
The Constitutional Future of The POCSO Act: Balancing Child Protection, Adolescent Autonomy, and Sexual Rights

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ABSTRACT

The Protection of Children from Sexual Offences Act, 2012 ('POCSO Act' or 'the Act') was enacted as a gender-neutral, victim-centric shield against the sexual exploitation of children. In fixing the age of consent uniformly at 18 years and rendering a child's consent legally immaterial, however, the Act has increasingly been deployed — not against predatory abuse, but against consensual romantic and sexual relationships between adolescents, frequently at the instance of disapproving families. This paper interrogates the constitutional foundations of this protectionist absolutism. Drawing on Articles 14, 15, 19 and 21 of the Constitution of India, the jurisprudence of decisional and bodily autonomy developed in *Justice K.S. Puttaswamy v Union of India*, the doctrine of evolving capacity recognised under the Convention on the Rights of the Child, and the Supreme Court's recent intervention in *State of Uttar Pradesh v Anurudh* (2026) urging a 'Romeo-Juliet clause', the paper argues that a rigid, non-dirigible age bar is constitutionally infirm insofar as it fails the proportionality standard applicable to rights-restricting legislation. It situates the Indian debate within comparative frameworks — the United Kingdom, the United States, Canada and South Africa — each of which tempers strict-liability child protection statutes with close-in-age or evolving-capacity exceptions. The paper concludes by proposing a calibrated constitutional reform model that preserves POCSO's protective architecture for exploitative and coercive conduct while carving out a narrowly tailored, safeguard-laden exception for genuinely consensual adolescent relationships, thereby reconciling the State's compelling interest in child protection with adolescents' emergent constitutional entitlement to sexual and decisional autonomy.

Keywords: POCSO Act; adolescent autonomy; age of consent; constitutional proportionality; Article 21; child sexual abuse law; Romeo-Juliet clause; sexual rights jurisprudence.

Introduction

Few statutes in India's recent legislative history embody a purer protectionist impulse than the Protection of Children from Sexual Offences Act, 2012.¹ Enacted to give effect to India's obligations under the Convention on the Rights of the Child and to remedy the conspicuous absence of a gender-neutral, child-specific criminal law, the Act defines 'child' as any person below the age of eighteen years and treats that person's consent as wholly irrelevant to criminal liability.² This uniform, non-derogable age threshold was a deliberate legislative choice: it

¹ The Protection of Children from Sexual Offences Act, 2012 (Act No. 32 of 2012), Preamble.

² Protection of Children from Sexual Offences Act, 2012, s 2(d) (defining 'child' as any person below the age of eighteen years).

sought to insulate an entire category of persons — spanning early childhood through late adolescence — from the evidentiary and psychological burden of proving absence of consent in prosecutions for sexual offences.

Yet the very universality that gives POCSO its protective force has generated a jurisprudential and social paradox. Because the Act draws no distinction between a six year-old victim of predatory abuse and a seventeen-year-old party to a mutually desired romantic relationship, both fact patterns are funnelled into the same punitive architecture — mandatory minimum sentences, obligatory reporting, and, since 2019, the possibility of capital punishment in aggravated cases. Empirical and judicial evidence accumulated over the past decade suggests that a significant share of prosecutions under the Act arise not from exploitation but from parental or communal disapproval of consensual adolescent relationships, frequently ones that cross caste, religious or communal lines. High Courts across India have repeatedly flagged this misapplication, and in January 2026 the Supreme Court itself, in a judgment of considerable constitutional significance, called upon the Union Government to consider introducing a ‘Romeo-Juliet clause’ into the Act.

This paper asks a narrower and more precise question than the policy debate ordinarily poses. It does not ask merely whether a close-in-age exception is desirable as a matter of policy — a question on which reasonable legislators may differ — but whether the present, undifferentiated age bar can survive scrutiny under the framework of constitutional rights that India’s courts have built around Article 21, particularly following *Justice K.S. Puttaswamy v Union of India*³, which located decisional and bodily autonomy at the core of the right to life and personal liberty. It situates that inquiry within the doctrine of the child’s ‘evolving capacity’ recognised in international children’s rights law,⁴ within comparative constitutional and criminal law, and within the Supreme Court’s own recent invitation to legislative reform.

