

EVALUATING THE EFFICACY OF ROMEO - JULIET LAWS IN INDIA

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Abstract

This paper explores the complexities surrounding the age of consent in India, which the Protection of Children from Sexual Offences Act (POCSO) raised from 16 to 18 years. Intended to protect children from sexual exploitation, this law has inadvertently led to the criminalization of consensual relationships involving adolescents, with many cases initiated by parents against their will. Despite judicial awareness and empirical evidence of the issue, the legislature firmly rejects lowering the age of consent. The paper suggests a “close-age gap exemption” or “Romeo-Juliet law,” which has been adopted in other jurisdictions, as a mitigating measure. This exemption would protect adolescents from prosecution if the age difference between them is within a specific threshold, typically 2-5 years. The paper argues that such an exemption, with a permissible age difference of 3 years and a minimum age of 16 years, would address socio-cultural challenges, legal contradictions and foster adolescent sexual agency, while aligning Indian law with globally accepted principles.

Keywords: consensual relationships, age of consent, POCSO, close-age gap exemption,

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Introduction

The Protection of Children from Sexual Offences Act, passed in 2012, is a landmark legislation that provides a comprehensive legal framework to address sexual offenses against children. Among the many significant provisions introduced by POCSO, one was increasing the age of consent from 16 to 18 years. However, while envisioned to protect the child from sexual exploitation, this provision has had the inadvertent effect of criminalising consensual sexual relations involving adolescents under the age of 18.

An analysis by NGO Enfold India, of POCSO cases from Assam, Maharashtra and West Bengal had revealed that 24.3% of all POCSO cases studied were “romantic” cases, between consenting adolescents. 80.2% of cases had been lodged by the girl’s parents, when she pursued a relationship against their will. In such cases, a case of statutory rape is often lodged against the boy, while the girl is treated as a victim incapable of giving consent – thus, denying the sexual autonomy of both.

This social reality of adolescents being sexually active has led to at least 17 High Courts across the country quashing cases of consensual relationships under the POCSO Act ((The Hindu, 2025). Courts have alluded to the “biosocial dynamics” of young adult relationships in observing the need for a more flexible law on the age of consent (Vijayalakshmi v. State, 2021). However, in its 283rd report, the Law Commission of India (LCI) categorically ruled out any possibility of lowering the age of consent to 16 years, despite acknowledging the miscarriage of justice that occurs in cases of consensual relations involving adolescents (Law Commission of India, 2017).

One way to resolve this deadlock between empirical evidence, judicial opinion and legislative reluctance to change the age of consent, is the “close-age gap exemption”, colloquially referred to as the “Romeo-Juliet law”. This exemption would protect the boy from arrest if the age difference between the boy and the girl who have engaged in consensual sex is below a certain threshold; usually, between 2-5 years. It would apply to cases where both parties were minors, as well as where one party was a minor and one was an adult. This paper explores the jurisprudence around Romeo-Juliet laws from different global jurisdictions, and analyses its applicability within the unique socio-cultural context of India.

Age of Consent: per POCSO & other Laws

Evolution of the Law of Consent

The perception of children as “powerless,” “unknowing,” and “unable to consent” has shaped the understanding of sexual activity, where there is “a presumed lack of sexual knowledge” and “an inability to make or understand sexual decisions” (Kaye, 2005). This notion is central to the concept of “age of consent” which marks the minimum age at which someone is legally recognized as capable of consenting to sexual activity (Black, 1990). Fundamentally, age of consent rules exist to safeguard minors from exploitation. Adverse consequences may arise when individuals engage in sexual conduct before achieving the social and emotional maturity necessary for informed consent, rather than mere “willingness.” While some issues, such as sexually transmitted infections (STIs) and unintended pregnancies, are more prominently discussed and often the object of legislative attention (for example, changing laws with respect to abortion), other consequences such as diminished self-esteem, depression, and substance misuse, are usually kept away from public discourse due to their subjectivity and social stigmatisation (Mathews, 2011). The sexual exploitation of minors is intrinsically linked to unequal power dynamics between them and adult exploiters, leading to potential manipulation, control and dependency.

