



THE JUVENILE RIGHT TO INTIMACY: A CONSTITUTIONAL CRITIQUE OF POCSO'S STRICT LIABILITY

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ABSTRACT

This paper provides a critical constitutional analysis of the Protection of Children from Sexual Offences (POCSO) Act, 2012, specifically examining the tensions arising from its "strict liability framework" in the context of adolescent "romantic" relationships. While the primary objective of POCSO is to safeguard children from predation, its rigid application often criminalises consensual sexual exploration between peers, effectively ignoring the evolving capacity and burgeoning "right to intimacy" of older adolescents. The critique centres on the legislative omission of "mens rea" (guilty intent) and the statutory age of consent (18 years), which remains detached from the socio-biological realities of modern youth. By examining judicial precedents and constitutional safeguards under "Articles 14, 19, and 21" of the Indian Constitution, this research argues that the current legal architecture may inadvertently violate the fundamental rights to privacy and personal liberty. This critique further analyses how the absence of a "Romeo-Juliet Clause" fails the test of proportionality and ignores the evolving capacities of adolescents. By examining the realities of mandatory reporting and parent-driven complaints, the research highlights how the current law often disrupts the very "best interests of the child" it seeks to protect, leading to the stigmatisation of young offenders and the secondary victimisation of survivors. The paper examines the idea of introducing a "Romeo-Juliet Clause." It explores practical design questions: What is a fair age gap to allow between partners? Instead of treating these cases as crimes, should the law use welfare programs, counselling, and diversionary routes rather than full prosecution? Ultimately, this paper calls for a shift toward restorative justice: a system that balances true child safety with a respect for the natural, developing rights of adolescents.

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INTRODUCTION

Law, at its best, is a tool of justice, and justice demands that similar acts receive similar treatment, while fundamentally different acts are treated differently. When a law fails to draw that distinction, it does not merely produce injustice in isolated cases; it undermines the very moral foundation upon which it was built. The Protection of Children from Sexual Offences Act, 2012 (hereinafter 'the POCSO Act' or 'the Act') is, in many respects, a landmark piece of legislation. It addressed a legitimate and persistent gap in Indian law: the Indian Penal Code, 1860, lacked child-specific provisions and procedures for sexual offences, treated children alike to adults, and left entire categories of abuse, such as non-penetrative assault, sexual harassment of children, and the use of children in pornography, either unaddressed or inadequately covered. The POCSO Act, which is a child-centric and gender-neutral law for the protection of children from various kinds of sexual offences, corrected many of these failures, and its importance as a protective statute cannot be understated.

Yet, the same legislative design that makes the Act effective against predatory abuse also makes it disproportionately punitive when applied to a fundamentally different category of conduct, the intimate relationships that develop between adolescents of a close age gap. In contemporary society, romantic relationships among late adolescents are increasingly common, accelerated by social media and early maturity, as adolescents explore sexuality and seek personal liberty in partner choices, a key developmental feature fostering intimacy, self-esteem, and well-being. Yet, India's socio-cultural norms position families as gatekeepers of life decisions, often resisting such bonds and prompting couples to elope, landing them in legal jeopardy.¹ The Act draws a single, sharp line at the age of eighteen. Any person who has not attained the age of 18 is a child.² Below that line, any sexual act, regardless of whether it was mutual, voluntary, or born of genuine affection between two young persons of comparable age, constitutes a criminal offence. Consent, in the eyes of the Act, is simply irrelevant. A seventeen-year-old cannot legally consent to any form of sexual intimacy, and the person who engages in such intimacy with them, even if that person is barely a year older, is guilty of an

¹ Anchan V, Janardhana N, Kommu JVS. POCSO Act, 2012: Consensual Sex as a Matter of Tug of War Between Developmental Need and Legal Obligation for the Adolescents in India. *Indian Journal of Psychological Medicine*. 2021;43(2):158-162. doi:[10.1177/0253717620957507](https://doi.org/10.1177/0253717620957507).

² S. 2(d) of POCSO ACT, 2012.

offence under the Act, subject to mandatory minimum imprisonment, with no avenue to raise consent as a defence. In many such cases, the complaint perse was filed not by the girl but by her family, and the girl herself, when examined before the court, affirmed the consensual and voluntary nature of the relationship. Yet the Act, as written, leaves the court little room to respond to this reality with any degree of nuance. The offence is complete the moment the act and the victim's age are proved. What the parties wanted, what they felt for each other, and how the relationship began are legally invisible.

