Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2026 – ISSN 2582-7820

Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Protection or Prosecution? Examining the Need for a Close-in-Age Exemption under the POCSO Act 2012

Aadya Gupta[a]

[a]Chandigarh University, Mohali, India

Received 30 September 2026; *Accepted* 30 October 2026; *Published* 04 November 2026

The Protection of Children from Sexual Offences Act 2012 (POCSO) provides a definition of 'child' as a person under 18, and it deems a child's consent to be legally unimportant. Therefore it does not make any distinction between those who are adults abusing others and those who are young persons a few years older than a partner in a voluntary relationship and it is often complaints are made by families who are opposed to the relationship rather than the children. The article raises questions about the need for and the manner of including an exception for close-in-age in POCSO. Courts have responded, but haven't solved the problem. High Courts invalidate proceedings on case-to-case basis and outcomes are case-dependent and bench-dependent. In In re Right to Privacy of Adolescents (2025), the Supreme Court upheld the conviction, but did not impose any sentence because of the invocation of article 142. The Law Commission's 283rd Report called for "guided sentencing discretion" instead of an exemption. In State of Uttar Pradesh v Anurudh (2026), the Supreme Court realised how the Act was being misused and requested the Union Government to look at introducing a 'Romeo-Juliet' clause. The article, using a doctrinal and comparative approach, based on Canada, Texas, South Africa and England and Wales, asserts that these responses are too late: the reporting duty, the FIR and the statutory presumptions all apply prior to the exercise of sentencing discretion. It recommends a restricted exemption with a floor age of 16 years, an age differential of not more than 3 years and an absolute exemption where coercion, trust, authority or dependency exists - as well as a two-stage confidential reporting system under section 19.

Keywords: *age of consent, adolescent relationships, strict liability.*

INTRODUCTION

Think about a young man, 20 years old, and his lover, 17 years old, who is not accepted by her family. The family complains to the police. Under the Protection of Children from Sexual Offences Act 2012 (POCSO), her age will determine this matter: an 'under eighteen' is a 'child', and her consent does not matter at law[1]. He can be sentenced to at least ten years for penetrative sexual assault[2], regardless of the character of the relationship; the statutory machinery will kick in regardless. The reporting obligation in section 19 applies, the presumption in section 29 applies, and the Act is overriding as per section 42A, but there is no mechanism to differentiate exploitation from a consensual relationship between people of similar age.[3]

Courts have noticed. In *Probhat Purkait v State of West Bengal*[4], a Division Bench of the Calcutta High Court remarked that the non-recognition of consensual conduct among older adolescents had resulted in 'automatic criminalisation' and 'conflation of consensual and non-consensual acts'. In *Anurudh,* the question that was before the Court was whether a HC with bail powers could compel age determination in all POCSO cases.[5] In the case of *Anurudh,* it was observed by the HC that it could not compel age determination in all POCSO cases, as there was a difference of opinion. The Romeo-Juliet passage is a legislative nudge in the form of a jurisdictional judgment, and it's not a holding on any exemption.

In the meantime, there is a lack of uniformity in relief. Sometimes, the High Courts cancel proceedings for other reasons, and sometimes they do not. Depending on the forum, bench, and the accident of settlement, a significant role is played here. While these responses all have a drawback, in that each works after the process has already started, the 283rd Report of the Law Commission of India maintained that eighteen should be the age of consent, and recommended that guided sentencing discretion should be implemented, rather than an exemption.[6] The FIR, the duty of reporting and the presumptions of law all come before any

[1] Protection of Children from Sexual Offences Act 2012
[2] *Ibid*
[3] Protection of Children from Sexual Offences Act 2012, ss 19, 29 and 42A
[4] *Probhat Purkait @ Provat v State of West Bengal* (2023) LiveLaw (Cal) 322
[5] *State of Uttar Pradesh v Anurudh & Anr* (2026) INSC 47
[6] Law Commission of India, *Report No 283: Age of Consent under the Protection of Children from Sexual Offences Act, 2012* (2023)

court decides to have some mercy at the end of the process, and there is no way to reverse an arrest or a trial.

This article suggests that only law can provide certainty and timeliness to meet adolescents' needs. It questions whether there should be a close-in-age exemption under POCSO and, if yes, how this exemption can be drawn up to ensure that no child is criminalised, while at the same time safeguarding their rights against exploitation. It suggests a narrow codified exemption that includes a floor age of 16, a three-year age gap, and an absolute exclusion for cases where exploitation, trust, authority or dependency exists, using a doctrinal and comparative approach. The article does not seek to decrease the age of consent or justify any softening on the part of the adult when it comes to infringing on it.

