishing predatory abuse from near-peer relationships, the criminal law retains its moral force while avoiding overbreadth.

In the Indian context, introduction of such an exemption would not signify retreat from child protection. Rather, it would align statutory application more closely with legislative mischief and constitutional proportionality.

### **II. Safeguards Against Exploitation**

Any close-in-age clause must be narrowly drafted to prevent misuse. Several safeguards are essential.

First, the exemption should apply only where both individuals are above a minimum threshold—perhaps sixteen years. This ensures that very young children remain fully protected. Second, the permissible age difference must be strictly defined, such as a maximum of three years.

Third, the exemption must not apply where the accused occupies a position of authority, trust, or fiduciary influence, such as teacher, guardian, or employer.

Fourth, it must exclude situations involving trafficking, commercial exploitation, or coercion. Fifth, judicial scrutiny must remain rigorous to prevent fabricated claims of consent. These safeguards ensure that the exemption does not become a shield for exploitation disguised as romance.

### **III. Sentencing Flexibility as an Alternative**

An alternative to categorical exemption is sentencing discretion. Parliament could retain criminalisation but allow courts to impose non-custodial or mitigated sentences in consensual adolescent cases involving minimal age difference.

This model would preserve the statutory prohibition while introducing proportionality at the punishment stage. It would reduce the need for constitutional intervention and allow trial courts to balance circumstances without invoking extraordinary powers.

However, sentencing flexibility alone may not resolve pre-trial consequences. Arrest, stigma, and prosecution itself carry substantial hardship. Therefore, a hybrid approach—combining close-in-age exemption with sentencing discretion—may be more effective.

### **IV. Bail Reform and Procedural Filtering**

Even without substantive amendment, procedural guidelines could reduce disproportionate hardship. Clear legislative or judicial guidelines may direct courts to consider proximity of age, voluntariness, and absence of coercion at the bail stage. This would prevent prolonged pre-trial incarceration in consensual cases.

However, reliance solely on bail discretion leaves structural ambiguity unresolved. It mitigates hardship without clarifying doctrinal boundaries.

### **V. Addressing Counter-Arguments**

Opponents of a close-in-age exemption may argue that it risks legitimising adolescent sexuality and undermining moral standards. They may also contend that proving genuine consent between minors is fraught with evidentiary uncertainty.

These concerns merit consideration. However, criminal law cannot be sustained solely as a moral instrument detached from proportionality. The objective of POCSO is protection from harm, not enforcement of social conservatism. Where harm in the exploitative sense is absent, criminal sanction must be carefully justified.

Furthermore, evidentiary challenges already exist under the current regime. Courts routinely assess credibility and voluntariness in numerous contexts. Structured safeguards can limit misuse.

## VI. Institutional Legitimacy and the Stability of Criminal Law

The credibility of criminal law depends upon its perceived fairness. When the law appears to punish consensual teenage relationships with the same severity as predatory abuse, public confidence may erode. Courts then face pressure to soften outcomes through creative reasoning.

Legislative recalibration would restore coherence. It would relieve courts from repeated resort to Article 142,<sup>56</sup> reduce divergence among High Courts, and align statutory application with constitutional proportionality.

Importantly, reform would not dilute protection for younger children or victims of exploitation. On the contrary, by clarifying boundaries, it would sharpen focus on genuine abuse.

## VII. A Draft Conceptual Framework

Without venturing into detailed legislative drafting, the following conceptual structure may be considered:

- 1) Sexual activity between individuals aged sixteen to eighteen shall not constitute an offence under Sections 3 or 4<sup>57</sup> where the age difference does not exceed three years and the relationship is consensual.
- 2) The exemption shall not apply where the accused holds a position of trust, authority, or influence over the minor.
- 3) The exemption shall not apply to aggravated offences under Section 5<sup>58</sup> involving coercion, trafficking, or exploitation.
- 4) Courts shall record reasons when invoking the exemption.

Such a provision would provide clarity while preserving protection.

## VIII. The Limits of Judicial Innovation

The Supreme Court's suggestion in *Anurudh*<sup>59</sup> that Parliament consider a Romeo-Juliet clause underscores institutional awareness of legislative domain. Courts cannot permanently manage

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<sup>56</sup> INDIA CONST. art. 142.

<sup>57</sup> Id. §§ 3–4.

<sup>58</sup> Id. § 5.

