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**CRIMINALISING CONSENT: ADOLESCENT ELOPEMENT AND THE
STATUTORY FRICTION BETWEEN POCSO AND THE PCMA**

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I. ABSTRACT

Cases involving adolescent elopement have increasingly exposed a difficult question within Indian criminal law: Should consensual relationships between older adolescents be treated in the same manner as predatory sexual offences? Although the Protection of Children from Sexual Offences Act, 2012 was enacted to shield children from abuse and exploitation, its application to relationships involving individuals between sixteen and eighteen years of age has generated considerable judicial and academic debate.

The issue becomes particularly significant when adolescents leave their homes voluntarily to avoid family pressure, domestic violence, or opposition to relationships based on caste, religion, or social background. In such situations, the legal framework often treats the minor exclusively as a victim, regardless of the circumstances surrounding the relationship. As a result, criminal proceedings may be initiated even where there are no allegations of coercion, deception, or abuse.

This article examines the legal and practical consequences of applying the POCSO Act to consensual adolescent relationships. It analyses the statutory presumptions contained in Sections 29 and 30, the interaction between POCSO and the Prohibition of Child Marriage Act, 2006, and the approach adopted by Indian courts in addressing such disputes. Particular attention is given

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to recent judicial developments, including observations made by the Supreme Court in *State of Uttar Pradesh v. Anurudh*.²

The study argues that the present framework does not adequately distinguish exploitative conduct from voluntary adolescent relationships. It explores the possibility of introducing a limited close-in-age exception that preserves the protective purpose of the Act while recognising the constitutional values of autonomy, dignity, privacy, and personal liberty.

II. INTRODUCTION

The constitutional basis for protective legislation in India is found in Article 15 of the Constitution.³ While Article 15 guarantees equality and prohibits discrimination by the State, clause (3) permits the enactment of special measures for the welfare and protection of women and children. Exercising this constitutional authority, and in furtherance of India's commitments under the United Nations Convention on the Rights of the Child,⁴ Parliament enacted the Protection of Children from Sexual Offences (POCSO) Act, 2012.⁵ The legislation was intended to address deficiencies in the earlier criminal law framework relating to child sexual abuse and exploitation.

A central feature of the POCSO Act is its age-based approach to consent. Under Section 2(1)(d),⁶ every person below the age of eighteen years is treated as a child for the purposes of the Act. The law does not recognise the legal validity of consent given by a minor. This framework creates a clear legal distinction between minors and adults; however, it leaves little room for recognising the realities of relationships involving older adolescents who fall close to the statutory age threshold.

During my judicial internship, I noticed that many POCSO cases were not about predatory abuse at all, but about teenage couples who had run away together, where angry parents used the law to

² State of U.P. v. Anurudh, 2026 SCC OnLine SC 40.

³ Constitution of India, 1950, Art. 15.

⁴ United Nations Convention on the Rights of the Child, 1989.

⁵ The Protection of Children from Sexual Offences Act, 2012 (Act No. 32 of 2012).

⁶ Protection of Children from Sexual Offences Act, 2012, section 2(1)(d).

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break up self-arranged marriages or consensual live-in relationships. In several matters, the entire case seemed to turn on a single piece of paper: the girl's Class 10 marksheet, treated as conclusive proof of minority, even when the boy said he genuinely did not know her exact age. Sitting through these hearings made it very clear that the strict age cutoff leaves trial courts with almost no space to think about adolescent choice, and it is usually only at the High Court level that judges even begin to grapple with questions of autonomy and consent in such relationships.

III. HISTORICAL JURISPRUDENCE AND REVERSE BURDEN SCHEMES

1. Evolution of Consent Jurisprudence Before the POCSO Act Before the enactment of the POCSO Act in 2012, offences involving child sexual abuse were primarily prosecuted under the general provisions of the Indian Penal Code. The development of Indian rape law was significantly influenced by public criticism of judicial approaches to consent and victim testimony. One of the most influential cases in this regard was *Tukaram v. State of Maharashtra (1979)*,⁷ commonly referred to as the Mathura rape case. In that case, the Supreme Court acquitted the accused police officers after concluding that the absence of physical resistance indicated consent. The judgment attracted widespread criticism and generated a nationwide movement for reform, ultimately contributing to the enactment of the Criminal Law (Amendment) Act, 1983,⁸ which strengthened protections in cases involving custodial sexual offences.