The Supreme Court, in *Alakh Alok Srivastava v Union of India*,³ held that the objective of the POCSO Act is to protect the child from many aspects so that the child does not feel a sense of discomfort or fear or is reminded of the horrific experience, and further, there has to be a child-friendly atmosphere. It is also worth asking a broader and more fundamental question: do adolescents have any constitutionally protected right to intimate expression? The Constitution of India, under Article 21, has been interpreted expansively by the Supreme Court to include the right to privacy, personal autonomy, dignity, and the freedom to make decisions about one's own body and relationships. In *Justice K.S. Puttaswamy v Union of India*,⁴ the Court held that the right to privacy encompasses decisional autonomy, the freedom of individuals to make intimate personal choices without State interference. While minors occupy a special position in law and are not afforded the full range of adult rights, they are not rightless either. The question this paper raises is whether the POCSO Act's absolute denial of legal recognition to adolescent consent can be reconciled with the constitutional framework that protects personal liberty and autonomy or whether it represents an overreach that the Constitution does not sanction.

Recent judicial scrutiny has exposed significant flaws in POCSO's rigid application to consensual adolescent relationships. In a notable post-script to its judgment, the Supreme Court in *State of U.P v Anurudh*⁵ acknowledged the Act's frequent misuse, where relationships between peers separated by mere 1-2 years in age are criminalised, often at the behest of disapproving parents rather than genuine victims. The Court urged Parliament to enact a "Romeo-Juliet" clause, mirroring provisions in jurisdictions like the US and Germany, to

³ *Alakh Alok Srivastava v. Union of India*, 2018 Cri LJ 2929 (SC)

⁴ AIR 2017 SC 4161

⁵ 2026 SCC OnLine SC 40

exempt close-in-age consensual intimacy, cautioning against conflating child protection with moral paternalism that stifles adolescent agency.⁶

This paper examines the strict liability framework of the POCSO Act as it operates upon consensual adolescent relationships, interrogates the tension between the State's protective mandate and the adolescent's right to autonomy, argues for the introduction of a close-in-age exception analogous to the 'Romeo and Juliet' clauses prevalent in several comparative jurisdictions, and proposes that a principled age-proximity defence is not merely a legislative convenience but a constitutional necessity.

THE PROVISIONS OF POCSO AND THE IMPOSITION OF STRICT LIABILITY ON CONSENSUAL ADOLESCENT RELATIONSHIPS

Understanding Strict Liability in the Criminal Context: In most criminal offences, the law requires the prosecution to prove two things: first, that the accused committed the act in question (the actus reus), and second, that the accused had the requisite guilty mind while doing so (the mens rea). The maxim actus non facit reum nisi mens sit rea - “an act does not make a man guilty unless his mind is also guilty” captures this principle. Strict liability offences are exceptions to this rule; they hold a person criminally responsible purely based on the act, regardless of intention, knowledge, or belief. The POCSO Act makes that departure from this principle. It is not that the Act accidentally omits the consent of the child or the intention of the accused. It is that the Act was deliberately structured so that neither matter. This was, in the legislative context, a considered protective choice. But as the following analysis shows, the breadth of that choice is far wider than the mischief it was meant to address.

The Definitional Foundation: Section 2(d) and the Age Threshold: Section 2(d) of the Act define 'child' as any person below the age of eighteen years. This single definition is the foundation on which the Act's entire liability structure rests. Once a court finds that the person on the receiving end of the act was below eighteen at the time, the offence under the relevant section is proved, subject only to proof that the act itself occurred. The definition draws no distinction between a twelve-year-old who is plainly incapable of sexual decision making and a seventeen-year-old who has been in a relationship for months, who understands what the

⁶ Ashok Ramappa Patil & Sumit Kumar Singh, Re-Examining POCSO in Regulating Adolescent Intimacy, Hindustan Times (Feb. 28, 2026), <https://www.hindustantimes.com/ht-insight/governance/reexamining-pocso-inregulating-adolescent-intimacy-101772279980795.html>.

relationship involves, and who actively and willingly participated in it. Both are 'children' under the Act. Both are, in law, equally incapable of consent.

This uniformity is understandable as a legislative default. Drawing fine lines within the category of childhood is genuinely difficult, and the legislature was right to be cautious about creating exceptions that could be exploited. But the consequence of that uniformity is that the Act applies the same legal presumptions, the same offence definitions, and the same mandatory sentences to a vast range of conduct that is morally very different, from the sexual assault of a pre-pubescent child to an intimate relationship between two teenagers who are close in age and genuinely care for each other. The Act treats all of this as one undifferentiated mass.

