



## **COURTS CAUGHT IN EMOTION AND STATUTES: THE JUDICIAL STRUGGLE IN ADOLESCENT ROMANTIC CASES**

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### **INTRODUCTION**

This Paper examines the intricate legal and societal dynamics surrounding the Protection of Children From Sexual Offences (POCSO) Act,<sup>1</sup> particularly in the case where the victim and the accused subsequently marry. While the POCSO Act establishes a stringent framework for child protection, designating offences as non-compoundable and crimes against society, judicial interpretation, especially by the Supreme Court's willingness to exercise extraordinary powers to prioritise the long term welfare and family stability of the victim, particularly when the victim has attained majority and voluntarily entered into marriage, often with children from the union. This approach highlights the inherent tension between strict legal mandates and the complex human realities that emerge post-offence, presenting significant ethical and societal dilemmas. The analysis underscores a shift in the interpretation of the "Best interest of the child" to encompass the holistic well-being of the now-adult victim and her established family unit, while also pointing to systemic failures in victim support that necessitate such judicial interventions.

### **RESEARCH METHODOLOGY**

This research adopts a mixed-method approach, combining doctrinal legal analysis with empirical data interpretation to examine the evolving judicial and legislative responses to minor-adult romantic and marital relationships, particularly in light of the POCSO Act, 2012 and the Prohibition of Child Marriage Act(PCMA).<sup>2</sup>

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<sup>1</sup> Protection of Children from Sexual Offences Act 2012(India)

<sup>2</sup> The Prohibition of Child Marriage Act 2006 (India)

**Nature of Research:** The study is qualitative and exploratory, grounded in doctrinal analysis, and integrates quantitative data to understand legal trends and societal patterns. It investigates how statutory protection for minors interacts with real-life outcomes in cases involving marriage and consensual adolescent relationships.

### Sources of Data

**Primary Legal Sources:** POCSO Act, 2012, Indian Penal Code,<sup>3</sup> Constitution of India.<sup>4</sup>

**Judicial decisions:** Supreme Court and High Court cases, including *Independent Thought v. Union of India*,<sup>5</sup> *Sabari v. Inspector of Police*,<sup>6</sup> *Vijalakshmi v. State*,<sup>7</sup> *Mahesh Mukrund Patel v. State of UP*<sup>8</sup> and others.

**Empirical and Statistical Source:** National Crime Records Bureau (NCRB), *Crime in India – 2022*. This official annual report by NCRB provides detailed statistical data on crimes against children, including offences under the POCSO Act. It includes state-wise and age-wise analysis of sexual offences and trends in FIR registration and convictions.

**UNICEF India:** *Child Marriage and Adolescent Data*, this global database includes updated statistics on child marriage prevalence, education levels, and reproductive health indicators for adolescents in India. It provides a comparative global and national overview.

**Open Government Data Platform (India):** *State/UT-wise Child Marriage Cases (2013–2017)*, this government dataset shows state-wise distribution of registered cases under the Prohibition of Child Marriage Act (PCMA), highlighting enforcement trends and reporting levels.

**Secondary Sources:** Peer-reviewed Journals, Legal Commentaries and media analysis from *The Hindu*, *LiveLaw*, *SCC Online*, *Bar & Bench*. Law Commission Reports (notably the 262nd Report advocating a “close-in-age” exception).

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<sup>3</sup> Indian Penal Code 1860, s 375, s 376

<sup>4</sup> Constitution of India 1950, art 21, art 142

<sup>5</sup> *Independent Thought v Union of India* (2017) 10 SCC 800 (SC)

<sup>6</sup> *Sabari v Inspector of Police* 2019 SCC OnLine Mad 9181 (Madras HC)

<sup>7</sup> *Vijayalakshmi v State* 2021 SCC OnLine Mad 865 (Madras HC)

<sup>8</sup> *Mahesh Mukund Patel v State of Uttar Pradesh* (2025) (Allahabad HC)

**Method of Analysis –**

**Doctrinal Analysis:** In-depth examination of statutory provision and judicial reasoning. Thematic evaluation of court decisions, especially on whether they prioritise statutory compliance or victims' rehabilitation and express autonomy.

**Empirical Analysis:** Data mapping of POCSO prosecutions involving child marriages and consensual adolescent relationships (disaggregated by age, region, outcome). Case trajectory tracing of minor girls married at 14-17 and now aged 22+: Assessing impact on education, mental health, social status and court cases. Use of quantitative summaries and qualitative narratives to contextualise judicial outcomes.

**Interdisciplinary Integration:** Psychological perspectives on adolescent agency, trauma, and grooming. Sociological insights into patriarchy, poverty, caste, and religion in sustaining child marriages.

**Ethical Considerations:** All secondary data used respects the privacy and dignity of survivors. In discussing real-life cases, pseudonyms or anonymised identifiers are used where applicable.

**Purpose of Methodology Update:** The inclusion of empirical data provides a grounded understanding of how child marriage laws and POCSO operate in practice, not just in statutes and judgments, but in the lived experiences of girls who transitioned from minor wives to adult women within the Indian socio-legal framework.

**REVIEW OF LITERATURE**

**Statutory Framework and Legislative Intent:** The POCSO Act was enacted to provide a strict liability regime for sexual acts involving minors. Scholars such as Swagata Raha\* and Anindita Pattanayak critique its overreach in cases involving consensual adolescent relationships (The Hindu, 2025). The PCMA (2006) aims to prevent child marriage but allows for “voidable” status rather than automatic nullity, reflecting historical ambivalence.

**Judicial Critique and Interpretive Flexibility:** Sabari v. Inspector of Police 2019 and Vijayalakshmi v. State 2021, Madras High Court cautions against criminalising adolescent

consensual sex. *Kadesh v. State of Karnataka*<sup>9</sup> and *Susham Darjee v. State of Sikkim*<sup>10</sup> reveal the use of discretion in cases of love-based elopements where coercion isn't evident.

The Supreme Court in *Independent Thought v. Union of India* (2017) extended the reach of POCSO to criminalise marital rape of minor girls, confirming that marriage is no defence under child protection law.