Over time, the judiciary adopted a more sensitive approach towards victims of sexual violence. In *State of Punjab v. Gurmit Singh (1996)*,⁹ the Supreme Court emphasised that the testimony of a victim should not be rejected merely because it lacks independent corroboration. The Court observed that where the statement of the prosecutrix inspires confidence, it may by itself form a sufficient basis for conviction. This decision marked an important step in recognising the evidentiary value of victim testimony in sexual offence cases.

⁷ *Tukaram v. State of Maharashtra*, (1979) 2 SCC 143.

⁸ The Criminal Law (Amendment) Act, 1983.

⁹ *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384.

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2. Reverse Burden and the Structure of the POCSO Act The POCSO Act was enacted against this historical background with the objective of providing stronger protection to children and preventing accused persons from relying upon claims of consent in cases involving minors. As a result, the Act adopts a strict approach towards sexual activity involving persons below eighteen years of age. Among its most significant features are Sections 29 and 30,¹⁰ which introduce statutory presumptions regarding the culpability of the accused.

In criminal law, the presumption of innocence is generally regarded as a fundamental principle. During the study of evidence law, students are taught that the burden of proving guilt ordinarily rests upon the prosecution. The POCSO Act departs from this traditional rule by placing a substantial burden upon the accused once certain foundational facts have been established. Where the prosecution demonstrates the occurrence of the alleged act and the minority of the victim, the court may invoke the statutory presumptions contained in the Act. The practical consequences of this framework can be seen in cases such as *Dharmander Singh v. State (2020)*,¹¹ where the operation of these presumptions became relevant during bail proceedings. Critics argue that, in situations involving consensual adolescent relationships, the statutory framework may treat young partners in a manner similar to offenders engaged in exploitative conduct, thereby raising concerns regarding proportionality and fairness.

IV. STATUTORY OVERLAPS: THE RELATIONSHIP BETWEEN THE PCMA AND THE POCSO ACT

A major legal concern in cases of adolescent elopement is how the Prohibition of Child Marriage Act, 2006 (PCMA)¹² interacts with the Protection of Children from Sexual Offences Act, 2012 (POCSO). In numerous cases, teenagers who depart from their homes despite their families' objections seek to formalise their bond through traditional or religious wedding ceremonies. The PCMA takes a unique stance on child marriages. According to Section 3 of the Act,¹³ a child marriage is typically seen as voidable at the choice of the minor party instead of being

¹⁰ Protection of Children from Sexual Offences Act, 2012, sections 29 & 30.

¹¹ *Dharmander Singh v. State*, 2020 SCC OnLine Del 1267.

¹² The Prohibition of Child Marriage Act, 2006.

¹³ Prohibition of Child Marriage Act, 2006, section 3. Prohibition of Child Marriage Act, 2006, section 3.

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automatically void from the beginning. The marriage retains legal status until it is contested and dissolved via the process set forth by law after the minor reaches adulthood. This framework represents a legislative effort to tackle the social issues related to child marriages while offering a process for their eventual dissolution.

In dealings with litigants and beneficiaries of legal aid, this noticeable inconsistency frequently arises as a cause of confusion. Families often find it challenging to comprehend how a relationship that may still garner minimal acknowledgment under family law can concurrently lead to significant criminal responsibility under a different law. The situation is complicated further due to Section 42-A of the POCSO Act,¹⁴ which states that its provisions will take precedence in cases of conflict with other laws. When a complaint is made about an adolescent relationship with a minor—especially when parents file criminal charges to contest the relationship—the protections offered by the PCMA might have restricted practical significance in criminal cases. In these situations, legal action under the POCSO Act often comes first, and the defendant might encounter allegations with harsh mandated penalties. This scenario has resulted in ongoing discussions regarding how the two statutes function in tandem, especially in instances concerning consensual teenage relationships and the increasing calls for close-in-age exemptions.