Part I explains the statutory framework, while Part II explains the history of these laws. Part III discusses the case-by-case judicial reaction, and Part IV the Law Commission's report and the Union's stance. Part V deals with constitutional aspects, and Part VI discusses the parallels with Canada, England and Wales, the U.S. and Australia. Proposed text for the model is provided in Part VII, which is followed by Part VIII, in which the principal objections are answered. A conclusion follows.

THE STATUTORY FRAMEWORK

When a Child is younger than 18, that's not considered to be Consent: Consent is legally irrelevant to a person under eighteen, as indicated in section 2(1)(d), and no provisions in the offence-creating provisions make mention of it[7]. That becomes the basis for the rest of the Act: there is no category of 'consensual' sexual activity with a child in the Act; there isn't any distinction between 'relationship' and 'exploitation '.

The Punishment System and the line at 16: As per Section 4(1), the minimum punishment for penetrative sexual assault is ten years' imprisonment, which may be life imprisonment. [8]The aggravated forms in sections 5 and 6 have a higher penalty, and after the change in 2019, the death penalty is also included for children under 16 years.[9] The argument of this article

[7] Protection of Children from Sexual Offences Act 2012, s 2(1)(d)
[8] Protection of Children from Sexual Offences Act 2012, s 4(1)
[9] Protection of Children from Sexual Offences Act 2012, ss 5 and 6; Protection of Children from Sexual Offences (Amendment) Act 2019

is found in section 4(2).[10] The number sixteen is considered a threshold by Parliament when setting punishment: the act is more serious if it is done before that age. That does not mean that the 2019 tiering is related to the validity of consent, however, and that 16 ought to be the bottom age of an exemption. It does, however, suggest that a ground of distinction already exists at the age of sixteen, as the law does recognise a fault line at that age and a lower age would not create a fault line where one was already there.

The Presumption and Overriding Effect is the Machinery and the Process of Reporting: There are three aspects of the Act that make it difficult to prevent the offence from taking place after it has been alleged. The responsibility applies to families, schools and doctors, and does not necessarily relate to an exploitative relationship.[11] The Act is presumed to have been committed by the accused until the contrary is proven (Section 29) and the Act overrides inconsistent law (Section 42A).[12] These are the requirements to limit the design of any exemption. A defence which the accused has to establish in a trial is available within the ambit of the presumption in Section 29,[13] once the report is made and an FIR is lodged. An exemption to work is accordingly better when it carves out from the presumption, and preferably earlier than when it would be felt by the presumption.

Non-Compoundability: The offences under POCSO are not compoundable under section 320 of the Code of Criminal Procedure, 1973, and the case shall continue to follow the provisions of Bharatiya Nagarik Suraksha Sanhita, 2023 from 1 July 2024 onwards[14]. Instead, there is a search for relief through the use of the High Court's inherent powers (which are explored in Part III).

Children as Accused: Minors are thus treated in the Juvenile Justice (Care and Protection of Children) Act 2015, with the exception of a child over the age of sixteen accused of a heinous offence, as detailed in the introduction, leaving some at risk of being tried as adults[15]. The most extreme examples of this for this piece will be when an adult-age man (in his teens or twenties) is accused in a relationship with a sixteen- or seventeen-year-old girl.

[10] Protection of Children from Sexual Offences Act 2012, s 4(2)
[11] Protection of Children from Sexual Offences Act 2012
[12] Protection of Children from Sexual Offences Act 2012, ss 29 and 42A
[13] Protection of Children from Sexual Offences Act 2012, s 29
[14] Code of Criminal Procedure 1973, s 320; Bharatiya Nagarik Suraksha Sanhita 2023, s 359
[15] Protection of Children from Sexual Offences Act 2012; Juvenile Justice (Care and Protection of Children) Act 2015

LEGISLATIVE HISTORY

The 'Adolescent Exception' that was Eliminated: As to the basis of an exception for adolescents, the Calcutta High Court noted the following in *Probhat Purkait v State of West Bengal,* which the Part relies on: The exception was withdrawn when the Bill was introduced in Parliament, and the Parliamentary Standing Committee expressed concern that the exception would turn the focus of trial on the victim's conduct while the Bill was being considered[16]. The objection of the Standing Committee is the most significant institutional reason to reject the proposal of this article, which Part VII directly tackles. The concern was not the need for prosecution, but that the exception would open the door for the defence to place the child's behaviour on trial. The solution, which will be developed later, is to permit the exemption to be granted as an exclusion from liability, which will be determined on documents and a recorded statement, and which will not involve cross-examination of the child on her conduct.