The argument proceeds in ten parts. Part II sets out the statutory architecture of the POCSO Act. Part III maps its collision course with Articles 14, 15, 19 and 21 of the Constitution. Part IV develops the doctrine of evolving capacity as the conceptual bridge between child protection and adolescent autonomy. Part V traces the judicial trajectory from Independent Thought through the High Courts to the Supreme Court’s 2026 intervention. Part VI draws comparative lessons from the United Kingdom, the United States, Canada and South Africa. Part VII situates the debate within the broader politics of gender and protection. Part VIII subjects the existing age bar to the proportionality standard. Part IX proposes a calibrated reform model, and Part X concludes.

³ Justice K.S. Puttaswamy (Retd) v Union of India (2017) 10 SCC 1, recognising the right to privacy, including decisional and bodily autonomy, as intrinsic to the right to life and personal liberty under Article 21.

⁴ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, arts 5 and 12; General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence, UN Doc CRC/C/GC/20.

The Statutory Architecture of the POCSO Act, 2012

The Act criminalises a graded hierarchy of conduct — Sexual assault, sexual harassment, aggravated penetrative sexual assault, penetrative sexual assault, and using juveniles for pornographic purposes and prescribes correspondingly graded, and in several instances mandatory minimum, sentences. The 2019 Amendment enhanced these penalties further, introducing the death penalty for aggravated penetrative sexual assault and stiffening punishment for offences involving child pornography, a response to public outrage following a series of high-profile atrocities rather than to any reconsideration of the Act's age architecture.⁵

Three structural features are of particular relevance to the autonomy debate. First, Section 2(d) fixes the age of consent at eighteen — two years above the age recognised for consent to marriage for men and, until recently, coextensive with the age of majority generally, but markedly higher than the age of consent recognised in most comparable jurisdictions.⁷ Second, the Act renders consent doctrinally irrelevant: unlike the general criminal law's treatment of consent as a defence, POCSO treats the complainant's age, without more, as dispositive of guilt. Third, Section 19 imposes a mandatory reporting obligation on any person, including doctors, teachers and counsellors, who has knowledge of an offence under the Act — a provision that, as this paper discusses in Part VII, has the documented effect of deterring adolescents from accessing sexual and reproductive healthcare for fear of triggering criminal proceedings against a partner.⁶

The cumulative effect of this architecture is that consensual sexual activity between two sixteen-year-olds, or between a seventeen-year-old and an eighteen-year-old, attracts the same categorical criminal liability — subject only to sentencing discretion — as predatory abuse of an infant. It is this collapsing of moral and developmental categories, rather than the Act's protective purpose as such, that generates the constitutional friction examined in the remainder of this paper.

Constitutional Foundations: Articles 14, 15, 19 and 21

The constitutional vulnerability of a uniform, non-derogable age bar arises at the intersection of four provisions. Article 14 guarantees equality before the law and equal protection of the laws, and has long been interpreted to prohibit classification that is arbitrary, disproportionate, or untethered to an intelligible differentia bearing a rational nexus to the statute's object. A classification that treats a seventeen-year, eleven-month-old as incapable of consent while treating an eighteen-year-old as fully capable draws a line that is, on one reading, arbitrary in its precision — an all-or-nothing threshold applied to a developmental process that is, as a

⁵ The Protection of Children from Sexual Offences (Amendment) Act, 2019 (Act No. 25 of 2019), introducing the death penalty for aggravated penetrative sexual assault and enhanced punishment for offences involving pornographic material.

⁶ Protection of Children from Sexual Offences Act, 2012, s 19 (mandatory reporting obligation).

matter of adolescent psychology and medicine, gradual rather than abrupt.

Article 21's guarantee of life and personal liberty has, since *Puttaswamy*¹⁰, been read to encompass a right to privacy with distinct decisional and bodily dimensions — the freedom to make intimate choices concerning one's body and relationships without unwarranted State interference. Although the Supreme Court has never held that this right vests unqualifiedly in minors, the doctrinal architecture of *Puttaswamy* does not exempt adolescents from its scope; it merely permits the State a wider margin to restrict the right in the interest of protecting the vulnerable — a margin that, this paper argues in Part VIII, must itself be exercised proportionately rather than through a blanket, undifferentiated bar.

Article 15(3) empowers the State to make special provision for children, and it is this provision that supplies POCSO's primary constitutional warrant. But the power to make special protective provision is not a power to legislate without constitutional constraint; protective legislation, like any other, must be tailored to its protective purpose and must not, in the name of protection, entrench paternalistic assumptions that themselves work an injustice on the persons ostensibly being protected — a concern the Supreme Court articulated forcefully, albeit in a different context, in *Anuj Garg v Hotel Association of India*.⁷

Finally, Article 19(1)(a), read together with the associational and expressive dimensions of personal liberty, has been invoked by advocates of reform to argue that the freedom to form and sustain intimate relationships — already recognised as constitutionally protected among adults in the context of choice of partner in *Shakti Vahini v Union of India*⁸ — cannot be treated as wholly absent for persons who are, by every other legal metric, recognised as bearers of evolving rights and responsibilities.