Section 3: Penetrative Sexual Assault and the Absence of Consent: Section 3 of the Act defines 'penetrative sexual assault' in physical and anatomical terms. The definition has no reference, direct or indirect, to the issue of consent. The act itself, committed upon a person below eighteen, is the offence regardless of whether the child was a willing participant.

Sections 7 and 9: Sexual Assault and the Irrelevance of Mutual Intimacy: Section 7 operates in complete silence on the question of consent. It defines sexual assault as the touching of any part of a child's body with sexual intent, or causing a child to touch the body of the accused or another person, again with sexual intent, and it does so without any regard for whether the late adolescent was a willing participant. This silence itself speaks volumes. The provision takes no account of developmental maturity, the equality inherent in peer relationships, or the presence of genuine volition. Section 9 then builds upon this foundation by cataloguing the aggravated forms of the same offence.

The weight of this omission deserves to be stated plainly. Under Section 375 of the Indian Penal Code, the offence of rape is constructed entirely around the presence or absence of consent. The woman's agreement, or the want of it, is the normative core around which the entire provision turns. POCSO extends no comparable recognition. Nowhere in the Act is consent acknowledged, even as a conceptual category worth considering when defining what constitutes an offence. To call this an oversight would be generous. It is a deliberate structural choice, and for adolescents in consensual relationships, the consequences of that choice are anything but abstract.

Sections 29 and 30: The Reversal of the Presumption of Innocence: The strict liability framework of the Act is deepened further by Sections 29 and 30, which operate at the level of

evidence and burden of proof. Section 29 provides that where a person is prosecuted under this Act, it shall be presumed that the accused has committed the offence. This is a direct reversal of the presumption of innocence, one of the most fundamental principles of criminal justice. Under Section 29, once the prosecution establishes that an act occurred and the victim was below eighteen, the accused is presumed guilty and must prove his innocence.

Section 30 adds a further dimension; it provides that whenever the commission of an offence under the Act requires a culpable mental state, the court shall presume the existence of that state of mind, and the burden of disproving it shall rest on the accused. Together, Sections 29 and 30 mean that in a POCSO prosecution arising from a consensual adolescent relationship, the accused person faces a presumption of guilt, a presumption of the required mental state, mandatory minimum sentencing, and no available defence based on the victim's consent or the mutual nature of the relationship.

The Net Effect: How Consensual Relationships are Criminalised: The POCSO Act's strict liability framework was designed to protect children from adults who exploit them. But the legislative instrument chosen to achieve that protection, the total erasure of consent and mental state from the definition of the offence, is wide enough to sweep within its scope a category of conduct that bears no resemblance to the exploitation the Act was designed to address. The Act does not ask whether the older party exploited the younger. It does not ask whether there was any meaningful power imbalance. It does not ask whether the younger party was deceived, pressured, or manipulated. It asks only: did the act occur? Was the victim below eighteen? That is all the law requires. The consequence is that the POCSO Act functions, in the context of adolescent relationships, as a tool of absolute prohibition, one that cannot be displaced by evidence of mutuality, proximity of age, or the genuine absence of any exploitative element. It is the Act's structural rigidity.

THE CONSTITUTIONAL BATTLEGROUND: ARTICLES 14, 19, AND 21

The Constitution of India is not merely a document of governance; it is, in the celebrated formulation of Dr B.R. Ambedkar, a social document, a guarantee of liberty against the omnipotence of an unrestrained majority.⁷ Part III, which enshrines fundamental rights, constitutes the normative bedrock upon which all legislative power must rest. Where a statute,

⁷ Dr. B.R. Ambedkar, Constituent Assembly Debates, Vol. VII (November 4, 1948).

however well-intentioned, inflicts disproportionate harm upon citizens, the constitutional guarantee is not suspended by legislative benevolence. It is invoked precisely because of it.

The Protection of Children from Sexual Offences Act, 2012 (hereinafter 'POCSO' or 'the Act') was conceived as an instrument of protection. Yet, as Justice Cardozo observed, "The great tides and currents which engulf the rest of men, do not turn aside in their course, and pass the judges by".⁸ The tide that has engulfed POCSO is the tide of unintended consequences, the Act's systematic failure to distinguish between the predator and the peer. This section submits that POCSO's strict liability framework, when applied to consensual adolescent relationships, offends three foundational constitutional guarantees: the right to privacy and personal liberty under Article 21; the right to equality and equal protection under Article 14; and the freedom of personal development under Article 19.