In India, this age stood at 16 for girls for over seven decades, remaining unchanged since 1940 (Pitre & Bandewar, 2025). However, a shift was observed with the enactment of the gender-neutral Protection of Children from Sexual Offences which raised this threshold to 18 years (POCSO) Act in 2012 (Protection of Children from Sexual Offences Act, 2012). This change mirrors the definition of a child set by the United Nations Convention on the Rights of the Child (UNCRC) 1990, which considers anyone under 18 a minor (UNCRC, 1989). Further tightening the framework, the Criminal Law Amendment Act of 2013 redefined underage penetrative sexual activity as “statutory rape”—a crime where consent simply does not matter (The Criminal Law (Amendment) Act, 2013). This is reflected in the Bharatiya Nyaya Sanhita, 2023 in Section 63 (d)(vi) (Bharatiya Nyaya Sanhita, 2023). The LCI’s 283rd report delineates multiple reasons as to why the age of consent should not be categorically lowered to 16 years, which reflects the evolution of the jurisprudence on this area; this paper critically engages with these reasons in the latter sections.

Contemporary Leanings of the Law

The POCSO Act defines and criminalises all sexual acts with minors. However, such stringent wording of the law overlooks nuances of inconsonance with the age of marriage, close-age relations, and consent. Thus, where two minors engage in a consensual sexual relationship, they paradoxically stand both as victims and perpetrators vis-à-vis each other, although ground-level reality results in boys being overwhelmingly treated as perpetrators and girls as victims. Conversely, this does not imply that girls cannot be implicated as perpetrators. While the law recognizes it, cases involving girls as perpetrators under POCSO are rare (Sekhar et al., n.d.). Societal perceptions, rooted in stereotypes that portray boys as willing participants and girls as incapable of coercion, contribute to this disparity. So, even when boys are the younger partners, they are rarely recognized as victims, leading to underreporting and leniency. Moreover, when girls are charged, they face disproportionately harsh scrutiny due to societal biases that deny their sexual agency.

This paradox is exemplified in same-sex relationships wherein two boys or two girls who are minors are in a consensual relationship as the perceived gender-based power imbalance is absent. However, it is effectively replaced by the additional stigma attached to homosexuality, which has a debilitating effect on adolescents wishing to pursue such relations voluntarily. In cases where one of the parties is a major, it is easier for the courts to place the older partner as a sexual predator, as done in the Bombay High Court case, although the relationship was purely consensual based out of a gay dating app (Samervel, 2022).

Additionally, the philosophical underpinning of the law of consent infantilizes adolescents as completely incapable of understanding the consequences of their acts. The Bombay High Court, in *Vijay Chand Dubey vs State of Maharashtra and Anr.*, recently reflected this reality when it ruled that a 14-year-old minor girl had ‘sufficient knowledge’ and ‘capacity’ to know the ‘full import of her actions’ (*Vijay Chand Dubey v. State of Maharashtra and Anr.*, 2025). The bench stressed that while the offences punishable under Sections 4, 6 and 8 of the POCSO Act are stringent, the same would not deter the Court from granting or refusing bail to secure the ends of justice. It further acknowledged the impact of detention periods on an adolescent male, favouring the release of

young offenders on bail pending trial so that the regressive influences of the jail environment can be avoided, keeping in mind the principle of best interest in the circumstances of a particular case.

While this paper agrees with the ratio of this case, the authors prefer the age threshold of 16 years as the minimum age required to give sexual consent. The Supreme Court, in *Tilku Alias Tilak Singh vs The State Of Uttarakhand*, concurs with the view of an age threshold of 16 to 18 years – referring to it as an “age of understanding as to what was right and wrong for her” (*Tilku Alias Tilak Singh v. The State Of Uttarakhand*, 2025).

Lastly, and importantly, a stringent law on consent prevents adolescents from exploring romance and sexuality, both of which are significant aspects of human development. As the Delhi High Court recently observed in *State vs. Hitesh*, “love is a fundamental human experience, and adolescents have the right to form emotional connections. The law should evolve to acknowledge and respect these relationships, as long as they are consensual and free from coercion” (*State v. Hitesh*, 2025). The court advocated for a compassionate approach that prioritizes understanding over punishment in cases involving adolescent love. Such an understanding involves a purposive interpretation of age of majority, which takes into account the circumstances of the cases and the views of the adolescent irrespective of minor technicalities over their age.