The Age of Consent in 2012 and 2013: When POCSO was enacted in 2012, it set eighteen as the age below which a person is a child. In 2013, the Justice Verma Committee, which had been set up to review the criminal law in the wake of the Delhi gang rape, had suggested an age of consent of sixteen.[17] This was rejected by Parliament. Criminal Law (Amendment) Act, 2013, has made the necessary amendment in the IPC, 1860, and now the age has been increased from 12 to 18 years old, similar to the provisions of POCSO[18]. The Indian Penal Code is now superseded by the Bharatiya Nyaya Sanhita, 2023, from 1st July 2024. Section 375 corresponds to section 63, and eighteen is still the age[19]. Determination of which Code applies depends on the date of the offence and, as a result, cases predating July 2024 are still determined in accordance with the Indian Penal Code.

The 2019 Amendment: Parliament had raised the minimum punishments and adopted the death penalty for aggravated penetrative sexual assault in 2019, as an outcome of concern about child sexual abuse, and it was a further step towards a punitive direction[20]. Did not

[16] *Probhat Purkait @ Provat v State of West Bengal* (2023) LiveLaw (Cal) 322; Department-Related Parliamentary Standing Committee on Human Resource Development, *Report No 243: The Protection of Children from Sexual Offences Bill, 2011* (2011)
[17] Justice J S Verma Committee, *Report of the Committee on Amendments to Criminal Law* (2013)
[18] Criminal Law (Amendment) Act 2013; Indian Penal Code 1860
[19] Bharatiya Nyaya Sanhita 2023, s 63; Indian Penal Code 1860, s 375
[20] Protection of Children from Sexual Offences (Amendment) Act 2019

discuss adolescents in consensual relationships. It is important to remember that this amendment was made in such a way as to tie section 4 to the age of the person involved and was never an opinion on adolescent consent.

The Gap is read by the Court: It further observed that the non-recognition of consensual behaviour among older adolescents has resulted in their automatic criminalisation, and a conflation of consensual and non-consensual acts is a deliberate choice by the legislature, as POCSO raised the age for sexual consent from 16 to 18, and thus consensual acts at the age of 16 are banned, with 18 forming a grey area[21]. In the case of Sanjeevkumar v State, the Madras High Court has made a similar observation.[22]

Protection as a Constitutional Obligation: The Counter-Weight: It is the balancing measure that any reform proposal has to account for, based on POCSO's constitutional sources in Article 15(3) and the best interests of the child principle in Article 39.[23] Article 15(3) allows for special provisions for children, and Article 39 requires the State to protect children from exploitation. These provisions give some indication of the reasons for Parliament's adoption of a bright line and why courts have been hesitant to whittle it down. They don't, however, make the argument that the line should not be drawn based on maturity or the age of the parties involved. The suggestion made in Part VII is that a narrow exemption is consistent with the purpose of the Act, since it leaves the Act's purpose of exploitation in place, but removes it from relationships for which the Act's history indicates it was never intended to extend.

THE JUDICIAL RESPONSE: CASE-BY-CASE TIER

The courts have not been oblivious to the issue. The Supreme Court and High Courts have handed down several judgments on adolescent relationships in the context of POCSO; however, these are case-by-case decisions and are not rules. This Part considers the decisions of the Supreme Court, the practice of the High Court, the procedural grounds for the relief granted and then evaluates what can and cannot be achieved by the approach.

---

[21] *Probhat Purkait @ Provat v State of West Bengal* (2023) LiveLaw (Cal) 322
[22] *Sanjeevkumar v Inspector of Police, Kadathur Police Station, Dharmapuri District* (2025) Crl A No 20/2023
[23] The Constitution of India 1950, arts 15(3) and 39; *Probhat Purkait @ Provat v State of West Bengal* (2023) LiveLaw (Cal) 322

The Supreme Court –

In re: Right to Privacy of Adolescents: The Court suo motu took cognisance of a Calcutta High Court judgment setting aside a conviction under POCSO and observations made on adolescent sexuality by the Calcutta High Court, which the Supreme Court found objectionable[24]. In its decision of 20 August 2024, it lifted the conviction and dismissed the argument that there is a non-exploitative sexual act with a 14-year-old. On 23 May 2025, it was again brought to its attention, and it found the accused guilty and, in the exercise of its summary jurisdiction, imposed no sentence on him, leaving it to the State to handle the case of the victim and her child[25]. The judgment establishes that a lack of consent is not a defence under section 6 and that exceptions will not be made by courts. The Court also did not specify that this case should be a precedent.

State of Uttar Pradesh v Anurudh: Anurudh has been released based on the Allahabad High Court's bail order that had mandated age determination tests in all POCSO cases, as stated in the introduction. The Supreme Court ruled that the High Court cannot make such directions in the exercise of bail jurisdiction under section 439 of the CrPC and that age falls in the domain of the court of trial and could only be viewed at the bail stage on a prima facie basis[26]. The Romeo-Juliet discussion is in paragraph 19, where the Court cited several examples of how the law is applied to families against young people and relationships. In the case of *Ravi Kumar*, the Allahabad bail order makes a reference to paragraph 19, while in the *Sahil v State (NCT of Delhi)* judgment, the Delhi High Court states that 'POCSO cases filed on the behest of the girl's family against a romantic involvement have become commonplace'[27]. In addition, Anurudh has been quoted as noting that in the Allahabad High Court judgment in *Satish alias Chand v State of UP,* courts have said that they should consider the facts of each case, listen to the victim, refrain from perversity of justice where 'age' is an important factor and use judicial discretion wisely[28]. It could be best described as a 'legislative nudge' in a judgment with a jurisdictional operative ratio.