**Comparative and International Perspectives:** The Law Commission's 262<sup>nd</sup> Report<sup>11</sup> recommends introducing a 'Romeo-Juliet Clause' to decriminalise consensual sex between adolescents close in age. The UN Committee on the Rights of the Child<sup>12</sup> advises states to avoid criminalising adolescents for consensual non-exploitative sexual activity. Comparative age of consent laws from countries like Japan, Germany and Bangladesh have been cited to argue for contextual flexibility in India.

**Sociological and Psychological Perspectives:** Scholars like Flavia Agnes have argued for greater attention to the minor's "agency" and socio-emotional maturity. Psychological literature highlights the dangers of grooming and coercion, but also acknowledges that criminal prosecution can retraumatize minors in non-abusive romantic relationships.

**Media and Civil Society Reports:** Reports from the Kailash Satyarthi Foundation and news stories document the rise in child marriages post-COVID and legal consequences faced by young men in consensual elopements. Articles in *The Hindu*, *Indian Express*, and *LiveLaw* illustrate how courts are increasingly divided, some uphold strict application of POCSO, while others favour rehabilitation and family preservation when the minor becomes a consenting adult.

## LEGAL FRAMEWORK AND ITS INHERENT CONFLICT

The bedrock of child protection in India is built upon the POCSO Act and the PCMA.

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<sup>9</sup> *Kadesh v State of Karnataka* 2013 SCC OnLine Kar 7220 (Karnataka HC)

<sup>10</sup> *Susham Darjee v State of Sikkim* (2025) (Sikkim HC)

<sup>11</sup> Law Commission of India, 262nd Report on the Death Penalty (Government of India 2015)

<sup>12</sup> UN Committee on the Rights of the Child, General Comment No 20 on the Implementation of the Rights of the Child During Adolescence (6 December 2016) UN Doc CRC/C/GC/20

**POCSO Act, 2012:** This Act defines a child<sup>13</sup> as any person below 18 years of age. Critically, it operates on the principle that a minor cannot give "consent" for sexual activity.<sup>14</sup> Any sexual act with a minor is deemed an offence, making the accused liable for severe penalties. The intent behind this is to provide an absolute shield to children against sexual exploitation, recognising their inherent vulnerability and lack of mature judgment.

**Prohibition of Child Marriage Act, 2006:** This Act criminalises child marriage and makes such marriages voidable<sup>15</sup> at the option of the contracting party who was a child. It also prescribes punishment for those who solemnise, promote, or permit child marriages. The underlying objective is to protect minors from the physical, emotional, and social harms associated with early marriage.

The conflict arises when these two stringent laws confront a situation where an adult-minor relationship has culminated in marriage. While the POCSO Act criminalises the sexual relationship, and the PCMA deems the marriage voidable, the reality on the ground often involves the minor, upon attaining majority, expressing a desire to continue the marriage or live with the adult partner.

### **JUDICIAL INTERPRETATION: THE COURT'S DILEMMA**

Indian courts frequently encounter cases where a minor girl, often between 16 and 18 years of age, elopes with an adult male, and they subsequently marry. When the police act on a complaint, usually from the girl's parents, the male partner is booked under POCSO and PCMA. The challenge arises when the girl, either immediately or after attaining majority, stated before the court that she married out of her own will and wishes to live with her husband.

**Age of Discretion vs Statutory Age:** Historically, some High Courts have shown a tendency to consider the "age of discretion" In certain cases, particularly when the minor expresses a clear desire to live with the partner and appears to have made an informed choice. However, this often conflicts directly with the absolute nature of the POCSO Act, which makes consent irrelevant below 18. Madras High Court Rulings: The Madras High Court had, in several

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<sup>13</sup> Section 2(d) defines a child as anyone under the age of 18.

<sup>14</sup> Finegan Law, 'Colorado Age of Consent Laws' (Finegan Law Firm, 10 November 2024)

<https://fineganlaw.com/colorado-age-of-consent-laws/> accessed 26 July 2025

<sup>15</sup> Prohibition of Child marriage Act, 2006, s 3

instances, expressed concern about the blanket criminalisation of consensual relationships between adolescents under POCSO.

*Sabari v. Inspector of police*, in this case, the Madras High Court observed that relationships amongst teenagers or with slightly older persons were not unnatural but a result of natural biological attraction, and recommended that the age of consent be reduced to 16 years. *Vijayalakshmi v. State Rep.* By the inspector of police, the Madras High Court again observed that punishing an adolescent boy who enters into a relationship with a minor girl was never the objective of the POCSO Act, and that applying POCSO in such a case could lead to irreversible damage to the reputation and livelihood of the youth.<sup>16</sup>

**Other High Courts Observation:** Other High Courts, including the Bombay High Court, the Kerala High Court, and the Himachal Pradesh High Court, have also acknowledged the complexities arising from applying POCSO to consensual relationships between adolescents, sometimes granting relief or expressing similar sentiments. They have indicated a need for a nuanced approach in cases where the minor appears to have made an informed choice and there's no evidence of exploitation. Supreme Court deliberation in *Nipun Saxena v. Union of India*.<sup>17</sup>

This ongoing public interest litigation (PIL) before the Supreme Court of India directly addresses the issue of the age of consent under POCSO. Senior advocate Indira Jaising, acting as *amicus curiae*, has argued for reading down the statutory age of consent from 18 to 16 years in cases of consensual sexual activity between adolescents, citing concerns about criminalising consensual relationships and infringing on constitutional rights. The union government, however, has consistently maintained that the age of consent should remain 18 to protect minors from sexual abuse and exploitation, stressing that this "bright-line rule" is crucial for child protection. While opposing a reduction in the statutory age, the centre has conceded that judicial discretion can be exercised on a case-by-case basis in instances of adolescent romantic and physical relationships.<sup>18</sup>

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<sup>16</sup> Times Now Digital, 'Carefully Considered Legislative Choice: What Centre Told SC on Bringing Down Age of Consent for Sex' (Times Now, 25 July 2025) <https://www.timesnownews.com/india/centre-says-age-of-consent-for-sex-cannot-be-lowered-from-18-years-article-152341860> accessed 26 July 2025

<sup>17</sup> *Nipun Saxena v Union of India* (2019) 2 SCC 703 (SC)

<sup>18</sup> Brahm Sareen, 'Punishing Adolescents in Love Was Not the Objective of POCSO Act' (Times of India – Law and Policy Blog, 7 May 2021) <https://timesofindia.indiatimes.com/readersblog/lawandpolicy/punishing-adolescents-in-love-was-not-the-objective-of-pocso-act-31678/> accessed 26 July 2025

**POCSO's Absolute Nature:** The POCSO Act defines a "child" as anyone below 18 years, and for any sexual act with a child, consent is legally irrelevant. This creates a strict liability offence. Age of discretion: Historically, and in certain other legal contexts, the Court have considered the "age of discretion," where a minor, particularly one nearing majority, is deemed mature enough to make certain informed decisions, including about their relationship. This concept often comes up in cases where a minor leaves home willingly with a partner and expresses a desire to live with them.