Article 21: The Right to Privacy and the Extinguishment of Adolescent Autonomy: Article 21 of the Constitution declares, in terms of absolute clarity, that "no person shall be deprived of his life or personal liberty except according to procedure established by law." The Supreme Court's nine-judge bench in Justice K.S. Puttaswamy (Retd.) v Union of India, constitutionally transformed Article 21 by recognising privacy as a fundamental right encompassing decisional autonomy, bodily integrity, and intimate association.⁹ Justice D.Y. Chandrachud articulated the core of this right with precision that speaks directly to the adolescent context: "Privacy of the body entitles an individual to the integrity of the physical aspects of personhood. The intersection of one's being with that of others is governed by the choice of the individual... Intimacy, the sharing of physical and emotional space, lies at the core of personal autonomy. To strip this space of constitutional protection is to render the individual a subject of the state rather than a citizen endowed with rights."¹⁰

The implications are profound. Article 21 speaks of "person," not "adult." The fundamental right attaches to the individual, not to a chronological threshold. The legislature may regulate its exercise, but it may not obliterate it, and obliteration is precisely what POCSO's strict liability achieves. Drawing from John Stuart Mill's harm principle, which holds that the only

⁸ Benjamin N. Cardozo, *The Nature of the Judicial Process* (Yale University Press, 1921), p.168.

⁹ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1 (Nine-Judge Constitutional Bench), overruling M.P. Sharma v. Satish Chandra, AIR 1954 SC 300 and Kharak Singh v. State of U.P., AIR 1963 SC 1295 to the extent they denied privacy as a fundamental right.

¹⁰ Ibid., per Chandrachud J. (as he then was), at para. 169.

legitimate basis for state coercion is the prevention of harm to others,¹¹ it follows that where two adolescents of comparable age and maturity engage in consensual intimacy where no coercion, deception, or exploitation is present, the state's intervention does not prevent harm; it constitutes harm by visiting the gravest criminal consequences upon conduct that lies squarely within the protected domain of individual self-regarding action.

The constitutional indictment deepens when the Maneka Gandhi standard is applied.¹² The procedure established by POCSO does not make any distinction between moral fault and innocence. It is not fair that it visits upon a seventeen-year-old the same consequences as upon an adult predator. And it is not reasonable, as it criminalises conduct arising not from depravity but from the natural developmental trajectory of adolescence. In *Shakti Vahini v Union of India*, the Court reaffirmed that intimate association is a fundamental aspect of personal liberty.¹³ To deny this entirely to older adolescents without any inquiry into individual capacity or relational context is to construct a constitutional vacuum where liberty should exist.

This vacuum is widened by the Supreme Court's recent decision in *X v Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi*, where the Court reaffirmed that bodily autonomy and decisional privacy under Article 21 cannot be conditioned upon social approval or legislative convenience, and that any state interposition in intimate decisions must be necessary, proportionate, and the least intrusive means available.¹⁴ POCSO satisfies none of these requirements when applied to adolescent peers. Section 3 of the Act defines penetrative sexual assault in terms that apply with identical legal force to a 45 old predator and a 17-year peer admitting no gradation, no contextual inquiry, and no constitutional space for consensual intimacy between adolescents of comparable age and capacity.¹⁵

Article 14: Manifest Arbitrariness and the Equality that POCSO Denies: Article 14 guarantees equality before the law and equal protection of laws. The Supreme Court's

¹¹ John Stuart Mill, *On Liberty* (1859), Chapter I. The harm principle has been expressly engaged in Indian constitutional discourse; see *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, per Chandrachud J.

¹² *Maneka Gandhi v. Union of India*, AIR 1978 SC 597. The Court overruled *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27, and held that procedure under Article 21 must be just, fair, and reasonable in substance.

¹³ *Shakti Vahini v. Union of India*, (2018) 7 SCC 192, per Dipak Misra CJ, at para. 58: "The right to choose a life partner is a manifestation of one's identity. Any curtailment of this right strikes at the very autonomy and dignity of the individual."

¹⁴ *X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi*, (2022) 14 SCC 1, per Chandrachud J. The Court held that bodily autonomy and decisional privacy under Article 21 cannot be conditioned upon marital status or social approval.