[24] *In re Right to Privacy of Adolescents* (2024) Suo Motu WP (Civ) No 3/2023, with Crl App No 1451/2024
[25] *In re Right to Privacy of Adolescents* (2025) INSC 778
[26] *State of Uttar Pradesh v Anurudh & Anr* (2026) INSC 47; Code of Criminal Procedure 1973, s 439
[27] *Ravi Kumar v State of UP & 3 Others* (2026) AHC:91700
[28] *Satish alias Chand v State of UP & 3 Others* (2024) AHC:108011

The High Courts –

In a few cases, the Delhi High Court has taken the stand that a minor's consent is not relevant to the issue. In *Rabin Rai*, it was held that consent between minors was irrelevant, and the Court refused to set aside the proceedings based on a compromise[29]. In *Mohd Amaan Malik v State (NCT of Delhi)*, it came to the same conclusion that the minor's consent was irrelevant[30]. It is also reported that the Court directed that there should be no exception for a 'near-majority, consensual relationship' as it would form an exception to the law otherwise known as judicial legislation.[31]

Closure has been granted in instances where, after offences, the facts were strongly in favour of closure. In *Prem Kumar v State,* the accused minor girl married to Prem Kumar, and they had two children, was quashed by the Delhi High Court. The Rajasthan High Court quashed the proceedings against the accused, as the sixteen-year-old and the twenty-two-year-old had a continuing relationship and a pregnancy had been observed; the Meghalaya HC quashed the proceedings where the minor lived with the accused and gave birth to a child. The Uttarakhand High Court is said to have accepted the Article 14 (equal protection) reasoning in a case where a seventeen-year-old and a twenty-one-year-old were involved.

Other Decisions are more about the principle than the Relief: The Delhi High Court in State v Hitesh upheld an acquittal and allowed for consensual relationships between adolescents, but also relied on the fact that no evidence was produced to prove that the victim's age was not as claimed[32]. In Probhat Purkait (18 October 2023), the Calcutta High Court noted that the acceptance of consensual behaviour by older adolescents leads to automatic criminalisation.[33]

The Delhi High Court is said to have pointed out some exceptional criteria for closure: the victim's voluntary no-objection; consistent demand for closure; clear voluntary behaviour; genuine marriage/arrangement; cohabitation or children; no violence or coercion; and the promotion of justice[34]. In a separate order, the Rajasthan High Court had directed research

[29] *Rabin Rai & Ors v State of Sikkim* (2026) Crl MC No 2 of 2026
[30] *Mohd Amaan Malik v State Govt NCT of Delhi & Anr* (2023) Crl MC 7121/2022
[31] *Sunny v State NCT of Delhi & Anr* (2026) Crl MC 3832/2025
[32] *State v Hitesh* (2025) DHC 944
[33] *Probhat Purkait @ Provat v State of West Bengal* (2023) LiveLaw (Cal) 322
[34] *Sunny v State NCT of Delhi & Anr* (2026) Crl MC 3832/2025

and Law Commission reports on the issue to determine if there is a significant percentage of POCSO cases that are not predatory in nature, but had not specified the percentage or the source.[35]

The Procedural Reason for Relief: As explained in Part I, the High Court has the inherent power to terminate the proceedings under Section 482 of the CrPC (or Section 528 of the BNSS after 1 July 2024), which is available for POCSO offences, and this is done on a case-by-case basis.[36]

Assessment: The case-by-case route has four constraints. Firstly, it's not predictable. Opposite results can be achieved for two couples in the same situation depending on the forum and the bench. Secondly, it is late: when arrested, it is followed by quashing, and when arrest is followed by trial, in some cases. Thirdly, it does not preclude the operation of the presumption of section 29 and the reporting obligation of section 19 whilst the case is pending. Fourthly, a number of factors in Delhi, including marriage and children, encourage outcomes that may themselves be a consequence of pressure, making it poorly suited to the distinction between a voluntary and coerced relationship. The Satish factors are substitutes for the statutory test, as judge-made. They tell us what such a test would include, and they tell us that it is not something which the Courts will provide. The Supreme Court's own finding in Right to Privacy of Adolescents that judicially-made exceptions are not acceptable leads to the same conclusion.[37]

THE LAW COMMISSION AND THE UNION'S LINE ON THE LAW

The second institutional response from the Law Commission of India and the Union Government. This Part outlines the Commission's recommendations, the record of its use of words to indicate whether misuse has occurred, and what it considered the position of the Union to be, and moves that the Commission's approach has left a gap.