The ongoing debate centres on how to balance the imperative of protecting children from genuine sexual abuse and exploitation with the reality of consensual romantic relationships among adolescents, particularly those close to the age of majority. The discussion revolves around whether a "close-in-age" exception or greater judicial discretion in sentencing can be introduced without diluting the protective framework of POCSO.

In cases like *Jiten Bouri v. State of West Bengal*,<sup>19</sup> the Calcutta High Court permitted a minor girl to join her husband, stating that she had "reached the age of discretion to understand her welfare." Similarly, the Delhi High Court in *Manish Singh v. State, NCT Delhi*<sup>20</sup> held that if a girl around 17 years old runs away to join her lover, it's not an offence once she attains the age of discretion.<sup>21</sup>

**Balancing Protection and Lived Realities:** The Supreme Court, in landmark judgments, has reiterated the supremacy of the POCSO Act. For instance, in *Independent Thought v. Union of India* 2017, the Supreme Court held that sexual intercourse with a minor wife (under 18) constitutes rape under Section 375 of the Indian Penal Code,<sup>22</sup> thereby removing the marital exception for minors. This judgment significantly reinforced the absolute nature of child protection.

However, recent news reports highlight the ongoing tension. A recent article in *The Hindu*<sup>23</sup> (July 16, 2025) discusses a Supreme Court sentencing judgment in *In Re: Right to Privacy of*

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<sup>19</sup> II (2003) DMC 774

<sup>20</sup> I (2006) DMC 1

<sup>21</sup> Flavia Agnes, 'Consent, Age and Agency: Reflections on the Recent Delhi High Court Judgement on Minors and Marriage' (Kafila.online, 12 June 2012) <https://kafila.online/2012/06/12/consent-age-and-agency-reflections-on-the-recent-delhi-high-court-judgement-on-minors-and-marriage-flavia-agnes/> accessed 26 July 2025

<sup>22</sup> Indian Penal Code, 1860 s 375

<sup>23</sup> Swagata Raha and Anindita Pattanayak, 'The Issue with Criminalising All Adolescent Relationships' (The Hindu, 16 July 2025) <https://www.thehindu.com> accessed 26 July 2025

Adolescents,<sup>24</sup> where the Court used its extraordinary jurisdiction under Article 142 of the Indian Constitution<sup>25</sup> to not impose a sentence on a young man convicted under POCSO. The case involved a 14-year-old who married a 25-year-old and had a child, and her trauma stemmed more from legal proceedings than the relationship itself. This indicates a continuing struggle by the judiciary to reconcile legal structures with complex human situations.

**Voidable vs. Void ab initio:** The PCMA states that child marriages are "voidable" at the option of the child. However, section 12 of the PCMA<sup>26</sup> also outlines circumstances where a child marriage is "void ab initio" (void from the beginning), such as when a child is enticed, compelled by force, or sold for marriage. The Court must carefully discern the circumstances to determine the validity and consequences of such marriages. The Madhya Pradesh High Court recently held in a case, *Komal v. Mayaram*.<sup>27</sup> that a minor girl's marriage to an adult can constitute "cruelty", a ground for divorce under the Hindu Marriage Act, further illustrates the legal complexities. The concepts of "sexual consent in marriage where the girl is a minor are vastly different under Indian law, despite the historical and societal complexities that sometimes blur these lines.

## **COMPARISON: SEXUAL CONSENT IN MARRIAGE VS. CHILD MARRIAGE INVOLVING A MINOR GIRL**

**Sexual consent in marriage (between adults) vs. Child marriage (minor girl) -**

**Similarities (superficial/ contextual):**

**Societal Expectation of Sexual Relations:** In both scenarios, there can be a societal expectation or assumption that sexual relations will occur within the marital union. This is a deeply ingrained cultural norm in India.

**Private sphere:** Both are traditionally viewed as falling within the private sphere of a marriage, making external scrutiny difficult unless a complaint is filed.

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<sup>24</sup> 2025 INSC 778

<sup>25</sup> Indian Constitution 1950, art 142

<sup>26</sup> Prohibition of Child marriage Act, 2006, s 12

<sup>27</sup> 2024 MPHC IND 24245



**Potential for coercion:** while the legal framework differs, the potential for subtle or overt coercion can exist in both, though the nature and implications of that coercion are fundamentally distinct.

**Differences (Crucial and legal):** In essence, the fundamental difference lies in the legal capacity to consent. In adult marriage, consent is presumed to be possible and is legally relevant. In a child marriage involving a minor girl, her "consent" for sexual activity is legally null and void under the POCSO Act. The law prioritises the minor's protection above any perceived willingness or the social construct of marriage.<sup>1</sup> The ongoing debates about the age of consent (18 vs. 16) for "consensual adolescent relationships" highlight the societal and legal tension, but as of current law, 18 remains the non-negotiable threshold for sexual consent.

Feature	Sexual Consent in Marriage (Adults)	Sexual Consent in Child Marriage (Minor Girl)
Legal Status of Consent	Required and Ongoing: Ideally, explicit and ongoing consent is required for sexual activity between adult spouses. While marital rape was historically exempted (up to certain ages), the judiciary is increasingly emphasising the wife's bodily autonomy and right to refuse. The Supreme Court in <i>Independent Thought v. Union of India</i> (2017) removed the marital exception for wives under 18, and	Legally Irrelevant/Impossible: Under the POCSO Act, 2012, a minor (under 18 years) is legally deemed incapable of giving consent to sexual activity. Any sexual act with a minor, irrespective of their apparent willingness or the existence of a marriage, is considered a sexual offence (e.g., rape). The law presumes a lack of capacity due to age and vulnerability.