¹⁵ Protection of Children from Sexual Offences Act, 2012, Sections 3 and 4 read with Section 29. The Act contains no close-in-age exception, no consent provision operative below 18, and no consideration of the age of the accused relative to the complainant.

foundational jurisprudence requires that legislative classification satisfy a two-pronged test: an intelligible differentia, and a rational nexus between that differentia and the legislative object.¹⁶ POCSO fails this test at the most fundamental level. The Act treats, in identical legal terms, two categorically distinct classes of persons: the adult sexual predator who exploits a child's vulnerability and dependence, and the adolescent peer who engages in consensual intimacy with another adolescent of comparable maturity. Both face the same presumption of guilt under Section 29. Both are liable for identical punishment under Sections 3 through 9. The law does not distinguish these fundamentally different moral situations, and in doing so, fails the test of intelligible differentia in the most constitutionally egregious manner.

The constitutional vocabulary of Article 14 was significantly expanded in *Shayara Bano v Union of India*, where Justice Nariman held that legislation may be struck down on the ground of manifest arbitrariness when it is capricious, lacks an adequate determining principle, or visits grossly disproportionate consequences upon those it affects.¹⁷ POCSO satisfies this test with uncomfortable ease. A 17-year-old in a consensual relationship is, under the Act, a perpetrator of aggravated penetrative sexual assault, liable for a minimum of ten years' imprisonment and branded for life as a child sexual offender, not because his conduct is morally predatory, but solely because the strict liability framework structurally excludes any inquiry into circumstances, relationship, or individual capacity. This is manifest arbitrariness in its purest constitutional form.

This dimension of the challenge finds powerful reinforcement in *Joseph Shine v Union of India*, where the Court struck down Section 497 IPC for treating persons differently on morally irrelevant grounds without principled justification.¹⁸ The parallel is instructive: just as Section 497 erased the wife's agency by defining her through marital status rather than as an autonomous individual, POCSO erases the adolescent's moral agency by defining him through chronological age without considering maturity, consent, or context. In both cases, the

¹⁶ *Ram Krishna Dalmia v. Justice S.R. Tendolkar*, AIR 1958 SC 538. This two-pronged Article 14 framework — intelligible differentia plus rational nexus — has governed equality analysis for over six decades.

¹⁷ *Shayara Bano v. Union of India*, (2017) 9 SCC 1, per Nariman J., at para. 101: "Manifest arbitrariness... must be such as to be evident from the very face of the provision itself... A legislation which is not informed by reason, and strikes at the right of an individual, must be held to be manifestly arbitrary."

¹⁸ *Joseph Shine v. Union of India*, (2018) 2 SCC 189, per Chandrachud J., at para. 56: "The law must treat individuals as ends in themselves — possessed of equal worth and equal dignity — and not as means to social or majoritarian ends."

constitutional vice is identical to the legislative reduction of a person to a category, without regard to the constitutional fact of their individual humanity.

Article 19: The Freedom to Develop and the Proportionality Imperative: Read conjointly with Article 21, Article 19 protects the broader freedom of personal development, the right of every individual to form relationships, explore identity, and grow into the fullness of personhood.¹⁹ Adolescence is, by the settled findings of developmental psychology, the formative period in which identity formation, relational exploration, and the capacity for intimacy are central developmental tasks.²⁰ The freedom to undergo this development, including its intimate dimensions, is not a privilege granted by legislative grace. It is a constitutionally protected aspect of personal liberty.

Article 19(2) permits reasonable restrictions on expressive freedoms, but any such restriction must satisfy the proportionality standard authoritatively restated in *Puttaswamy* and applied in *Anuradha Bhasin v Union of India*: the measure must pursue a legitimate aim, be rationally connected to it, constitute the least intrusive means available, and strike a fair balance between right and objective.²¹ POCSO passes the first limb; child protection is a compelling state interest. It begins to falter at the second, and collapses entirely at the third and fourth. Calibrated alternatives

- A close-in-age exception,
- Judicial screening at the pre-cognisance stage, and
- A diversion framework is demonstrably available.

Their complete absence from the statutory architecture renders POCSO's impact on adolescent liberty not a regulation but an obliteration, one that no honest application of the proportionality standard can sustain.