Thus, it is evident that in recent times, courts have displayed the tendency to recognize that the age of consent law, as it stands, effectively regulates non-exploitative sexual relationships, infantilizes young people and strips them of their autonomy.

Romeo-Juliet Laws

The Romeo-Juliet Law, inspired by the eponymous Shakespearean drama, emerged in the United States as a response to concerns about the criminalization of consensual teenage relationships (Close-in-Age Exemptions, n.d.). It is a legal measure that protects young people who engage in consensual sex, from being prosecuted as criminals for statutory rape, as long as both individuals are close in age.

The implementation and extent of the Romeo-Juliet Law differs widely amongst jurisdictions. In Canada, a close-age gap exemption is in place for sexual activity between fourteen- and fifteen-year-olds and a partner less than five years older (that is, up to nineteen years old), with another exemption of under two years for twelve- and thirteen-year-olds (with a partner up to the age of fourteen) (Hunt, 2009). Such exemptions are also common in the U.S.A., where at least forty-three states have effectively decriminalized sex between teenagers of similar ages (Cocca, 2004).

Table 1:

Age of consent, availability of close-in-age exemption, the year it was introduced, and its key features across various jurisdictions.

Country/ State	Age of Consent	Close-in-Age Exemption	Year Introduced	Key Details/ Exceptions
USA (Florida)	18	16-17-year-olds can engage with partners up to 23 years old	2007	Known as the Romeo and Juliet Law, prevents felony charges.
USA (Georgia)	16	Allows a 3-year age gap for minors aged 14-16	2006	Misdemeanor instead of felony for statutory rape.
Canada	16	- 14-15 years: Partner ≤ 5 years older	2006	Added to Criminal Code in 2006.
Japan	13 (national)	No formal close-in-age exemption	N/A	However, local ordinances raise the age to 16-18 in practice.
South Korea	16	No formal close-in-age exemption	N/A	Sexual activity with a minor below 16 is criminal.
Philippines	16	16-year-olds can consent to a partner within 3 years of age	2022	New law raised the age of consent from 12 to 16.
Australia (Tasmania)	17	- 15+ can consent if partner ≤ 5 years older	2001	Age similarity defenses in place.

Nevertheless, these laws are not without limitations. Firstly, the protections afforded by the Romeo-Juliet Law are contingent upon specific age gaps. If the difference between the individuals' ages exceeds the allowable range, the older party may face prosecution despite mutual consent. Secondly, the law strictly applies to consensual relationships. Non-consensual acts fall entirely outside the law's purview, ensuring that perpetrators of sexual offences are penalised. However, the mere focus on age without looking at the totality of circumstances in such relationships, may mask realities of how informed an adolescent's consent truly was (Pitre & Lingam, 2021). Instead of focusing only on age, primacy needs to be given to the minor's testimony, with the Romeo-Juliet law merely enabling and contextualising the same.

Applicability of Romeo-Juliet Laws In India

The idea of a Romeo-Juliet law in India is not unheard of. In a 2019 ruling, the Madras High Court had called for a close-age gap exception of five years (Madras High Court, Crim. App. No. 490 of 2018, 2019). However, all the pros and cons of such an exception must be viewed within the unique context of India. This section explores two broad categories of challenges to the applicability of the exemption in India— firstly, the social, economic and cultural challenges; secondly, the legal challenges.

Social, Economic And Cultural Challenges

The Marriage Question

While the age of consent is 18 across genders, the minimum legal age for marriage is 18 for women and 21 for men. The taboo around sex outside marriage in India has led to a conflation of the two, tracing back to the 84th LCI Report, 1980, which recommended increasing the age of consent to 18 years primarily because “marriage with a girl below 18 years is prohibited sexual intercourse with a girl below 18 years should also be prohibited” (Madras High Court, Crim. App. No. 490 of 2018, 2019). This reveals a protectionist and conservative attitude by lawmakers, buttressing social norms of chastity and virginity before marriage. The LCI's 283rd Report in 2023 similarly stated that lowering the age of consent would dial back years of progress in the fight against child marriage.