Feature	Sexual Consent in Marriage (Adults)	Sexual Consent in Child Marriage (Minor Girl)
	ongoing legal debates (as recently reported) aim to criminalise marital rape for all ages.	
<b>Legal Validity of Marriage</b>	Valid Marriage: The marriage is legally valid if both parties meet the age and other requirements of personal laws (e.g., Hindu Marriage Act, Special Marriage Act) and are consenting adults.	Voidable or Void ab initio: Under the Prohibition of Child Marriage Act (PCMA), 2006, a child marriage is voidable at the option of the child. In specific circumstances (e.g., where the child is trafficked, enticed, or sold for marriage), it can be void ab initio (void from the very beginning) under Section 12 of the PCMA. Regardless, it is an illegal union.
<b>Criminality of Sexual Act</b>	Potentially Criminal (Marital Rape Debate): While marital rape for adult wives is still largely un-criminalised as rape under Section 375 IPC (though actively debated in higher courts), it can be recognised as domestic	Criminal (POCSO Act): Any sexual activity with a minor girl, even if married, is a criminal offence under the POCSO Act, punishable with severe imprisonment. The relationship is considered a crime, not a marital right.

<b>Feature</b>	<b>Sexual Consent in Marriage (Adults)</b>	<b>Sexual Consent in Child Marriage (Minor Girl)</b>
	violence under the Protection of Women from Domestic Violence Act, 2005. The legal landscape is evolving towards criminalisation.	
<b>Autonomy and Agency</b>	Presumed Adult Autonomy: Adults are legally presumed to have the capacity for self - self-determination and to make choices regarding their bodies and relationships. Violations of this autonomy lead to criminal charges (e.g., Sexual assault, rape).	No legal autonomy for sexual consent: The law explicitly denies minors the capacity for " consent in sexual matters, recognising their vulnerability, developmental stage, and susceptibility to influence/ grooming. Their apparent " willingness " is not legally recognised as valid consent
<b>Purpose of Law</b>	To ensure equality, dignity and bodily autonomy within marriage, preventing abuse and coercion among adults.	To unequivocally protect children from sexual exploitation and abuse, irrespective of the context, and to prohibit harmful practices like child marriage.

<b>Feature</b>	<b>Sexual Consent in Marriage (Adults)</b>	<b>Sexual Consent in Child Marriage (Minor Girl)</b>
<b>Judicial Approach</b>	Courts increasingly affirm the right to bodily integrity and self-determination for adult spouses.	Courts are bound by POCSO to treat sexual acts with minors as criminal. While some High Courts have shown discretion in custody matters for close-in-age "romantic" relationships, the Supreme Court has consistently upheld the absolute nature of POCSO, especially in the context of sexual offences. The central government has also strongly stated in the Supreme Court that the age of consent cannot be lowered from 18.
<b>Victimization</b>	An adult wife facing marital rape is a victim of sexual violence.	A minor girl in a child marriage who engages in sexual activity is, by definition, a victim of sexual assault/rape under POCSO. The marriage does not legitimise the sexual act.
<b>Medical and Reproductive Rights</b>	Adult women have full access to MPT, contraception, and reproductive rights.	A minor may require judicial or parental consent for abortion under the MTP Act; medical

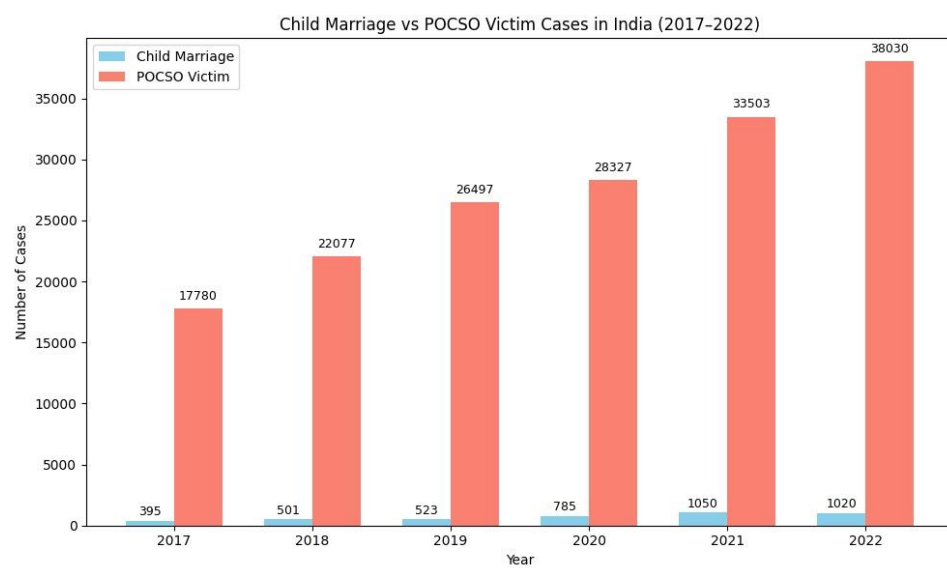
<b>Feature</b>	<b>Sexual Consent in Marriage (Adults)</b>	<b>Sexual Consent in Child Marriage (Minor Girl)</b>
		ethics complicate sexual/reproductive care.
<b>Judicial View on Consent</b>	Courts generally presume consent exists within adult marriage unless proved otherwise.	Courts disregard minors' consent entirely – POCSO overrides personal consent or marital consent.
<b>Exceptions to Marital Rape Law</b>	Exception 2 to Section 375 IPC (marital rape) applies to adult spouses	Exception struck down in Independent Thought v. Union of India (2017) if a girl is under 18
<b>Autonomy and Agency of Women</b>	An adult woman's autonomy and bodily integrity are constitutionally protected.	A minor girl's "consent" is not legally recognised; her autonomy is overridden by statutory protection.
<b>Social Legitimacy</b>	Socially accepted; no stigma in marital sexual relations	Child marriage is socially condemned in urban and modern contexts, though still tolerated in some rural areas

#### OPINION AND SUGGESTION

The key difference lies in the legally recognised capacity to consent. While adult women can consent to sex within marriage, minor girls cannot, even if they claim voluntary participation.

The law, through POCSO and judicial precedent, prioritises protection over autonomy for minors.

However, the blanket criminalisation of such a relationship creates dilemmas in real-life situations, especially when the minor is close to 18. The relationship is voluntary, or the couple is already married and socially accepted.