V. JUDICIAL TRENDS: HIGH COURT QUASHING POWERS AND APEX COURT INTERVENTIONS

The application of the POCSO Act to consensual adolescent elopements has led the higher judiciary to intervene repeatedly to prevent serious miscarriages of justice. Recognising that these situations often fall outside the legislative intent of the Act, which is primarily to address predatory abuse, High Courts have increasingly invoked their inherent powers under Section 482 of the CrPC (now Section 528 of the BNSS)¹⁵ to quash proceedings.

¹⁴ Protection of Children from Sexual Offences Act, 2012, § 42-A.

¹⁵ Code of Criminal Procedure, 1973, section 482 / Bharatiya Nagarik Suraksha Sanhita, 2023, section 528.

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In *Vijayalakshmi v. State of Tamil Nadu (2021)*,¹⁶ the Madras High Court quashed criminal proceedings and explicitly distinguished adolescent romance from exploitative sexual offences. The Delhi High Court reinforced this approach in *Vijay Maan @ Kapil v. State (2024)*,¹⁷ holding that trial courts must critically examine whether there is any coercion or exploitation before allowing POCSO prosecutions to proceed, particularly where the relationship is consensual and the parties are adolescents.

When the statutory machinery fails at the lower levels, the Supreme Court has exercised its powers under Article 142 of the Constitution¹⁸ to provide relief in exceptional cases. In *K. Kirubakaran v. State of Tamil Nadu (2025)*,¹⁹ the Court quashed a conviction after finding that the parties had subsequently married and established a family. The Court held that applying the strict penal provisions in such circumstances would be contrary to the ends of justice, and prioritised the factual reality of the relationship over the rigid statutory framework. The Supreme Court exercised this power explicitly to do "complete justice" based on the unique facts of the dispute, issuing a strict caveat that the order shall not be treated as a legal precedent.

VI. SOCIO-LEGAL IMPACT ON ADOLESCENTS

The practical enforcement of the POCSO Act reveals a significant divergence from its legislative intent. Several studies and judicial observations have indicated that a significant share of POCSO prosecutions arise from consensual adolescent relationships rather than from allegations of predatory abuse. The 283rd Report of the Law Commission of India likewise acknowledged concerns about the growing number of cases involving consensual relationships between adolescents.

This broad application produces severe socio-legal consequences:

¹⁶ *Vijayalakshmi v. State*, 2021 SCC OnLine Mad 317.

¹⁷ *Kapil v. State*, 2024 SCC OnLine Del.

¹⁸ Constitution of India, 1950, Art. 142.

¹⁹ *K. Kirubakaran v. State of Tamil Nadu*, 2025 INSC 1272.

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- **Impact on the Accused's Future:** Factual consent is legally immaterial during a trial. Once arrested, the young male partner is labelled a sexual offender. This stigma can permanently derail his educational prospects, disqualify him from government employment opportunities, and constrain access to fundamental rights, such as passport issuance.
- **Pre-Trial Incarceration and Educational Disruption:** Because the offences are non-bailable, accused adolescents often spend months in observation homes or district jails before securing bail. This social stigma and prolonged absence frequently force families into hiding and result in the accused dropping out of the educational system entirely.
- **Honour-Based Pressure and Loss of Female Agency:** The adolescent girl faces intense moral policing. Families frequently confine these girls and subject them to emotional—and sometimes physical—pressure to “restore family honour.” The minor's agency is systematically overridden; parents routinely pressure or coerce her into recording hostile statements under Section 164 of the CrPC (now Section 183 of the BNSS)²⁰ to ensure the boy's conviction.
- **Misallocation of Judicial Resources:** Special Fast Track Courts, established to ensure the prompt delivery of justice to children who are genuine victims of predatory sexual offences, are increasingly clogged with cases involving consensual adolescent elopements. This backlog diverts critical resources away from the actual victims the statute was designed to protect.