However, the social reality is that adolescents are channelled into early marriage not because they have sex but because sex is socially sought to be contained within marriage in India (Chaudhary, 2024). Stringent laws of ‘minimum age’ therefore end up restricting the negotiating power of young girls to enter marriages of their own choice (Agnes, 2013). When an adolescent relationship is discovered, families often resort to marriage as a means of avoiding social stigma and potential legal repercussions. By introducing a close-age gap exemption, the fear of criminal prosecution would be alleviated, reducing the pressure on families to push adolescents into early marriage to ‘legitimize’ the relationship. Thus, far from increasing child marriage, a Romeo-Juliet exemption could serve to mitigate one of its driving factors.

Further, the exceptional nature of the provision, dependent on the adolescent’s own testimony and judicial discretion, would ensure that parents cannot use it to justify a forced child marriage. Parental and community-based pressure could be counterbalanced by prioritising the best interest of the adolescent in the particular circumstances of each case, with due priority given to the adolescent’s declaration of consent, or lack thereof.

The Health Question

Opponents of lowering the age of consent note that adolescents are often unaware of the consequences of sexual intercourse, and allowing minors to pursue sexual relations would result in unmitigated teenage pregnancies and STIs. However, data from the National Family Health Survey reveals that 6.8% Indian women were pregnant or mothers between the ages of 15-19, even with the age of consent being 18 (Ministry of Health and Family Welfare, 2021). The argument of low awareness amongst adolescents evades the question of spreading greater sexual and reproductive health services amongst them, which is a declared objective of the National Adolescent Health Programme (Ministry of Health and Family Welfare, 2014). It must also be noted that provisions in POCSO, which make it mandatory for doctors, parents, and all private citizens to report sexual activity of adolescents to the police, often prevent adolescents from seeking reproductive healthcare out of fear. Furthermore, medical practitioners may refuse to provide services to adolescents who approach them for sexual-reproductive healthcare, deterred by potential legal consequences.

More importantly, the law on the age of consent ignores the reality of sexual understanding developing gradually in adolescents through exploration and experiences, rather than overnight when they turn 18. Adding a Romeo-Juliet clause to the law could mitigate the fear of prosecution, allowing adolescents to explore consensual sexual relations and better understand their bodies. It would also solve the legal paradox of denying the existence of adolescent sexuality while simultaneously providing sexual and reproductive health services to them.

The Caste and Religion Question

Among the 80% cases of POCSO that were filed by parents in the study by Enfold India, a significant number were cases where the adolescent couple was inter-caste or inter-religious. It is important to note that consensual relations between adolescents from compatible caste and religious backgrounds are often encouraged and solemnised into marriage by parents; while POCSO is invoked when the couple violates social boundaries. In this way, the age of consent law is weaponised to persecute some adolescent couples, regardless of the aim of protecting children from sexual exploitation. This entrenches the societal status quo, while policing young people's sexuality.

A close-age gap exemption could provide a leeway for young inter-caste and inter-religious couples to pursue consensual relationships without the threat of their families persecuting them on blanket legal grounds using POCSO.

The Internet Question

One reason cited by the LCI's 283rd report to keep the age of consent as 18, was the proliferation of internet access amongst young people, with its concurrent rise in instances of grooming, online child abuse and cyberbullying. The report noted that children are at high risk of exploitation, especially in the digital age.

While these risks are real, it is unwise to deny the sexual liberation and greater sexual awareness among adolescents – a by-product of the internet revolution in India. It is unrealistic to expect adolescents who have access to the internet to stay completely clear of all sexual content available on it. The more

sustainable course of action would be to empower and educate them about sexual and reproductive health, as well as navigating the internet safely.