From 2017 to 2022, POCSO cases in India rose sharply from 17,780 to 38,030, while child marriage cases remained low, increasing only from 395 to 1,020. This sharp contrast suggests that many adolescent romantic or marital relationships are being prosecuted under POCSO, even when involving mutual consent.

Globally, 23.3% of women aged 20–24 were married before 18, showing that child marriage remains prevalent. However, India's low reporting of such cases indicates under-enforcement of child marriage laws and over-criminalisation through POCSO. The data highlights a growing need to distinguish consensual adolescent relationships from exploitative abuse in legal policy.

## JUDICIAL INSIGHT ON MINOR-ADULT ROMANTIC RELATIONSHIP

**Kadesh v. State of Karnataka:**<sup>28</sup> Ashwini, a minor girl, disappeared while returning from a temple fair with her family. After a delay of about a week, her parents filed a complaint, suspecting that Kadesh, who lived nearby and had allegedly teased her. Before, had eloped

<sup>28</sup> Kadesh v. State of Karnataka, 2013 SCC OnLine Kar 7220

with her. Later, it was revealed that they had engaged in sexual intercourse. The police booked the petitioner under:

- Section 366A IPC – procuration of a minor girl<sup>29</sup>
- Section 376 IPC - Rape<sup>30</sup>

**Petitioner's Argument:** The accused claimed the relationship was consensual.

**His counsel argued:** Ashwini's age was uncertain due to a lack of authentic records (only studied till the 5th standard). The delay in lodging the FIR undermined the case. Even if sexual relations occurred, it was not rape in the true sense, as there was no coercion.

**Prosecution's Stand:** Since Ashwini was a minor under 18, her consent was legally irrelevant under Section 375 IPC. Hence, any sexual activity amounted to statutory rape.

**Judicial Observations and Reasoning:** The court acknowledged, there was a dispute about Ashwini's age and school records were not conclusive. Whether the act was rape or not depended entirely on whether the victim was below 18. Since this would require proof at trial, bail was granted.

**Legal and Societal Insights Drawn from the case:** The court reiterated that the consent of a minor is not valid under Indian law. However, it showed judicial flexibility by accepting that the exact age must be proven at trial. The petitioner's narrative suggested a romantic relationship rather than abduction or assault. The law, however, made no exception for relationships born out of love if the girl is under 18.

The FIR was filed one week later, despite parents suspecting the petitioner. This delay was viewed as a glaring circumstance, possibly hinting at a consensual elopement, not abduction. Kadesh was arrested and jailed despite no immediate complaint or violence. Shows how young adults in consensual relationships with minors are criminalised under the current legal structure. No indication that the couple married or lived together afterwards.

But had they done so, Indian courts (especially post-POCSO) have been inconsistent—sometimes quashing FIRs, other times upholding strict punishment.

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<sup>29</sup> Indian Penal Code s 366A

<sup>30</sup> Indian Penal Code s 376

**Indian Express (2023):**<sup>31</sup> Reported dozens of such cases across Tamil Nadu and West Bengal, where couples approach courts to validate their marriage and seek quashing of POCSO charges. This case is a prime example of how Indian courts handle minor–adult romantic relationships. While the law presumes guilt, courts sometimes acknowledge the emotional context and delay in complaint, and cautiously allow bail, especially when marriage or long-term cohabitation might follow. This supports your broader research argument: the need for a nuanced application of POCSO and a rethink on criminalising consensual adolescent love, particularly when it results in marriage or family.

In cases where parents might be driven by societal pressures and the desire to uphold "social respect" or family honour, allegations under the POCSO Act are sometimes filed against an adult male in consensual adult-minor relationships, particularly when their daughter has eloped or entered into a relationship perceived as illicit by the family.

The Sikkim High Court's judgment in *Sushan Darjee (Hingmang) v. State of Sikkim*,<sup>32</sup> provides a compelling example that can be viewed through this lens. In this case, the appellant, in a romantic relationship with the victim, was accused of sexual offences under POCSO and IPC. However, the High Court observed that the prosecution failed to conclusively prove the victim's minority.

Key factors included a 10-year delay in birth registration without proper explanation and inconsistencies in school records, leading the court to accept the possibility that the victim's parents might have reduced her age furthermore, despite the trial court's initial finding of non-consent for one specific sexual act, the High Court analyzed the victim's conduct, noting that she did not seek help or inform anyone, and later agreed to elope after discovering her pregnancy.

These circumstances led the High Court to conclude that the sexual acts were consensual. Ultimately, the High Court acquitted the accused. This judgment illustrates a scenario where a POCSO case, potentially initiated by parents to regain control over their daughter and preserve family reputation, unravels when the legal age of the victim is not proven, and the relationship

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<sup>31</sup> Indian Express, 'Dozens of Minor–Adult Couples Seek Validation of Marriage, Quashing of POCSO Cases in Tamil Nadu and Bengal' (Indian Express, 2023) <https://indianexpress.com/article/opinion/columns/in-interpreting-pocso-law-rigidly-the-madras-high-court-has-undermined-the-agency-of-youngsters-10023809/> accessed 26 July 2025

<sup>32</sup> *Sushan Darjee (Hingmang) v. State of Sikkim*, 2025 SHC 31 1



is found to be consensual by the court, highlighting the complex intersection of law, social norms, and individual agency.

**Ashik Ramjan Ansari v. State of Maharashtra:** Justice Bharati Dangre, who delivered the judgment, reversed the conviction of the accused, highlighting the dilemma when the prosecutrix is clear about her expectations and readiness to take consequences from the relationship, even at 17.5 years of age. The court refused to concur with the Special Judge's conviction for rape merely because the girl was a minor, given her complete understanding of the acts.

### SPARING SENTENCE

**In Re:** Right to privacy of adolescent: In this landmark judgement from May 2025, the Supreme Court took the unprecedented step of sparing a man convicted under the POCSO Act from a mandatory 20-year jail sentence. The court's decision was based on the unique circumstances of the case: the accused, who was 24 at the time of the offence, had engaged in a sexual relationship with a minor girl, but subsequently married her after she attained adulthood, and they now live together with their child. The court explicitly acknowledged "systematic failures" in the implementation of the POCSO Act that had exacerbated the victim's trauma, stating that the legal battle itself, rather than the original crime, had traumatised her.