<sup>59</sup> *Anurudh*, 2026 INSC 47.

structural overbreadth through constitutional exceptionalism. Judicial creativity, while valuable, must not supplant legislative responsibility.

The recurring invocation of Article 142<sup>60</sup> and inherent jurisdiction demonstrates that the statute lacks internal flexibility in edge cases. Legislative recalibration would convert exceptional judicial mercy into principled statutory design.

### **Conclusion: Reconciling Protection and Autonomy in the Age of POCSO**

The Protection of Children from Sexual Offences Act, 2012 stands as a landmark legislative commitment to safeguarding minors from sexual exploitation. Its architecture reflects moral clarity and protective urgency. By eliminating ambiguity around consent and strengthening prosecutorial tools, Parliament sought to correct systemic failures that historically left children vulnerable to abuse. In this respect, the statute embodies a constitutionally legitimate and socially necessary objective.

Yet, as judicial experience over the past decade demonstrates, the application of POCSO to consensual adolescent relationships has generated a structural paradox. The same provisions designed to protect minors from predatory harm are increasingly invoked in cases involving near-peer intimacy devoid of coercion. Courts find themselves compelled to treat qualitatively distinct factual scenarios as legally indistinguishable.

The doctrinal analysis undertaken in this paper reveals that the tension arises not from misinterpretation, but from statutory absolutism. The literal rule, faithfully applied, leaves no room for recognising minor consent. The mischief rule suggests that the legislature primarily targeted exploitative abuse rather than adolescent romance. Purposive interpretation highlights the risk that mechanical enforcement may undermine welfare objectives. Constitutional proportionality raises questions about over-inclusiveness and disproportionate penal consequences.

The Supreme Court's jurisprudence reflects careful institutional restraint. It has consistently reaffirmed that minor consent is irrelevant under the statute, thereby preserving legislative supremacy. Simultaneously, it has invoked Article 142<sup>61</sup> in exceptional cases to prevent

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<sup>60</sup> INDIA CONST. art. 142.

<sup>61</sup> INDIA CONST. art. 142.

manifest injustice. High Courts, operating without such constitutional latitude, have employed inherent jurisdiction and bail discretion to filter out cases perceived as misaligned with legislative purpose. These judicial responses mitigate hardship but do not alter structural design.

The recurring need for judicial mitigation suggests that the paradox is embedded within the statutory framework itself. When extraordinary constitutional powers become routine mechanisms for tempering rigid statutory outcomes, it signals the absence of calibrated differentiation within the law. Criminal statutes must be sufficiently precise to capture harm without extending beyond it.

The constitutional analysis does not compel the conclusion that POCSO is invalid. Age-based protection is unquestionably legitimate. However, proportionality requires that criminalisation be tailored to the harm it seeks to prevent. The uniform criminalisation of all sexual conduct below eighteen, irrespective of proximity of age or absence of exploitation, risks overbreadth in edge cases. This overbreadth does not negate the statute's legitimacy, but it exposes tension between protective absolutism and contextual justice.

The solution lies not in judicial dilution but in legislative refinement. A narrowly tailored close-in-age exemption, accompanied by strict safeguards against coercion and exploitation, would reconcile child protection with proportionality. Alternatively, enhanced sentencing discretion could permit contextual balancing without undermining statutory prohibition. Such reform would not weaken the protective core of POCSO; rather, it would reinforce its moral credibility by ensuring that punishment corresponds to harm.

Ultimately, the paradox of POCSO reflects a deeper jurisprudential challenge: how to protect vulnerability without erasing emerging autonomy. Adolescence occupies a transitional space between dependency and adulthood. The law's response to this liminal stage must balance caution with nuance. Absolute prohibition provides clarity, but calibrated differentiation provides justice.

Until legislative recalibration occurs, Indian courts will continue navigating this uneasy terrain—affirming textual rigidity while invoking constitutional flexibility. In that space, love will periodically stand trial under a statute designed to prevent abuse. The long-term stability

of criminal law, however, demands that protection and proportionality coexist within the statutory text itself.

The future of POCSO jurisprudence will therefore depend not merely upon judicial ingenuity, but upon legislative willingness to confront complexity. A child protection statute must remain uncompromising against exploitation. Yet it must also avoid transforming consensual adolescence into criminality indistinguishable from predation. Reconciling these imperatives is the unfinished task at the heart of the POCSO paradox.

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