VII. COMPARATIVE PERSPECTIVE

An examination of international legal frameworks shows that, while global standards firmly uphold child protection principles, many foreign legislatures approach adolescent sexuality with greater nuance and practicality. India's rigid, absolute approach—where any sexual activity involving a person under 18 is treated criminal regardless of context—creates an unusual

²⁰ Code of Criminal Procedure, 1973, section 164 / Bharatiya Nagarik Suraksha Sanhita, 2023, section 183.

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situation in which consensual relationships between teenage peers are prosecuted using the same legal framework intended for serious predatory offenders.

Several countries address this issue through what are commonly known as "Romeo and Juliet" clauses. These provisions create close-in-age exemptions for consensual sexual acts between older adolescents. Jurisdictions such as Canada, the United Kingdom, and certain states in the United States have enacted such statutory exceptions. Under these rules, when both parties are older minors (typically aged 15 or 16 or above) and the age difference between them does not exceed two to four years, the relationship is excluded from the scope of criminal sexual assault, provided there is no evidence of coercion, manipulation, or abuse of power.

In addition, many European systems have adopted the Barnahus model,²¹ which brings together child-focused, multi-disciplinary teams to conduct psychological and social assessments before criminal charges are formally initiated. These approaches do not legitimise child sexual abuse; rather, they recognise that consensual adolescent relationships may require treatment different from exploitative conduct. The comparative experience demonstrates that child protection and adolescent autonomy need not be treated as competing objectives. Although India's social and legal context differs from that of many foreign jurisdictions, these models provide useful insights for ongoing discussions regarding reform of the POCSO framework.

VIII. ARGUMENTS AGAINST CLOSE-IN-AGE EXEMPTIONS

Although close-in-age exemptions have attracted support from scholars and some judicial commentators, there remain serious concerns about relaxing the current statutory scheme. These concerns deserve careful attention before any reform is proposed.

One of the main objections to close-in-age exemptions is the fear that they could be used to hide grooming and exploitation. An older person might present a relationship as "romantic" when, in reality, there is emotional manipulation, pressure, or a clear imbalance of power. This connects directly to another practical concern: it is often very hard to know, from the outside, whether an

²¹ The Barnahus Model (European multidisciplinary framework for child-friendly justice).

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adolescent's consent is genuine. Young people may change their versions of events because of family pressure, fear, dependence on the partner, or the stigma attached to sexuality. For police and judges, this makes it difficult to draw a clear line between real consent and subtle coercion, and this difficulty is one reason why some lawmakers prefer a simple age-based rule that offers clarity and reduces complicated evidentiary disputes.

Another key reason given for keeping the age of consent at eighteen is the need to tackle child marriage, trafficking, and other forms of sexual exploitation. Parliament chose eighteen quite consciously, as a bright-line rule to reinforce child protection, and those who oppose close-in-age exemptions worry that any relaxation could weaken these safeguards and open up room for misuse by offenders. At the policy level, the law has clearly been designed to favour broad structural protections over case-by-case judgments: it sacrifices nuance about individual adolescent relationships in order to preserve the certainty of an absolute threshold. These objections cannot be brushed aside, because protecting children is the core purpose of the POCSO Act and any amendment must keep that goal intact. At the same time, some of the evidentiary and exploitation concerns can be addressed through clear, objective criteria rather than leaving everything to subjective judicial impressions. For example, a statutory rule that limits any exemption to relationships where the age gap does not exceed three years, and the girl is at least sixteen, would sharply restrict the benefit to genuine peer relationships while still keeping strong safeguards in place against grooming and abuse.

IX. REFORMS AND RECOMMENDATIONS: THE WAY FORWARD

The growing conflict between rigid statutory requirements and the realities of adolescent elopement calls for urgent legislative reform. This issue was recently examined by the 22nd Law Commission of India in its 283rd Report.²² Several High Courts had referred the matter to the Commission, requesting a review of the age of consent in light of the rising number of prosecutions involving consensual adolescent relationships.