The Doctrine of Evolving Capacity and Adolescent Sexual Autonomy

International children's rights law does not treat childhood as a undifferentiated legal status extinguished at a single stroke on the eighteenth birthday. States Parties are required by Article 5 of the Convention on the Rights of the Child to uphold the obligations, rights, and duties of parents to provide guidance to the child 'in a manner consistent with the evolving capacities of the child', and the Committee on the Rights of the Child's General Comment No. 20 elaborates this doctrine specifically in relation to adolescence, recognising that adolescents progressively acquire the capacity for autonomous decision-making, including in matters of sexuality.

The doctrinal ancestor of this approach in the common law tradition is the House of Lords'

⁷ *Anuj Garg v Hotel Association of India* (2008) 3 SCC 1, holding that protective discrimination legislation must be tested against contemporary standards and must not perpetuate paternalistic stereotypes that curtail individual autonomy.

⁸ *Shakti Vahini v Union of India* (2018) 7 SCC 192, on honour-based violence and the misuse of family authority to police adolescent romantic choice, read here for its broader observations on the constitutional protection of the right to choose a partner.

decision in *Gillick v West Norfolk and Wisbech Area Health Authority*⁹, which recognised that a minor of sufficient understanding and intelligence may possess the capacity to make certain decisions independently of parental consent. ‘Gillick competence’ has since migrated, in adapted form, into comparative constitutional reasoning on adolescent autonomy well beyond its original medical-consent context, including into the South African Constitutional Court’s reasoning in *Teddy Bear Clinic*¹⁰.

The evolving-capacity doctrine offers a conceptual resolution to what might otherwise appear an intractable binary between ‘protection’ and ‘autonomy’. It does not deny that children require protection from sexual exploitation; it denies only that protection must take the form of a single, cliff-edge threshold indifferent to age, maturity, power differential and the presence or absence of coercion. Applied to the POCSO Act, the doctrine suggests that the correct constitutional question is not whether adolescents possess full adult sexual autonomy — they plainly do not, and no serious reform proposal contends otherwise — but whether the Act’s complete denial of any legal significance to a sixteen- or seventeen-year-old’s consent, in relationships with a similarly aged partner, is a proportionate means of protecting children from sexual exploitation, or whether it sweeps within its protective net relationships that the doctrine of evolving capacity would recognise as autonomous.

Judicial Trajectory: From Independent Thought to Anurudh (2026)

Indian courts have approached the tension between protection and autonomy incrementally and at times inconsistently. In *Independent Thought v Union of India*¹¹, the Supreme Court read down the marital rape exception in Section 375 of the Indian Penal Code, 1860 to align it with POCSO’s uniform age threshold, holding that sexual intercourse with a wife between fifteen and eighteen years constitutes rape. The decision is significant for present purposes not for its outcome — which reinforced rather than relaxed the eighteen-year threshold — but for its reasoning, which located the harm principally in the structural vulnerability of child marriage rather than in adolescent sexuality as such, a distinction subsequent courts have drawn upon in cases involving non-marital consensual relationships.

High Courts confronting cases of consensual adolescent relationships prosecuted under POCSO at the instance of disapproving families have been markedly more explicit in

⁹ *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112 (HL), recognising the evolving capacity of a minor to consent to medical treatment absent parental knowledge, the doctrinal ancestor of the ‘Gillick competence’ standard subsequently absorbed into international children’s rights discourse.

¹⁰ *Teddy Bear Clinic for Abused Children v Minister of Justice and Constitutional Development* 2014 (2) SA 168 (CC), in which the South African Constitutional Court struck down provisions criminalising consensual sexual conduct between adolescents aged twelve to sixteen as an unjustifiable violation of their rights to dignity and privacy.