What the Report Recommends? The Commission's 283rd Report retains eighteen as the age of consent and rejects reducing it to sixteen. It recognises that adolescents are sometimes prosecuted mechanically in voluntary, non-exploitative relationships, and it responds with

[35] *Aryan S/O Parshuram v State of Rajasthan* (2026) RJ-JP:3628
[36] Code of Criminal Procedure 1973, s 482; Bharatiya Nagarik Suraksha Sanhita 2023, s 528
[37] *In re Right to Privacy of Adolescents* (2025) INSC 778

what a published analysis calls a protective-but-calibrated approach: guided judicial discretion in sentencing rather than a statutory exemption. The Report is a policy recommendation and does not bind Parliament. The research materials include the safeguards in the broader context of procedures, and not sentencing.

The Report Records includes a section on Misuse: It is a statement in the Report in a qualitative sense, since no percentage is given for the part consulted for this article, that Special Courts are burdened with false cases, especially those of teenagers involved in love affairs and which are brought in by the families who disapprove of them or which are filed as a result of the mandatory reporting.

The Union's Position: The Union's position, as reported, is that the age of consent should stay at 18, but that judges, in cases where adolescents are involved, should be given discretion. Anurudh called for their judgment to be sent to the Secretary, Law and urged the Union to look into a Romeo-Juliet clause[38]. As of now, no action or correction has been found.

Assessment: The Commission has a judicial-like process within a criminal system. This does not affect the offence or the reporting obligation pursuant to section 19, arrest or the presumption in section 29. It is not like the High Court route, which starts after the process has commenced, but it does protect in form and is punitive in effect. That discretion by judges is enough substitute for a rule is a tenet shared by the Commission and the Union's reported position. This article contends otherwise, however.

THE CONSTITUTIONAL DIMENSION

The question of whether the threshold itself is constitutionally vulnerable naturally follows the preceding parts. The age limit in POCSO does not appear to run afoul of Articles 14 or 21, and is stated from the beginning as a legislative reform and not as the result of a constitutional challenge.[39] The constitutional issues are still important, however, because they demonstrate why a narrowly drawn exemption is legitimate and why the current blanket exemption is at risk.

[38] *State of Uttar Pradesh v Anurudh & Anr* (2026) INSC 47
[39] The Constitution of India 1950, arts 14 and 21

The Classification and Arbitrariness of Article 14: When dealing with everyone under the age of eighteen the same way, one neglects to take into account the level of maturity of both parties and also the age difference between the two.[40] A law which classifies a close-in-age couple as an adult abuser and a child victim, classifies like cases alike and invites an argument of arbitrariness, is reported to be accepted by the Uttarakhand High Court in a case involving a seventeen-year-old and a twenty-one-year-old. The Uttarakhand High Court is reported to have accepted this reasoning in a case involving a seventeen-year-old and a twenty-one-year-old, while the Delhi High Court has maintained that the bright line drawn by Parliament cannot be softened by the court[41]. The answer is that there are established legislative methods to create bright lines, especially for children. The question thus is whether a narrow exception can be fitted into the line without undermining the purpose of the line, which Part VII says it can.

COMPARATIVE MODELS

There are a number of laws that have close-in-age rules, which vary in their construction and when they are invoked. This Part looks at four jurisdictions, each of which has a general age of consent but has also provided for conduct of young people of the same age. The accounts below are based on a secondary comparative summary and should be verified against the statutes before submission.

Canada: The age of consent in Canada is 16. Close in age, under the provisions of the Criminal Code, is section 150.1. In principle, a fourteen- or fifteen-year-old can agree to a partner who is not more than five years younger and a narrower exemption is provided for a twelve- or thirteen-year-old and a two-year-older partner. Exemptions are lost when the partner is in a position of authority or of trust, when the relationship is dependent, when the behaviour is exploitative. [42]The Canadian model is then based on the age of the child, limited by the age difference, and excludes based on the relationship between the child and the adult.

England and Wales: The age of consent is sixteen years under the Sexual Offences Act 2003, and there is no close in the age exemption in the Act.[43] Prosecutorial guidance acknowledges

[40] The Constitution of India 1950, art 14
[41] *Sunny v State NCT of Delhi & Anr* (2026) Crl MC 3832/2025
[42] Criminal Code RSC 1985, s 150.1
[43] Sexual Offences Act 2003, ss 9–13

that teen-to-teen consensual activity does not necessarily constitute a crime[44]. The protection is thus not based on a right in the statute but rather a discretionary decision by prosecutors. This is not a method that can be incorporated in India in its present form. What is to be done is that the police will have to file an FIR if details of any cognisable offence are disclosed and take discretionary action only at a later stage[45]. If section 19 requires registration and reporting, a rule must be applied at the threshold, as discretion downstream comes after the process.