²² Law Commission of India, 283rd Report on Age of Consent under the POCSO Act, 2012.

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Many legal scholars and activists hoped for a more progressive recommendation that would recognise the bodily autonomy of older adolescents. However, the Commission's report took a cautious approach. Emphasising the need to combat child trafficking and other forms of exploitation, the Commission concluded that the existing 18-year age of consent should not be reduced or modified. Rather than recommending a Romeo-and-Juliet or close-in-age exemption, the Commission proposed introducing "guided judicial discretion in sentencing" for cases where factual consent is established. It argued that such cases should not be treated with the same severity as cases involving predatory abuse.

Although allowing judicial discretion at the sentencing stage offers some improvement, it does not address the core problem: the adolescent accused must still undergo a full criminal trial, face the possibility of pre-trial detention, and endure the lasting stigma of being charged with a serious sexual offence before a judge can consider leniency. To effectively address this problem, the following structural reforms are necessary:

- **Mandatory Pre-FIR Screening Mechanism:** The Ministry of Home Affairs should introduce a standardised protocol for adolescent elopement cases. Before registering a serious POCSO FIR in such cases, the matter should be referred to a specialised panel consisting of a Child Welfare Police Officer (CWPO) and a qualified counselor. This panel would assess whether the case involves predatory exploitation or a consensual relationship between peers.
- **Introduction of Close-In-Age Exemptions:** Parliament should amend Sections 4 and 6 of the POCSO Act to include a specific proviso. Where the female is above sixteen years of age and the age difference between the parties is less than three years, the strict liability presumptions and mandatory minimum sentences should not apply automatically. Instead, the trial court should be given discretion to consider the overall circumstances of the case.
- **Criminal Penalties for Malicious Prosecution:** To discourage families from misusing child protection laws to enforce caste-based, religious, or honour-based control, strict

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criminal penalties should be introduced for guardians who file clearly false kidnapping or rape charges in cases of consensual adolescent elopement.

These reforms would help ensure that the POCSO Act remains focused on its original purpose—protecting children from genuine sexual exploitation—while avoiding the criminalisation of consensual relationships between older adolescents.

X. CONCLUSION

The Supreme Court's recent remarks in *State of U.P. v. Anurudh*²³ bring out how sharply the text of the POCSO Act can clash with what actually happens in adolescent relationships. Instead of dealing only with clear cases of abuse, the law ends up covering many situations where teenagers have eloped by choice. Because Parliament has not provided any close-in-age exception, higher courts are often left trying to soften the impact of the statute after the fact. They do this by using special constitutional and inherent powers to give relief in individual cases, even though the bare wording of the law points the other way. In practice, this means that young people in consensual relationships can be arrested, treated as serious offenders, and kept in custody for long periods before an appellate court finally has a chance to look at the facts and correct what would otherwise be a harsh and unjust result. The widespread and ongoing misuse of the POCSO Act in cases of consensual adolescent elopement reveals both a deep societal unease with youth autonomy and a significant flaw in the way the statute is drafted. What was originally introduced as a landmark law to protect vulnerable children has, in many instances, been transformed into a punitive tool that destroys the futures of young people.

India does not need to dismantle the POCSO Act. Instead, it requires a compassionate, balanced, and nuanced approach that clearly distinguishes between predatory, exploitative conduct and normative adolescent relationships. The prosecution and incarceration of a 19-year-old student as a serious sexual offender merely for eloping with his 17-year-old partner reflects a profound failure of legal reasoning and imagination. Only when the legislature takes cognizance of the Supreme Court's observations in *Anurudh* regarding the statute's harshness—and acts within its

²³ State of U.P. v. Anurudh, 2026 SCC OnLine SC 40.

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exclusive domain to introduce close-in-age exemptions while resolving the structural conflict between POCSO and the Prohibition of Child Marriage Act (PCMA)—can the justice system effectively bridge the gap between rigid statutory interpretation and lived social reality. Until such legislative reform is achieved, the law will continue to penalise the very generation it was intended to protect.



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