¹¹ *Independent Thought v Union of India* (2017) 10 SCC 800, reading down Exception 2 to Section 375 of the Indian Penal Code, 1860 to hold that sexual intercourse with a wife between fifteen and eighteen years of age constitutes rape, thereby harmonising the marital rape exception with the POCSO Act’s uniform age threshold of eighteen.

identifying the resulting injustice. In *Skhemborlang Suting v State of Meghalaya*¹², the Meghalaya High Court lamented the criminalisation of a relationship that had matured into marriage, and the Karnataka High Court, in a series of orders,¹³ referred the underlying policy question — whether the age of consent ought to be recalibrated — to the Law Commission of India.

The Twenty-Second Law Commission's response, delivered in its 283rd Report in September 2023, proved a qualified disappointment to reform advocates.¹⁴ Departing from the earlier recommendation of the Justice J.S. Verma Committee, which had proposed retaining the age of consent at sixteen years,¹⁵ the Commission recommended retaining the threshold at eighteen while introducing a discretionary sentencing mechanism — turning on a judicially assessed standard of 'tacit approval' — for offenders aged sixteen to eighteen involved in demonstrably consensual relationships. Critics have observed that this approach operates only at the sentencing stage: it does not decriminalise consensual adolescent sexuality, and the accused remains liable to arrest, prosecution, and the social and psychological consequences of a criminal trial, notwithstanding an eventual reduction in sentence.¹⁶

The most consequential judicial development to date came in January 2026, when the Supreme Court, in *State of Uttar Pradesh v Anurudh*¹⁷, addressed an appeal concerning the propriety of a High Court direction mandating medical age-determination at the bail stage in all POCSO prosecutions. Deciding the narrow procedural question by reference to the statutory hierarchy of age-proof documents under the Juvenile Justice Act¹⁸ and the earlier ruling in *Jarnail Singh v State of Haryana*¹⁹, the Court went further and addressed, in unusually candid terms, the

¹² *Skhemborlang Suting v State of Meghalaya*, CrI A No. 40 of 2020 (Meghalaya HC, 8 October 2021), lamenting the criminalisation of a consensual adolescent relationship that had matured into marriage and questioning the wisdom of a uniform age of consent at eighteen.

¹³ See, e.g., *Rakesh v State of Karnataka*, CrI P No. 3061 of 2020 (Karnataka HC), and subsequent orders in which the Karnataka High Court referred the question of the age of consent under the POCSO Act to the Law Commission of India in light of recurrent prosecutions arising from consensual adolescent relationships.

¹⁴ Law Commission of India, *Age of Consent under the POCSO Act* (Report No. 283, September 2023). The Twenty-Second Law Commission, acting on references from the High Courts of Karnataka and Madhya Pradesh, recommended retaining the age of consent at eighteen years while introducing structured judicial discretion in sentencing — through a proposed 'tacit approval' standard — for offenders aged sixteen to eighteen involved in demonstrably consensual relationships.

¹⁵ Justice J.S. Verma Committee, *Report of the Committee on Amendments to Criminal Law* (23 January 2013), which had recommended retaining the age of consent at sixteen years, a recommendation not carried into the Criminal Law (Amendment) Act, 2013 or the POCSO Act.

¹⁶ Padma Bhate-Deosthali, Sangeeta Rege and T.K. Sundari Ravindran, 'Law Commission of India Report on the Age of Consent: Denying Justice and Autonomy to Adolescents' (2024) 9 *Indian Journal of Medical Ethics*.

¹⁷ *State of Uttar Pradesh v Anurudh*, 2026 INSC 47 (Sanjay Karol and N. Kotiswar Singh JJ, 9 January 2026), setting aside a blanket direction of the Allahabad High Court mandating medical age-determination at the bail stage in all POCSO prosecutions, and directing that the judgment be forwarded to the Secretary, Ministry of Law and Justice, Government of India, to consider legislative measures — including a 'RomeoJuliet clause' exempting genuine adolescent relationships — to curb the misuse of the Act.

¹⁸ Juvenile Justice (Care and Protection of Children) Act, 2015, s 94, providing the statutory hierarchy of documents for age determination.

¹⁹ *Jarnail Singh v State of Haryana* (2013) 7 SCC 263, on the hierarchy of documents to be relied upon for age determination under Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007.

systemic misuse of the Act. Justice Sanjay Karol, writing for the Bench, observed that prosecutions initiated by families opposed to a daughter's romantic involvement had become commonplace, leaving young men to 'languish in jails', and described a 'grim societal chasm' between genuine child survivors of abuse — often constrained by poverty and stigma — and privileged litigants who weaponise the Act to settle personal or familial scores. The Court directed that the judgment be circulated to the Secretary, Ministry of Law and Justice, to consider legislative measures, including the introduction of a 'Romeo-Juliet clause' exempting genuine adolescent relationships, coupled with a mechanism to penalise the retaliatory misuse of the Act.