The United States: In the United States, close-in-age provisions differ from State to State, and are often set to allow for a gap of two to four years. The Texas Penal Code §22.011(e) is an affirmative defence in which the accused was not more than three years older than the victim, was not in a prohibited marital relationship with the victim, and the victim was at least fourteen years old, excluding those required to register as sex offenders. There are two features that are important to this article. The three-year cap is the number listed below in the proposal. The Texan rule is a defence which the accused has to raise and establish at trial. It does not remove the arrest, the charge, or the trial, and the relief is given only at the end of the case-by-case process; this is what has already been granted in Parts III and IV.

Australia: The age of consent is usually sixteen in Australia, with close-in-age defences available, with exceptions for authority and coercion. There is some variation in the detail from jurisdiction to jurisdiction, and the common elements are those that repeat elsewhere: an age gap, no coercion, and lack of authority.

Assessment: The following four lessons are for India. First, every model includes a minimum age of no exemption applies before that age, and the following proposal does just that at age 16. Secondly, each caps the age gap. Thirdly, both are power-relations-free. Fourthly, and this is the aspect that is most different between the models, the rules are applied at various stages: as a defence during trial in Texas, as a threshold rule in Canada, and as a prosecutorial discretion in England and Wales. The threshold-based approach is more conducive to India's compulsion to register and report.

[44] *Rape and Sexual Offences Prosecution Guidance* (Crown Prosecution Service, 2026)
[45] *Lalita Kumari v Government of Uttar Pradesh & Ors* (2014) 2 SCC 1

The decision to have a cap of three years should be explained, as it is stricter than Canada's 14- and 15-year-olds, who have a 5-year cap. There are three reasons for this. The figure is in the 2–4-year range typical of the United States and is consistent with the Texan rule. The Law Commission's suggested discretion shall apply if the gap is not more than three years and the exemption proposed here would be based on the presumption of protection for all under eighteen, and would be applied to sixteen- and seventeen-year-olds. In Canada, by contrast, those of the same age are adults with respect to the general offences and have their own offence of exploitation. The more reasonable response to eighteen remaining the age of consent is a tighter gap. This approach is the author's and should be verified with the source.

THE PROPOSED MODEL

The proposed reform is set out in this Part. It begins with the design goals and the function of the proposal, details its scope, form, process and reporting system, and ends with a proposed statutory text.

Design Objectives and Contribution: The elements of the proposal correspond with that suggestion, which is why the contribution of the commentaries should be sought elsewhere, viz in a published commentary that suggests an exception for a complainant who is at least sixteen years old, and a maximum age difference of three years, and no force, coercion or abuse of trust. It sits in three aspects: the process for determining when the exemption applies, the way that the reporting requirement in section 19 is treated and the interaction with the Juvenile Justice (Care and Protection of Children) Act 2015.

The design is influenced by two constraints of Part II. The Parliamentary Standing Committee argued that an adolescent exception would draw the trial's focus to the victim's actions, so this should be determined by the documents and a statement recorded by the child, without having to examine the child about her actions. [46]The presumption in section 29 runs against any defence the accused has to prove, and therefore the exemption is one of exclusion and not one of defence.[47]

[46] *Probhat Purkait @ Provat v State of West Bengal* (2023) LiveLaw (Cal) 322; Report No 243: The Protection of Children from Sexual Offences Bill, 2011 (n 17)
[47] Protection of Children from Sexual Offences Act 2012, s 29

Scope and Conditions: The exemption would cover offences listed in sections 3, 4, 7 and 8, which are all sexual assault offences, and also penetrative sexual assault. It would not be applicable to the aggravated types in sections 5, 6, 9 and 10. [48]The conditions are: the ages of both are at least sixteen; the difference in their ages does not exceed three years; there was no force, deception or inducement; and there was no relationship of trust, authority, dependency or custody between them. The conditions are: both aged at least sixteen; difference of age not more than three years; no force, deception or inducement; and no relationship of trust, authority, dependency or custody between them.

The relationships of trust and authority should be listed and not left to interpretation. A school, tuition or religious setting is not clearly included in a general term. The draft therefore names parents, guardians and relatives; teachers, tutors, coaches and religious instructors; employers; carers and medical practitioners; and persons in charge of an institution in which the child resides or is detained, and it does so by reference to the categories already used in section 5[49]. The provision is gender-neutral, because POCSO itself is.

