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“THE RIGID APPLICATION OF POCSO IN CASES INVOLVING CONSENSUAL ADOLESCENT LOVE (16–18 YEARS) RESULTS IN UNINTENDED MISUSE AND OVER CRIMINALIZATION”

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ABSTRACT

The Protection of Children from Sexual Offences (POCSO) Act, 2012, was enacted in India to provide a robust legal framework for safeguarding children from sexual abuse and exploitation. While the statute plays a crucial role in protecting minors, its rigid and uniform application has led to unintended consequences, particularly in cases involving consensual romantic relationships between adolescents aged 16 to 18 years. By criminalizing all forms of sexual activity involving individuals below eighteen, the law fails to distinguish between exploitative conduct and mutually consensual acts among peers. This has resulted in the prosecution of young individuals often boys under severe penal provisions, despite the absence of coercion or abuse.

This paper examines how the strict enforcement of the POCSO Act contributes to over-criminalization and potential misuse, especially when familial or societal disapproval transforms consensual relationships into criminal complaints. It analyzes judicial trends, socio-legal implications, and the tension between child protection and adolescent autonomy. The study argues for a more nuanced and context-sensitive approach that balances safeguarding objectives with the realities of adolescent development, and explores the need for legal reform or interpretative flexibility to prevent injustice.

Introduction

The Protection of Children from Sexual Offences (POCSO) Act, 2012 represents a landmark legislation in India aimed at addressing sexual offences against minors with a child-centric and gender-neutral approach. Enacted in response to growing concerns about child abuse, the Act provides stringent punishments and procedural safeguards to ensure the protection and dignity of children. However, despite its well-intentioned objectives, the application of the law has raised significant concerns in cases involving consensual relationships between adolescents, particularly those in the 16–18 age group.

Under the current legal framework, any individual below the age of eighteen is legally incapable of giving consent to sexual activity. Consequently, even mutually consensual relationships between adolescents are treated as offences under the Act. This blanket criminalization does not account for the evolving capacities, emotional maturity, and autonomy of older adolescents. In practice, it has led to a surge in cases where consensual romantic relationships are reframed as criminal acts, often due to parental intervention, social stigma, or inter-caste and inter-religious dynamics.

The rigid enforcement of the POCSO Act in such contexts raises important questions about the balance between protection and autonomy. Courts across India have increasingly encountered cases where the facts reveal consensual relationships rather than exploitative abuse. In several instances, the judiciary has expressed concern over the misuse of the law, noting that it may inadvertently penalize normal adolescent behavior and disrupt young lives.

This paper seeks to critically analyze the unintended consequences of the strict application of the POCSO Act in cases of consensual adolescent relationships. It explores the legal, social, and psychological dimensions of the issue, drawing on case law, statutory interpretation, and academic discourse. The study also evaluates whether the current framework aligns with principles of proportionality and justice, and considers potential reforms, such as introducing a “close-in-age” exemption or adopting a more discretionary judicial approach. Ultimately, the paper aims to contribute to an ongoing dialogue on reconciling child protection with adolescent rights in contemporary Indian society.

Criminalisation of Consensual Adolescent Relationships

One major issue is the **blanket criminalisation** of consensual relationships where both parties

are between 16–18 years. In ¹**S. Varadarajan v. State of Madras AIR 1965 SC 942**, though predating POCSO, the Supreme Court distinguished between “taking” and voluntary accompaniment in minor elopement cases. The reasoning underscores the importance of recognising voluntary conduct in determining culpability.

Misuse and ‘Weaponisation’ of the POCSO Act

Familial and Social Weaponisation

One of the central challenges is the **use of POCSO by families or other actors to penalise consensual relationships** that are socially or culturally disapproved of. Complaints are frequently filed by parents opposed to romantic ties, particularly in inter-caste, inter-religious, or socially contentious relationships, turning what may be a consensual adolescent relationship into a serious criminal proceeding. The Supreme Court has highlighted that **families often misrepresent age or file false complaints** to exert control, thus undermining the law’s protective purpose and distorting justice.

In ²**Mahipal v. State of Haryana (2019) 14 SCC 198**, the Supreme Court emphasised cautious exercise of discretion in bail under serious offences. In consensual POCSO cases, courts increasingly grant bail recognising absence of exploitation, yet the initial prosecution itself causes irreversible damage.

High Courts, including the Allahabad and Madras High Courts, have repeatedly quashed FIRs in consensual adolescent cases, observing that continuation of proceedings amounts to abuse of process.

Inequality and Manipulation of Legal Power

The misuse of POCSO tends to mirror broader **societal inequalities**. Privileged families with social and economic capital are better positioned to initiate legal action, while genuinely abused and vulnerable children lacking such resources remain unheard or intimidated by the criminal justice system. This imbalance leads to a **justice gap** and undermines the law’s legitimacy as a protective statute rather than a tool of social coercion.