The court prioritised the victim's rehabilitation and the stability of her existing family unit, concluding that the accused's imprisonment would cause further harm to her and their child. Justice Oka's observation highlighted that the victim, now an adult, was "desperate to save her husband" and "emotionally committed to the accused," having been abandoned by her own family. While restoring the conviction, the court chose not to impose a prison sentence despite the mandatory minimum, instead acting as a "true guardian" of the victim and her child by directing the state to provide support for their shelters and education.

### QUASING PROCEEDINGS

**Mahesh Mukund Patel v. State of U.P.:** In another significant judgement from March 2025, the Supreme Court quashed POCSO proceedings, noting that the accused and victim were "happily married" and had two children. The first information report (FIR) was registered in September 2016, alleging the victim was 17 years old. However, the marriage was solemnised in December 2016, and an ossification test indicated the victim's age was between 17.5 and 19

years at the time of the alleged offence, with consistent documentary evidence suggesting she was already a major (18+) when the offence was committed. The victim, in an affidavit, confirmed her happy marriage and cohabitation with the accused. The Court concluded that continuing the prosecution would serve no purpose and would only result in "unnecessary harassment" to the couple and their children. Notably, the Supreme Court criticised the High Court for failing to exercise its jurisdiction under Section 482 CrPC to quash the proceedings, thereby compelling the parties to approach the apex court. This case illustrates a scenario where the victim's age at the time of the offence was borderline or disputed, and the subsequent formation of a stable family unit was a crucial factor influencing the judicial outcome. The POCSO Act is fundamentally rooted in the principle of ensuring the "best interest of the child". However, the Supreme Court's judgments, particularly in

**In Re: Right to Privacy of Adolescents**, revealed that this "best interest" is not a static concept. It dynamically evolves with the victim's age and life circumstances court explicitly notes that the victim, now an adult, is "desperate to save her husband" and "emotionally committed" to her new family. In this context, the court prioritises the stability and well-being of the new family unit (comprising the victim, the accused, and their child) over a strict adherence to the mandatory minimum sentence. This signifies a re-evaluation of "best interest" from solely protecting a minor from sexual assault to encompassing the holistic well-being and rehabilitation of the now-adult victim and her established family. The victim's attainment of majority, her voluntary decision to marry the accused (post-adulthood), and the subsequent birth of children directly influence the Supreme Court to consider a different application of justice. This shifts the focus from purely punitive measures to a more rehabilitative and welfare-centric approach for the established family unit. This is a clear connection where the passage of time and changed personal circumstances significantly influence judicial outcomes, especially at the apex court level. This established a powerful precedent where Article 142<sup>33</sup> can be invoked to mitigate the harshness of POCSO, not to condone the original offence, but to prevent further harm to the victim and her family in unique, post-adulthood marriage scenarios. It highlights a judicial recognition that the law, while essential, must sometimes yield to complex human realities to achieve "complex justice"

There is an apparent divergence in judicial application between the High Courts and the Supreme Court. High Courts often show reluctance to quash POCSO cases based on marriage,

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<sup>33</sup> Ibid

citing the non-compoundable nature and societal impact. Conversely, the Supreme Court does quash proceedings or spare sentences in specific, compelling cases. The Supreme Court explicitly criticises High Courts for not adequately exercising their 482 CrPC<sup>34</sup> powers in certain instances, thereby forcing parties to appeal to the highest court. This points to a significant difference in judicial application and interpretation. The Supreme Court's recourse to Article 142 underscores that these are considered exceptional cases falling outside the typical, strict application of POCSO by lower courts. This is not a contradiction in the fundamental legal principle (the offence remains a crime), but rather in the judicial outcome due to the unique, extraordinary powers vested in the Supreme Court.

The emerging theme is that while the letter of the law is stringent, the spirit of "complete justice" (Article 142) allows for flexibility in rare, compelling circumstances, particularly when the victim's age at the time of the offence is borderline or when a stable family unit has unequivocally formed post-adulthood. This creates a degree of uncertainty for High Courts and litigants, suggesting that while High Courts should generally adhere to the strict non-compoundable nature of POCSO, there is an implicit understanding that the Supreme Court might intervene if the case presents sufficiently compelling facts related to the victim's post-offence welfare and the stability of her family. This dynamic could potentially lead to an increase in appeals to the Supreme Court in similar "marriage" scenarios, seeking the exercise of its extraordinary jurisdiction.

### **ARGUMENTS IN FAVOUR OF QUASHING / LENIENCY PROPONENTS OF QUASHING OR LENIENCY**

Argue that continuing criminal proceedings, especially prolonged trials, can inflict further harm and hardship on the victim. This includes potential social stigma, ostracism, severe psychological trauma, and emotional distress. In this view, Quashing cases, under specific conditions, could promote the victim's welfare and rehabilitation by allowing them to move forward with a stable family life, particularly if they have children with the accused.

When the victim reaches adulthood and voluntarily enters into marriage with the accused, some arguments suggest that the court should respect their decision and free will, especially if they

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<sup>34</sup> Code of Criminal Procedure 1973, s 482 (India)

are reportedly "happily married" and have established a family with children. The Supreme Court's decisions, particularly

**In Re:** Right to Privacy of Adolescents reflects a significant consideration for the now-adult victim's choices and her expressed desire for family stability. It is also argued that continuing prosecution, particularly when a stable family unit with children has been established, might serve no meaningful purpose and would only result in "unnecessary harassment" to the accused, the victim, and their children. This perspective emphasises the pragmatic impact on the current lives of the individuals involved.

### **ARGUMENTS AGAINST QUASHING/LENIENCY**

The primary and most forceful argument against quashing POCSO cases based on marriage is that the marriage or compromise does not diminish or erase the gravity and inherent nature of the offence. Child sexual abuse is fundamentally considered a crime against society as a whole, not merely an individual victim.

A significant concern is that the marriage or compromise might not be a genuine expression of consent and free will, but rather a result of coercion, undue pressure, or inducement exerted by the accused or their families, or even the victim's own family due to societal pressures. Allowing such compromises could perpetuate unequal power dynamics and ignore the fundamental violation and harm caused.<sup>35</sup>

Quashing such cases could send a highly detrimental message to society at large, potentially encouraging perpetrators of child sexual abuse. It might create a perception that offenders can exploit the vulnerability and innocence of children and subsequently escape accountability by marrying their victims. Furthermore, allowing marriage to serve as a ground for acquittal or quashing would fundamentally defeat the very object and purpose of the POCSO Act, which was specifically enacted to provide a robust and uncompromising legal framework for child protection. Such a course of action would amount to a mockery of the law and undermine its deterrent effect.