Jurisprudential Foundation: Dignity, Natural Law, and Constitutional Personhood: The constitutional argument rests upon jurisprudential foundations that span multiple traditions. Ronald Dworkin's theory of rights as “trumps” over majoritarian preferences establishes that

¹⁹ *Bennett Coleman & Co. v. Union of India*, AIR 1973 SC 106. The Court articulated a broad understanding of expressive liberty encompassing freedoms of self-development and association.

²⁰ Erik H. Erikson, *Identity: Youth and Crisis* (W.W. Norton, 1968). Erikson's foundational developmental theory identifies relational and intimate exploration as the central psychosocial task of adolescence.

²¹ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637, at para. 68, affirming the four-limb proportionality test from *Modern Dental College v. State of M.P.*, (2016) 7 SCC 353 and *Puttaswamy*, (2017) 10 SCC 1.

individual constitutional rights cannot be traded away for collective goals, however compelling: Individuals have rights when, for some reason, a collective goal is not a sufficient justification for denying them what they wish, as individuals, to have or to do.²² The compelling goal of child protection does not constitute sufficient justification for denying an older adolescent any constitutional recognition of the right to engage in consensual intimacy with a peer.

The natural law tradition, through its Thomistic formulation “*lex iniusta non est lex*,” insists that a law which condemns as criminal a person who has committed no morally recognisable wrong fails the test of reason and justice that gives law its moral authority.²³ The Supreme Court has consistently grounded fundamental rights jurisprudence in the value of human dignity from *Francis Coralie Mullin v Union Territory of Delhi*²⁴, through *Puttaswamy*, holding that dignity is the foundational premise of all constitutional rights. A statute that brands a consenting 17-year-old a child sex offender for life violates this foundational value with a force that no legislative good intention can neutralise.

John Rawls' veil of ignorance provides the decisive test: a rational legislator, uncertain whether they would emerge as a vulnerable child requiring protection or as an adolescent peer facing prosecution, would never design a rigid, one-size-fits-all law regime like POCSO's strict liability framework.²⁵ Instead, they would build in safeguards such as contextual inquiry, proportional limits, and protection of individual dignity. The absence of such safeguards suggests not constitutional fairness, but legislative indifference to it.

JUDICIAL INTERPRETATION: THE COURTS AND THE CONSTITUTIONAL SIGNAL

The constitutional concerns surrounding POCSO have not gone unnoticed by the judiciary. The Madras High Court, in *P. Sibiraj v State*, directed the State to consider introducing a close-in-age exception, explicitly grounding its direction in the proportionality mandate of Article

²² Ronald Dworkin, *Taking Rights Seriously* (Harvard University Press, 1977), p. xi.

²³ St. Thomas Aquinas, *Summa Theologica*, Ia IIae, Q. 96, Art. 4: “*Lex iniusta non est lex*” - an unjust law is no law at all.

²⁴ *Francis Coralie Mullin v. Union Territory of Delhi*, AIR 1981 SC 746, per Bhagwati J.: “The right to live with human dignity... must include the right to the basic necessities of life and the right to carry on such functions as constitute the bare minimum expression of the human self.”

²⁵ John Rawls, *A Theory of Justice* (Harvard University Press, 1971), pp. 118–123. Behind the veil of ignorance, rational legislators would insist upon proportionate safeguards and contextual inquiry rather than categorical strict liability.

21.²⁶ Earlier, in *S. Murugan v State*, the Court acquitted an accused in a consensual peer relationship, cautioning that the mechanical application of POCSO raises serious constitutional issues of proportionality that trial courts had overlooked.²⁷

Similarly, the Kerala High Court in *Sabari v Inspector of Police* (2019) observed that prosecuting adolescents engaged in consensual relationships under POCSO warrants urgent legislative reconsideration due to its disproportionate consequences and lack of genuine protective benefit.²⁸

These decisions reveal a consistent judicial effort to read proportionality into a statutory framework that structurally omits it. However, such case-by-case correction is constitutionally inadequate. Fundamental rights cannot depend on judicial discretion or geographical happenstance; they must be secured within the statute itself.

The Supreme Court's broader jurisprudence completes the constitutional picture. In *Navtej Singh Johar*, the Court affirmed that constitutional morality grounded in dignity and autonomy must prevail over social or majoritarian morality.²⁹ In *Independent Thought v Union of India*, it recognised adolescents as independent bearers of fundamental rights under Articles 14, 15, and 21, not merely passive subjects of protection.³⁰ Further, in *Aparna Bhat v. State of Madhya Pradesh*, the Court emphasised the need for contextual sensitivity in applying sexual offence laws.³¹ Taken together, these rulings establish that dignity, autonomy, and contextual reasoning are constitutional requirements. If context is mandatory even at the sentencing stage, it is even more essential at the stage of determining criminal liability, precisely the stage where POCSO's strict liability framework excludes any such inquiry.