Procedural and Practical Challenges

Arrest, Detention and Trial Delays

Even in consensual cases, the **mandatory reporting and arrest provisions** under POCSO

¹AIR 1965 SC 942

often result in young people spending extended periods in custody or observation homes before their cases are adjudicated. The legal process may extend for months or years, irrespective of eventual acquittal, causing **irreversible personal, educational, and social harm** to adolescents engaged in consensual relationships.

Section 29 of POCSO reverses the burden of proof, presuming the accused guilty unless proven otherwise. This presumption becomes particularly harsh in consensual adolescent cases.

In ³**Bijoy v. State of West Bengal**, the Calcutta High Court discussed the application of presumptions under POCSO and emphasised careful scrutiny of evidence. However, in practice, adolescents accused under POCSO face prolonged incarceration before acquittal.

Health and Autonomy Concerns

Mandatory reporting requirements in POCSO also extend to healthcare providers who are duty-bound to disclose underage sexual activity or underage pregnancy to police authorities. This provision deters adolescents from seeking **sexual and reproductive healthcare**, creating adverse public health outcomes and infringing upon personal autonomy.

Judicial Discretion vs. Legislative Silence

While some High Courts and the Supreme Court of India have intervened to quash proceedings or grant bail in consensual cases, these judicial remedies occur **after significant legal harm has already been inflicted**. Relief is often delayed, inconsistent, and dependent on judicial interpretation, revealing a legislative vacuum where **no statutory provision clearly exempts consensual adolescent relationships** from POCSO's scope.

Gendered Dynamics and Societal Impact

Disproportionate Impact on Young Men

Although the POCSO Act is **gender-neutral on its face**, its application in consensual adolescent cases often results in **disproportionate consequences for young males**, who are labelled offenders and may face lifelong stigma. This gendered effect reproduces patriarchal norms by presuming male culpability while overlooking female agency, especially when both parties assert mutual consent.

(2019) 14 SCC 198

Social Stigma and Life-Long Consequences

The stigma attached to a POCSO prosecution can profoundly affect adolescents' lives, including **educational setbacks, social ostracism, mental health challenges, and future employment barriers**. Even where consensual relationships proceed to marriage, the legal record of a criminal prosecution continues to follow the individuals, raising questions about the proportionality of punishment relative to conduct.

Debate on Structural Reform: 'Romeo-Juliet' Clause

Judicial Recommendation for Reform

The Supreme Court and several High Courts have expressly called on the **legislature to consider a "Romeo-Juliet clause"** or similar statutory exemption. Such a provision would recognise **close-in-age consensual relationships between adolescents** and prevent automatic criminalisation, while preserving sentencing discretion and maintaining protections against true exploitation.

The Supreme Court in **State of Uttar Pradesh v. Anurudh (2026)** suggested legislative examination of a close-in-age exemption. Such clauses in comparative jurisdictions prevent criminalisation of consensual relations between adolescents within a limited age gap.

Indian courts, including the Madras High Court in *Vijayalakshmi* (2021), have formally recommended reconsideration of the age of consent to prevent misuse.

Balancing Protection and Rights

Critically, reform proponents argue that any statutory exemption must be **carefully drafted** to ensure that genuine cases of coercion, abuse of authority, or exploitation are not shielded under the pretext of consent. Key considerations include **defining appropriate age thresholds, age-gap limits, and safeguards against manipulation**.

Concluding Analysis

The misuse and challenges surrounding POCSO's application to consensual adolescent relationships reveal a **structural tension between child protection objectives and the lived realities of adolescent autonomy and personal dignity**. While the Act plays a crucial protective role in safeguarding minors from abuse, its unqualified application has produced **disproportionate, unjust, and socially damaging outcomes**. Legislative reform, grounded in

⁴ GKToday, 'Supreme Court Flags Romeo-Juliet Clause in POCSO' (2026)

balanced legal principles and informed by empirical evidence, appears essential to ensure that the statutory framework protects children while respecting adolescent autonomy and preventing misuse. The **Romeo-Juliet debate** reflects a broader global discourse on age of consent laws, proportionality, and the role of criminal law in regulating private consensual behaviour.

CONCLUSION AND SUGGESTIONS/RECOMMENDATIONS

Introduction

This concluding chapter synthesises the findings of the preceding chapters and proposes **recommendations** to address the legal and socio-judicial challenges of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) when applied to **consensual adolescent relationships** between persons aged 16 to 18 years a situation commonly framed as “*Romeo-Juliet*” cases. The chapter evaluates whether the present legislative framework aligns with constitutional principles, developmental realities, and comparative international approaches, and proposes **pragmatic reforms** that uphold child protection while mitigating misuse.

Summary of Key Findings

Statutory Rigidity and Misapplication

The analysis in Chapters II through IV demonstrates that the POCSO Act’s **non-recognition of consent** for persons under 18 results in **automatic criminalisation** of all sexual conduct involving minors, irrespective of mutual consent or lack of coercion. This rigid statutory feature has led to **misuse** where consensual adolescent relationships are treated as sexual abuse. In ⁵**Independent Thought v. Union of India (2017) 10 SCC 800**, the Supreme Court endorsed the non-consensual nature of intercourse with minors, yet this principle, when applied wholesale to consensual adolescent relationships, produces unintended consequences.