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<sup>35</sup> 'Can POCSO Act Cases Be Quashed If the Accused Marries the Victim?' (2023) The Indian Journal for Research in Law and Management <https://www.ijrlm.com/post/can-pocso-act-cases-be-quashed-if-the-accused-marries-the-victim> accessed 26 July 2025

The argument in favour of quashing often invokes the concept of "rehabilitation", referring to both the "Rehabilitation of the accused"(by avoiding imprisonment) and the "welfare and rehabilitation of the victim". However, these two forms of "rehabilitation" can be in direct conflict. The core ethical dilemma lies in whether "rehabilitation of the accused" (through marriage and avoiding jail) is truly compatible with the "welfare of the victim" (who suffered sexual assault as a child). The available information suggests a profound societal and judicial struggle with this balance. The Supreme Court's decisions, as seen in

**In Re: Right to Privacy of Adolescents**, appears to prioritise the victim's welfare in her current adult state and the stability of her newly formed family unit, rather than the accused's rehabilitation being the sole or primary driver for leniency.

This highlights a fundamental tension inherent in criminal justice systems: the balance between punitive justice (punishing the offender for the crime committed) and restorative justice or rehabilitation (focusing on the holistic well-being of all parties and preventing future harm). In POCSO cases involving subsequent marriage, the Supreme Court appears to be leaning towards a form of restorative justice for the victim's current family unit, even if it necessitates a deviation from strict punitive measures for the accused. This complex balancing act underscores the judiciary's role in adapting legal principles to unique human circumstances while striving for "complete justice."

### **CONSIDERATION OF THE CHILD'S BEST INTERESTS AS PARAMOUNT**

The POCSO Act and its accompanying guidelines unequivocally emphasise the "best interest of the child" as the guiding principle in all proceedings related to child sexual abuse. This principle encompasses minimising trauma, preventing re-victimisation, and protecting the child from intimidation throughout the judicial process. However, the definition and application of "best interest" become significantly more complex when the victim transitions from childhood to adulthood and subsequently forms a family unit with the accused. The Supreme Court's recent decisions illustrate a discernible shift in this interpretation: from primarily protecting a minor from sexual assault to ensuring the holistic well-being and rehabilitation of the now-adult victim and her established family unit, especially when children are involved.

Like, in several instances across India, couples once entangled in legal battles due to child marriage have gone on to lead stable, fulfilling lives after marrying each other. Once the girl

attained majority. One such case involved a teenage couple from a rural district where the girl, aged 17, eloped with her 19-year-old partner. Though their relationship was consensual, the boy was booked under the POCSO Act due to the girl being a minor. He was imprisoned for several months as an undertrial, while the girl was sent to a shelter home. Despite legal hurdles, the couple remained committed. After the girl turned 18, she voluntarily reiterated her wish to marry the same person. With support from family and counselling from legal aid services, the couple married legally.

Today, they are living a peaceful life together, with the husband employed in a small business and the wife pursuing vocational training. Their story, while not negating the gravity of the child protection laws, highlights the nuanced reality where youthful relationships—through legally prohibited means—may stem from mutual affection rather than exploitation. Such cases prompt the need for reforms that balance legal safeguards for minors with sensitivity towards genuine romantic relationships.

Justice Mahendar Kumar Goyal observed that the survivor herself had chosen to remain married, and that continuing prosecution would further traumatise her. The Court emphasised that the accused should not be separated from her, given her own expressed wishes and current family stability.

**Justice Goyal (Rajasthan HC):** In *Kalu Ram v. State of Rajasthan*<sup>36</sup> 2024 SCC Online Raj 1612 said, “To do complete and meaningful justice to the victim ... the only viable course is to ensure that the accused is not separated from her.”

Justice M. Nagaprasanna granted Interim bail to the accused in a case to marry the now-major victim. After marriage and the birth of their child, the Court quashed the POCSO case to protect the mother and child’s future.

In July 2024 granted interim bail to a 23-year-old POCSO accused to marry the now-18-year-old victim. Once the marriage certificate was produced—and the couple had a child—the Court quashed the proceedings, cautioning that the case could be revived if the accused abandoned her. The judgment emphasised avoiding adverse consequences for mother and child from continued prosecution.

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<sup>36</sup> *Kalu Ram v. State of Rajasthan* 2024 SCC OnLine Raj 1612

**Law Commission India, 262<sup>nd</sup> Report 2015:** Recommended that laws must be sensitive to consensual sexual activity among teenagers, calling for a “close-in-age” exception to prevent criminalising youthful romance.

**The "Romeo-Juliet" Clause Debate:** The strict application of POCSO often leads to situations where young couples, close in age but one minor, face severe legal consequences. This has led to discussions around the "Romeo-Juliet" clause (where an age difference below a certain threshold might mitigate the offence), though Indian law currently does not explicitly recognise such a provision in POCSO.

### PSYCHOLOGICAL DIMENSIONS: UNPACKING CONSENT AND AGENCY

The concept of "consent" from a minor in a romantic and sexual relationship (in case of marriage) is inherently complex and often problematic.

**Developmental Vulnerability:** Psychologically, minors, especially adolescents, are still developing their cognitive abilities, emotional regulation, and understanding of long-term consequences. Their capacity to provide truly free and informed consent in a power-imbalanced relationship is questionable. The influence of family, peer pressure, or even romantic idealisation can overshadow genuine agency.

**Grooming and Exploitation:** What might appear as a "love marriage" on the surface could, upon deeper psychological analysis, reveal elements of grooming, manipulation, or exploitation. The older partner may gradually isolate the minor, create dependency, and exploit their emotional vulnerabilities.