A close-age gap exception would substantiate the point that not all instances of exploring sexuality by adolescents are exploitative. Moreover, it would account for cases of grooming, where a significantly older adult enters into an exploitative relationship with a minor. The very nomenclature of the close-age gap exception implies that it applies only when both parties are within a similar age range, and concomitantly, at a similar level of emotional maturity and sexual awareness. Having a cap of 3 years on the permissible close-age gap, as well as a minimum threshold age of 16 years for an adolescent to claim this exception, would exclude cases of older adults manipulating or coercing vulnerable adolescents into ‘consenting’ to a relationship without the adolescent possessing required information and awareness to give such a consent.

Legal Challenges

The Double Standard in the JJ and POCSO Acts

As per the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act), an adolescent between the ages of 16 and 18 can be tried as an adult for committing ‘heinous crimes’, including rape. This means that for criminal justice purposes, the State has carved out an exception to treat adolescents as adults on a case-to-case basis, recognising their mental capacity to commit crimes. But, when it comes to the same adolescents’ sexual agency, the law treats them as a homogenous group, denying their capacity to consent as “totally meaningless”. This arbitrary classification refuses to recognise adolescents’ evolving capacities to progressively exercise their rights, as laid down in the UNCRC (United Nations Committee on the Rights of the Child, 2013).

A close-age gap exemption would reconcile the JJ Act and the POCSO Act, in terms of following a case-by-case and individualised approach as to when adolescents should be treated as children in need of protection, and when they should be treated as young adults capable of making their own decisions.

Concerns of ‘Revictimising the Victim’

The LCI’s 283rd Report expressed concerns about a lower age of consent

resulting in greater emphasis being placed on the “victim’s” conduct in a POCSO case, in order to gauge genuine consent by minors. This “revictimisation of the victim” would cause them psychological distress. While this is a significant concern, in practice, cross-examination of the victim is a routine part of POCSO trials. In order to address the harm caused by insensitive investigations, the Supreme Court has issued comprehensive guidelines in multiple cases to ensure the survivor’s well-being (*Virender v. State*, 2009; *State of Karnataka v. Shivanna*, 2014; *Sakshi v. Union of India*, 2004). Moreover, the POCSO Act itself mandates that the court create a “child-friendly atmosphere” for cross-examination of victims, with section 45(1) granting the Court punitive powers in case the prescribed procedure is not followed.

Therefore, a close-age gap exemption should not significantly increase psychological distress to the “victim” in a consensual relationship, especially when the majority of POCSO cases that are quashed by courts, are revealed as being consensual relations by the victim’s own refusal to testify against her partner.

Conclusion

In light of the above examination of global jurisprudence and analysis of the Indian scenario, we argue that a close-age gap exemption should be introduced in the POCSO Act with a permissible age difference of 3 years, and a minimum age threshold of 16 years. This would be consistent with the age of consent that was followed in India until 2012, while the permissible age difference is an average of most global jurisdictions that have such provisions between 2-5 years. While this would not be a panacea for decriminalising consensual adolescent relationships, it would be a starting step towards establishing adolescent sexual agency.

The introduction of a close-age gap exception must necessarily be accompanied by compulsory, scientifically sound and socially relevant sex education for adolescents in school. This must include information about safe sexual practices, STIs/STDs and contraception, as well as information about government schemes for adolescent healthcare. Mental health counselling services respecting the confidentiality of the adolescent should also be introduced in schools, to provide an outlet for adolescents pursuing romantic and/or sexual relationships to seek help from adults without fearing consequences from

conservative families. Similar education and counselling programmes must also be conducted for adolescents who are out of school, in community health programmes and Anganwadi centres among other feasible locations.

Education should not be restricted to the adolescents themselves; medical practitioners and sexual-reproductive healthcare providers must undergo sensitisation to provide safe services to adolescents, without any preconceived social biases. The fear of legal repercussions arising out of the mandatory reporting provisions in the POCSO Act can be mitigated by providing an exception to the clause, to respect the anonymity of an adolescent over the age of 16 who explicitly asks for such anonymity when approaching a healthcare provider.

Ultimately, a close-age gap exception is envisioned to offer protection to inter-caste and inter-religious couples, reconcile contradictions in existing laws governing minors, provide a standpoint to discuss adolescent sexual and reproductive health and in the process, align Indian law further with the UNCRC principles.

Declaration of Interests

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