Justice Vivian Bose once warned that the Constitution must not become a "parchment barrier" against legislative or executive excess.³² The warning resonates here. The concern is not that POCSO was enacted with malice, but that in crafting a law aimed at predatory abuse, Parliament failed to consider its impact on consensual adolescent peers. The result is a form of legislative overreach born not of hostility, but of indifference to constitutional nuance. Yet

²⁶ *P. Sibiraj v. State*, CrI.A. No. 109 of 2023 (Madras High Court). The most direct judicial recommendation to date for legislative amendment to introduce a close-in-age exception to POCSO.

²⁷ *S. Murugan v. State of Tamil Nadu*, CrI.A. No. 368 of 2019 (Madras High Court).

²⁸ *Sabari v. Inspector of Police*, (2019) (Kerala High Court).

²⁹ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, per Misra CJ, at para. 93.

³⁰ *Independent Thought v. Union of India*, (2017) 10 SCC 800, per Madan B. Lokur J.

³¹ *Aparna Bhat v. State of Madhya Pradesh*, (2021) 5 SCC 52, per Chandrachud J.

³² Justice Vivian Bose, dissenting in *Virendra v. State of Punjab*, AIR 1957 SC 896.

Articles 14, 19, and 21 are not symbolic aspirations; they are enforceable guarantees. Where a statutory framework disproportionately burdens adolescent intimacy without contextual safeguards, the Constitution demands corrective legislative action.

THE CASE FOR A CLOSE-IN-AGE EXCEPTION: DESIGN, DIVERSION, AND RESTORATIVE JUSTICE

The constitutional indictment set out in the preceding sections does not merely compel criticism; it compels reform. A statute that visits upon a consenting seventeen-year-old the same criminal consequences as upon an adult predator cannot be defended by invoking its protective purpose alone. Protection, stripped of contextual judgment, becomes a form of harm. The answer, this paper submits, lies in the introduction of a close-in-age exception: a provision, long adopted in several mature legal systems, that removes consensual intimacy between adolescents of comparable age from the reach of criminal liability, while leaving the full force of the law intact against those who truly exploit the young.³³

The first design question is this: what age gap between partners is constitutionally fair? The concern is legitimate, and an exception drawn too broadly risks sheltering adults who exploit younger adolescents; one drawn too narrowly fails to address the very situation it is meant to cure. Comparative law offers guidance. Canada's Criminal Code permits consensual sexual activity between adolescents where the age difference does not exceed two years, provided neither party holds a position of trust or authority over the other.³⁴ Several American states adopt a similar two-to-three-year window.³⁵ This paper proposes a two-year threshold, applicable where both parties are between sixteen and eighteen, as constitutionally workable for India, wide enough to reflect the reality of adolescent relationships, and narrow enough to prevent abuse. The critical safeguard is not the number alone, but the accompanying

³³ P. Sibiraj v. State, CrI.A. No. 109 of 2023 (Madras High Court), directing the State to consider a close-in-age exception to POCSO on proportionality grounds under Article 21; see also Sabari v. Inspector of Police (2019) (Kerala High Court), recommending legislative reconsideration of POCSO's application to consensual adolescent relationships.

³⁴ Criminal Code of Canada, RSC 1985, c C-46, s 150.1(2): "Where an accused is charged with an offence under section 151 or 152 or subsection 153(1)... it is a defence that the complainant consented to the activity that forms the subject-matter of the charge if the accused... is less than two years older than the complainant."

³⁵ See, e.g., Texas Penal Code § 22.011(e) (affirmative defence where the actor is not more than three years older than the victim); Florida Statute § 794.05 (close-in-age exception for persons not more than four years older). For comparative analysis, see Matthew Waites, *The Age of Consent: Young People, Sexuality and Citizenship* (Palgrave Macmillan, 2005), pp. 78–94.

conditions: the relationship must be consensual, no position of trust or authority may exist, and no coercion, deception, or exploitation may be present.