Form: An Exclusion, Not a Defence: The proposal is based on exemptions being stated as offences being excluded, rather than being affirmative defences. After the FIR and the arrest, a defence leaves the accused to establish and prove the content of the section 29 presumption. An exclusion applies to the definition of the offence, and therefore when the conditions of the offence are satisfied, none can be made out by virtue of the covered sections and the presumption is not engaged[50]. If the Special Court is uncertain whether the conditions of coercion or of relationships of authority are satisfied, then the exclusion is not in operation. This allocation is a preference for protection, and addresses the worry that an exemption would be abused.

Procedure: Screening at the Front End: The exemption may be of little help if it were not taken into account before being run through. The idea of the proposal is thus a screening mechanism at registration level. The officer registers the information if, upon receipt, it appears on its face that facts are being disclosed which would fall under the exemption. Upon registering the information, the officer shall not arrest until the information has been

[48] Protection of Children from Sexual Offences Act 2012, ss 3–10
[49] Protection of Children from Sexual Offences Act 2012, s 5
[50] Protection of Children from Sexual Offences Act 2012, s 29

evaluated by the Child Welfare Committee within seven days; the officer is exempt from the requirement to make an arrest and the requirement to register the information to the extent that the requirement is satisfied by the registration. With the assistance of a support person, the Committee speaks to the child in private, takes the documents referred to in section 94 of the Juvenile Justice Act 2015 and records its reasons[51]. An arrest is still valid when the officer writes the reasons for the arrest if he or she has reason to believe the child is at risk of harm or the person is likely to interfere with the child or the investigation. If the Special Court decides the exclusion applies, then the case closes and is closed on a prima facie basis on the documentary evidence, as the Supreme Court did endorse in *Anurudh* that age should be approached on a prima facie basis[52]. If not, the investigation continues as usual.

Reporting under Section 19: The duty in Section 19 to report remains in place, but a report in a situation of a possible close-in-age case is forwarded to the Child Welfare Committee for assessment prior to arrest. Doctors, teachers and family members, who now have to report any such relationship to the police, are now protected from liability under section 21[53]. This covers the situation of doctors, teachers and family members who must now report any such relationship to the police. The proposal also relies on the existing Section 22, which imposes punishment on a complainant for making a false complaint with the motive of humiliating, extorting or threatening[54], and would implement the second limb of Anurudh, which is the mechanism to prosecute the people who use the law for settling scores.[55]

Interaction with the Juvenile Justice Act: As per Section 34 of POCSO, the exclusion would be applicable to an accused child as well, which means that if a boy turns 17 and gets into the age bracket, he would not be tried as an adult under the provisions of Section 15 and Section 18(3) of the Juvenile Justice Act[56]. This eliminates the maximum exposure described in the introduction.

Assessment: The model eliminates the criminal process from consensual relationships between people of a similar age at the initial stage, not at the final stage. It maintains the 18-

[51] Juvenile Justice (Care and Protection of Children) Act 2015, s 94
[52] *State of Uttar Pradesh v Anurudh & Anr* (2026) INSC 47
[53] Protection of Children from Sexual Offences Act 2012, ss 19 and 21
[54] Protection of Children from Sexual Offences Act 2012, s 22
[55] *State of Uttar Pradesh v Anurudh & Anr* (2026) INSC 47
[56] Protection of Children from Sexual Offences Act 2012, s 34; Juvenile Justice (Care and Protection of Children) Act 2015, ss 15 and 18(3)

year-old age of consent. It continues to have section 19, section 29 and aggravated offences for all cases outside its conditions. It is narrow in age, in gap and in relationship, and it resolves doubt in favour of the child.

COUNTER-ARGUMENTS

Any such proposal provokes principled objections. This Part presents the top 6 and addresses each.

The Risk of Exploitation: The main argument is that lowering the threshold would put children at risk, particularly girls, of being coerced and trafficked. The Supreme Court has stated that a sexual act with a fourteen-year-old must not be considered non-exploitative, and the Law Commission has expressed concerns about exploitation and child marriage[57]; in response, the floor of the proposal has been raised from fourteen to sixteen. It has been made to exclude all forms of coercion, inducement, deception and abuse of position, and doubt is interpreted against the inclusion. It cannot be used by an adult for a sixteen-year-old, and a teacher, relative or employer cannot use it at all.

The Gap between Conviction and Reporting: Another argument is that if it is an exemption at the trial stage, then the FIR would not be invalidated, and it is the process that is really the problem. This is right as a criticism of a defence, and that is why the proposal is an exception to the defence in a front-end screening with changed reporting requirements. The harm from the process is dealt with at the point where it arises.

The three-year time cap is an arbitrary restriction: Any restriction on numbers can be said to be arbitrary. The three years figure was explained in Part VI: it falls within the range of other jurisdictions, it is the Texan figure, and it is stated to be the figure in the Law Commission's own proposed discretion. That's tighter than five years in Canada because the exemption is part of a system that ensures that the age of consent is eighteen, which is a recognised legislative technique and one that can be justified on that basis.