**Trauma Bonding and Stockholm Syndrome:** In some instances, minors who have been in such relationships for a prolonged period may develop a trauma bond with their abuser or exhibit characteristics of Stockholm Syndrome, where they identify with and defend their captor. This makes it incredibly challenging for the legal system to ascertain genuine willingness or identify the underlying trauma. The Hindu article (July 16, 2025)<sup>37</sup> explicitly states, "the law saw it as a crime, the victim did not... the legal crime did not cause any trauma

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<sup>37</sup> 'The Issue with Criminalising All Adolescent Relationships' (The Hindu, 16 July 2025) (as discussed in Civildaily) <https://www.thehindu.com/opinion/lead/the-issue-with-criminalising-all-adolescent-relationships/article69815972.ece> accessed 26 July 2025



on this particular victim. It was the consequences thereafter," highlighting the psychological distress caused by the legal process itself rather than the relationship.

**Impact on Identity and Future:** The psychological impact on the minor extends beyond the immediate relationship. It can affect their self-esteem, future relationships, educational opportunities, and overall psychological well-being, even if the marriage continues.

## **SOCIOLOGICAL CONTEXT: DRIVERS AND CONSEQUENCES**

Adult-minor marriages are not isolated incidents but are deeply rooted in various socio-cultural and economic factors prevalent in India.

**Poverty and Economic Hardship:** Families, particularly in rural or economically disadvantaged areas, may marry off minor daughters due to poverty, viewing marriage as a means to reduce economic burden or secure their daughters' future. The COVID-19 pandemic, for instance, saw an increase in child marriage due to exacerbated economic hardship.<sup>38</sup>

**Patriarchy and Gender Inequality:** Deep-seated patriarchal norms often contribute to child marriage. Girls are perceived as a liability, and early marriage is seen as a way to control their sexuality and ensure family honour. Lack of education for girls, limited opportunities, and the perpetuation of traditional gender roles reinforce these practices.

**Cultural and Religious Practices:** While progressive laws exist, certain cultural customs or interpretations of religious laws may still tacitly encourage or legitimise early marriages. Though the PCMA supersedes personal laws, courts sometimes face arguments based on religious customs (e.g., Muslim personal laws allowing marriage at puberty), leading to judicial scrutiny.

The Kerala High Court has explicitly stated that the Prohibition of Child Marriage Act, 2006, supersedes Muslim personal law, and "every citizen of this country is subject to the law of the land, which is the Act 2006, irrespective of his or her religion."<sup>39</sup>

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<sup>38</sup> Kailash Satyarthi Children's Foundation, 'Forced Brides in India' (2023) <https://satyarthi.org.in> accessed 26 July 2025

<sup>39</sup> 'Prohibition of Child Marriage Act Will Supersede Muslim Personal Law; Every Indian a Citizen First, Religion Comes Later: Kerala HC' (SCC Online, 3 August 2024) <https://www.scconline.com/blog/post/2024/08/03/child-marriage-muslim-personal-law-kerala-hc/> accessed 26 July 2025



The Court also threw some light on the Kerala Prohibition of Child Marriage Rules, 2008, which basically deals with the appointment of Child Marriage prohibition officers, whose primary duty is to act promptly upon receiving any information about the solemnisation of child marriages, regardless of the mode of communication. Case, namely, Moidutty Musliyar v. State of Kerala.<sup>40</sup>

Lack of awareness and enforcement despite legal provisions, a significant number of child marriages go unreported or are not effectively prevented due to a lack of awareness, inadequate enforcement mechanisms, or community complicity.

**Social Stigma and Re-Victimisation:** When a minor girl in such a relationship is brought into the legal system, she often faces immense social stigma, not just for the relationship but also for being a "victim." The court proceedings, police involvement, and potential placement in shelter homes can be re-traumatising, pushing her further towards the accused partner for support and stability.

## SUGGESTIONS AND RECOMMENDATIONS

- **Introduce Close-in-Age Exception:** Allow consensual relationships between adolescents and adults within a 3–5-year age difference.
- **Make Marital Status a Factor in Sentencing:** Post-majority marriage with continued consent could be a mitigating factor.
- **Mandatory Counselling Before FIR:** In elopement cases, courts may direct counselling of both parties before formal prosecution.
- **Amend POCSO for Clarity:** Clearly distinguish between exploitative relationships and consensual adolescent intimacy.
- **Establish Special Juvenile Panels:** To examine such cases before criminal proceedings, particularly when marriage exists.

## CONCLUSION

The cases of adult-minor relationships culminating in marriage present a formidable challenge to the Indian legal system. While the unequivocal aim is to protect children from sexual exploitation and early marriage, the application of stringent laws in cases where a marital

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<sup>40</sup> Moidutty Musliyar v Sub-Inspector Vadakkencherry Police Station & Ors (2024) SCC OnLine Ker 56284 (Kerala HC)

relationship has been established and the minor expresses "willingness" necessitates a nuanced approach.

Simply punishing the adult, while legally correct, may not always serve the ultimate "best interests" of the child, especially when there are children born out of the union or where the minor's trauma is exacerbated by the legal process.

A holistic approach requires:

**Strengthening Prevention:** Addressing the root causes of child marriage – poverty, lack of education, patriarchal norms – through comprehensive social programs, awareness campaigns, and economic empowerment initiatives for girls.

**Revisiting Legal Framework with Nuance:** While upholding the protective intent of POCSO, exploring mechanisms for age-appropriate responses, potentially including a re-evaluation of the "consent" threshold for adolescents (above 16 but under 18) in specific, non-exploitative contexts, or providing for restorative justice mechanisms that prioritize the minor's long-term well-being over solely punitive measures, where appropriate. This would require careful legislative deliberation, perhaps similar to discussions around the "Romeo-Juliet" clause.

**Judicial Sensitivity and Discretion:** Equipping judges with greater training in developmental psychology and gender sensitivity to better understand the dynamics of coercion, trauma bonding, and "flawed consent" in adolescent relationships. Exercising discretion under Article 142 of the Constitution, as seen in recent Supreme Court judgments, can provide a pathway for just outcomes in exceptional circumstances.

**Comprehensive Support Systems:** Establishing robust support systems for minors involved in such relationships, including counselling, rehabilitation, education, and economic opportunities, ensuring they are not further marginalised by the legal system.

Therefore, the "uncomfortable knot" of adult-minor relationships culminating in marriage demands more than just legal condemnation. It requires a profound understanding of the complex interplay of law, psychology, and sociology to forge a path that truly protects children while navigating the intricate realities of human lives in India.

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