Judicial Recognition of Disproportionate Outcomes

Indian courts, including the SC in *State of Uttar Pradesh v. Anurudh* (2026), have recognised that the automatic application of POCSO to consensual adolescent cases can amount to **mechanical prosecution**. High Courts, including the Madras HC in *Sabari v. Inspector of Police* and Allahabad HC in similar cases, have highlighted misuse where families lodge FIRs

to penalise consensual adolescent relationships. However, courts have emphasised that **legislative reform** not judicial innovation is the appropriate avenue for addressing these issues.

Comparative Legal Insights

International practices, as analysed in Chapter VI, reveal the **efficacy of close-in-age or Romeo-Juliet exemptions** in jurisdictions such as the United States, Canada, Europe, and South Africa. These models balance protection against exploitation with recognition of consensual adolescent autonomy an approach absent in India's POCSO framework.

Core Legal and Policy Challenges

Balancing Protection and Autonomy

The central question for legal policy is whether the aim to protect minors from sexual exploitation justifies an absolute prohibition on consensual adolescent relationships. The protectionist paradigm must be balanced with respect for **adolescent agency, dignity, and privacy rights**, principles affirmed in⁶⁶ *Justice K.S. Puttaswamy v. Union of India (2017) 10 SCC 1* and *Navtej Singh Johar v. Union of India (2018) 10 SCC 1*. Although these cases principally concern adults, they underscore constitutional values informally relevant to adolescent autonomy.

Procedural Harm and Inequalities

The current regime subjects adolescents to **arrest, detention, legal stigma, and social ostracism**, even in consensual cases. Mandatory reporting provisions also deter minors from seeking healthcare, exacerbating public health harms.

Judicial Limitations

While courts have intervened in specific cases through bail and quashing orders, judicial remedies are **case-specific and inconsistent**. The judiciary has refrained from judicial legislation, correctly deferring to Parliament to amend statutory text.

Recommendations for Legal Reform

Based on the analyses, the following **recommendations** are proposed:

⁶⁶ (2017) 10 SCC 800

Introduce a Statutory Close-in-Age (“Romeo-Juliet”) Exception

Parliament should consider amending the POCSO Act to include a **close-in-age exemption** that decriminalises consensual sexual conduct between adolescents within a defined age range (e.g., 16–18) and within a specified age gap (e.g., 0–3 years), similar to Canadian and U.S. models. This reform would preserve strong protection against exploitative conduct while preventing misuse against consensual adolescent relationships.

Example language (for academic consideration):

“Notwithstanding anything contained in this Act, where the sexual activity is consensual and both parties are above the age of 16 years and no more than three years apart in age, no offence under this Act shall be deemed to have been committed.”

A carefully crafted exemption must retain exclusions for coercion, abuse of authority, and exploitation.

Clarify Judicial Guidelines for Bail and Quashing in Consensual Cases

Until legislative reform occurs, the judiciary should issue binding judicial guidelines on bail and quashing applications in consensual POCSO cases to minimise **procedural harm**. Courts should place greater emphasis on **evidence of coercion or abuse** in prima facie analyses, as opposed to mere statutory age thresholds.

In ⁷*Mahipal v. State of Haryana (2019) 14 SCC 198*, the Supreme Court articulated that bail cannot be denied simply based on statutory severity where evidence does not prima facie indicate serious harm—principles that can inform interim judicial guidelines in consensual adolescent scenarios.

Amend Mandatory Reporting Provisions

Mandatory reporting obligations that cover all underage sexual activity should be revisited to avoid deterring adolescents from seeking healthcare. Exemptions for consensual adolescent conduct, with safeguards to prevent concealment of abuse, may align public health needs with child protection goals.

Data Collection and Policy Evaluation

The Government should support empirical research on POCSO prosecutions to quantify the prevalence of consensual adolescent cases versus exploitative cases. Evidence-based policy

(2019) 14 SCC 198

evaluations will inform legislators regarding the scope and impact of proposed reforms.

Future Research Directions

Further research can explore:

- The psychological and social impact of POCSO prosecutions on adolescents.
- Cross-cultural normative analyses of age of consent and autonomy.
- Longitudinal studies on outcomes of close-in-age exemptions in comparative jurisdictions.

Conclusion

The Protection of Children from Sexual Offences Act, 2012 admirably seeks to safeguard minors from sexual abuse. However, its **absolute statutory approach** criminalising all sexual conduct involving persons under 18 has produced **unintended and disproportionate outcomes** in consensual adolescent relationships. The judiciary has played a critical role in highlighting misuse and advocating for legislative reform, but legal clarity must come from Parliament.

Introducing a **close-in-age or Romeo-Juliet exception**, refining bail and reporting protocols, and aligning statutory provisions with constitutional values without diluting protections against exploitation represent practical and balanced pathways forward. Comparative legal models demonstrate that protecting children and respecting adolescent autonomy can co-exist within a coherent legal framework.

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