Judicial Legislation: This is not a court exception that can be raised against this proposal, as this is a legislative proposal. Courts have said that they don't have the power to make the exception. The Delhi High Court appears to have held that there cannot be a 'near-majority,

[57] *In re Right to Privacy of Adolescents* (2025) INSC 778

consensual relationship' exception, and so has the Supreme Court, which has held that there is no concept of 'non-exploitative sexual acts with a 14-year-old' except what Parliament can create[58].

The Definition of Authority and Trust: The exception for relations of authority and trust is only as solid as the definition is. A general phrase cannot be applied to a school, tuition or religious establishment. The draft thus specifies the relationships, which can be extended by rules. The remaining risk is that if an influence relationship isn't in the list, it isn't a relationship of influence. The intention of clause (1)(c) (which excludes any abuse of position) is to catch those cases.

The Standing Committee's Concern: The objection of the Parliamentary Standing Committee was that an exception would mean putting the conduct of the victim on trial. The proposal addresses this issue by determining the exclusion based on documents and a recorded statement, and by banning all questions to the child concerning her sexual conduct. The only concern was with the form of the exception in 2011, and the proposed form is designed to respond to that concern.

Assessment: All the objections are minor and do not invalidate the proposal, but each limits the design. The exploitation objection is used to justify the floor, gap and exclusions. The front-end screening is discussed in the process objection. The Standing Committee's concern is why the decision is in a documentary form. The empirical uncertainty is the residual uncertainty: The data in Part I indicate that a significant number of prosecutions are from relationships, but they do not indicate what that number would be if the conditions in section 3A were in place. The question should be tested once a set of pilot data is available; the argument of the article is that a case for legislative reform does not require answering the question first.

CONCLUSION

The purpose of POCSO cannot be doubted: the protection of children from sexual exploitation. The problem is that a statute that treats all people under 18 as 'children' and that renders consent irrelevant cannot distinguish an adult abuser from a young person in a

[58] *Sunny v State NCT of Delhi & Anr* (2026) Crl MC 3832/2025; *In re Right to Privacy of Adolescents* (2025) INSC 778

consensual relationship with another who is a similar age. The reporting duty of the Act and the presumption of guilt and the overriding nature of the Act have been felt at the beginning of the process and not only at the end.

Those who have recognised the issue have responded by keeping this structure intact. In some cases, High Courts overturn proceedings and in others, they do not, and the decision is based on the forum, the bench and the accident of settlement. The Supreme Court upheld the conviction given in *Right to Privacy of Adolescents*, but did not give a sentence under Article 142 of the Constitution and emphasised the boundaries of what the court can do[59]. In *Anurudh,* it admitted that the Act was misapplied and sought the Union to contemplate a Romeo-Juliet clause, but it was a question of jurisdiction in that case[60]. The Law Commission adopted the age of consent, which is eighteen, and proposed guided sentencing discretion. None of these answers comes after the arrest and only comes after the report and the registration of the FIR, at the time when the law first meets the adolescent couple, parent, doctor or the police.

Hence, the article has suggested that this certainty can only be provided by legislation. It suggests a specific limitation of liability at age sixteen instead of the age eighteen currently stipulated, a maximum age difference of three years, and an absolute liability exclusion in case of force, deception, inducement, trust, authority, dependency or custody. It also links the exclusion with the front-end screening of the Child Welfare Committee and changes the reporting responsibility under section 19 to make the protection work prior to arrest, not at trial. It is intended as an exclusion and not a defence, as the section 29 presumption is not drawn, and the conduct is determined on documents and in a recorded statement, not at trial with the child. These features resolve the concerns of the Parliamentary Standing Committee that led to the removal of the adolescent exception in 2011 and the Law Commission that disagreed with a more sweeping reform in 2023.

The range of the claims of the article is limited. It is based on the empirical interpretation of case studies carried out in selected States, which reveal that a significant proportion of prosecutions are linked to relationships, but do not indicate how many would meet the conditions proposed. But the constitutional question is not settled: there is no precedent

[59] *In re Right to Privacy of Adolescents* (2025) INSC 778
[60] *State of Uttar Pradesh v Anurudh & Anr* (2026) INSC 47

which demonstrates that the present threshold is invalid, and the arguments invoked based on articles 14 and 21 do not force a legislative change. The design considerations, such as the period of three years and the seven days for screening, would be better informed by testing against data, and the obvious next step would be an investigation of the cases that would be eligible to screen.

This is not a call for Parliament to reduce the age of consent, and the proposal doesn't call for it. What it seeks is more limited; namely, that the law acknowledges and characterises the difference that these courts, the Law Commission and the Supreme Court have referred to, and that it does so in the form of a rule, not by simply applying mercy case by case. The Supreme Court has indicated the remedy. The issue for Parliament is not whether the current format is too broad, but how to amend it.