Even where a case falls outside the close-in-age exception, the question must be asked: Is full criminal prosecution the appropriate response? The POCSO Act, as it stands, answers that question before the court has seen the facts, and the answer is always yes. This paper submits that it should not be. Where the evidence discloses a consensual relationship and no exploitation is present, the law ought to direct the matter not toward a criminal trial but toward a structured diversion framework: one that brings welfare officers, trained counsellors, and family support to bear, rather than a prosecutor and a mandatory minimum sentence.³⁶ Diversion does not mean indifference. It means that the State responds to adolescent intimacy with the tools appropriate to it: guidance, support, and the protection of genuine vulnerability, not the machinery of criminal punishment.

Underlying both the close-in-age exception and the diversion framework is a deeper shift in legal philosophy, one that this paper regards as constitutionally compelled. The current framework treats adolescent intimacy as a problem to be punished. A restorative approach treats it as a reality to be understood. Restorative justice, in this context, does not abandon child protection; it reorients it, away from retribution and toward repair, away from criminal stigma and toward the genuine well-being of both parties.³⁷ It asks not ‘how do we punish what occurred?’ but ‘how do we ensure that no real harm was done, and that none follows?’ It places welfare, counselling, and informed support at the centre of the State’s response — and reserves the full force of criminal law for those who truly deserve it. True child safety is not served by branding a seventeen-year-old a sexual offender for life.³⁸ It is served by a legal system wise enough to tell the difference between the predator and the peer, and principled enough to treat them differently.

³⁶ Enfold Proactive Health Trust (with UNICEF India & UNFPA), *Romantic Cases under the POCSO Act* (2022): in 93.8% of romantic POCSO cases studied, the outcome was acquittal — confirming that full prosecution produces neither conviction nor protection, only prolonged trauma for all parties involved.

³⁷ Howard Zehr, *Changing Lenses: Restorative Justice for Our Times* (Herald Press, 2005), p. 181: restorative justice “focuses on the harm done rather than the rules broken” and prioritises the repair of relationships over retributive punishment. See also Anchan V et al., *Indian Journal of Psychological Medicine* 2021;43(2):158–162, recommending welfare-based interventions over criminal prosecution for adolescent peer relationships.

³⁸ Enfold Proactive Health Trust (2022), above n 8: of 1,609 acquittals in romantic POCSO cases, courts themselves concluded the relationship was consensual in 63.1% of cases — confirming that the Act routinely punishes conduct that even the criminal justice system recognises as morally blameless. See further *Independent Thought v. Union of India*, (2017) 10 SCC 800, recognising adolescents as independent bearers of fundamental rights under Articles 14, 15, and 21.

CONCLUSION

The POCSO Act was born of a genuine and urgent need. The legislative intent that produced it to shield children from predatory abuse is one that no honest analysis can impugn. But a statute is not saved by the nobility of its purpose. It is judged by the breadth of its reach, the fairness of its operation, and its fidelity to the constitutional framework within which it must stand. Judged by those standards, POCSO's strict liability framework, as applied to consensual adolescent relationships, does not survive scrutiny. The law makes no distinctions. It punishes without examination. A seventeen-year-old in a consensual peer relationship faces identical legal consequences as a predatory adult, and the statute never once pauses to ask what actually happened.

The constitutional objections to this approach are not merely debatable; they are substantial. Article 21 extends its protection to every person, not only to adults. Article 14 prohibits treating situations that are morally unlike each other as though they were equivalent. Article 19, read alongside Article 21, encompasses the freedom of personal development, including aspects of adolescent experience that social science has consistently recognised as ordinary and formative. POCSO's strict liability structure sits uncomfortably with all three provisions. It does not regulate adolescent intimacy so much as it erases it from legal consideration.

The reforms suggested here are not about diluting child protection. They are about making it more precise. A close-in-age exception, a structured diversion pathway, and a restorative justice approach together form a framework capable of doing what the existing law cannot, which is directing criminal sanction toward genuine harm and stepping back where intervention itself becomes the injury. Courts have become increasingly candid about this tension. The Madras and Kerala High Courts have flagged it. The Supreme Court has too. The next step belongs to Parliament, not as a retreat from protection, but as a return to constitutional first principles: that law must reckon with the actual person before it, and not merely the legal category into which it has been placed.

The Constitution, as Dr B.R. Ambedkar understood it, is a social document, a guardrail against the unchecked power of any majority, however well-intentioned. It does not permit the State to sacrifice the rights of the few on the altar of the fears of the many. The adolescent who stands before a POCSO court not as a predator, but as a peer is precisely the person that

the guarantee was written to protect. A legal system that fails to recognise this is not protecting children. It is failing them.