The Union Government, in submissions made in a separate but related proceeding in²⁰ which Senior Advocate Indira Jaising appeared as amicus curiae to argue for a close-in-age exception grounded in the evolving-capacity doctrine and Articles 14, 15, 19 and 21, has resisted any relaxation of the eighteen-year threshold, contending that the absolute bar provides an indispensable shield against exploitation and trafficking that a case-by-case exception would inevitably erode. This unresolved contest between the judiciary's emerging discomfort with the Act's absolutism and the executive's continued insistence on a bright-line rule frames the constitutional inquiry that follows.

Comparative Perspectives: Close-in-Age Exceptions Abroad

India is a conspicuous outlier in maintaining a uniform, exception-free age of consent set as high as eighteen years for all sexual activity. The United Kingdom fixes the general age of consent at sixteen, and prosecutorial guidance issued by the Crown Prosecution Service directs charging discretion away from cases involving genuinely consensual activity between similarly aged adolescents.²¹ Most jurisdictions within the United States set the age of consent between sixteen and eighteen but temper strict liability with statutory 'Romeo-Juliet' provisions that calibrate criminal liability to the age differential between the parties rather than imposing liability irrespective of that differential.²²

Canada's Criminal Code provides a graduated close-in-age exception for adolescents aged twelve to fifteen, permitting an age gap of between two and five years depending on the younger party's age, while categorically excluding the exception wherever a relationship of trust, authority or dependency exists between the parties²³ — a design feature of particular

²⁰ Written submissions of Ms Indira Jaising, Senior Advocate and Amicus Curiae, in the pending proceedings before the Supreme Court of India concerning safeguards in sexual-offence prosecutions, arguing that the blanket criminalisation of adolescent sexual activity under the POCSO Act is inconsistent with Articles 14, 15, 19 and 21 of the Constitution and proposing a close-in-age statutory exception.

²¹ Sexual Offences Act 2003 (UK), s 9, read with the Crown Prosecution Service guidelines on charging in cases of child sexual offences, which direct prosecutorial discretion where both parties are close in age and the relationship is genuinely consensual, notwithstanding a general age of consent of sixteen.

²² See, generally, state statutory-rape frameworks incorporating close-in-age ('Romeo-Juliet') exemptions, e.g. Tex. Penal Code Ann. § 22.011(e) (West); Cal. Penal Code § 261.5 (West), which calibrate criminal liability to the age differential between the parties rather than applying a uniform bar.

²³ Criminal Code, RSC 1985, c C-46, s 150.1(2)–(2.1) (Canada), providing a close-in-age exception for twelve-

relevance to India, where concerns about exploitative power differentials (teacher-student, employer-employee) are frequently, and legitimately, invoked against relaxation of the age bar. South Africa's Constitutional Court went furthest, in *Teddy Bear Clinic*³⁰, striking down provisions that criminalised consensual sexual conduct between adolescents aged twelve to sixteen as an unjustifiable violation of their constitutional rights to dignity and privacy, reasoning that criminalisation was more likely to harm than protect adolescents by deterring them from seeking healthcare, counselling and family support.

What unites these otherwise disparate legal systems is not agreement on where precisely the age of consent should be fixed, but a shared structural commitment to distinguishing, within the criminal law itself, between exploitative and non-exploitative adolescent sexual conduct — typically through some combination of a close-in-age exception, a relationship-of-trust exclusion, and prosecutorial or judicial discretion calibrated to the presence or absence of coercion. The POCSO Act, by contrast, collapses this distinction entirely, leaving courts to reconstruct it, imperfectly and after the fact, through inherent quashing powers under Section 482 of the Code of Criminal Procedure, 1973 — a remedy available only to those with the resources, awareness and legal access to invoke it, and one that offers no protection against arrest, remand and the initiation of criminal proceedings in the first instance.

Sexual Rights, Gender, and the Politics of Protection

The debate over POCSO's age architecture cannot be extracted from its gendered social context. Data compiled by the National Crime Records Bureau indicate that a substantial share of registered POCSO cases involve adolescents in the sixteen-to-eighteen bracket, with a marked concentration of family-initiated complaints arising from inter-caste or inter-faith relationships.²⁴ In practice, notwithstanding the Act's gender-neutral text, enforcement patterns routinely cast the adolescent girl as victim and her similarly aged male partner as offender, exposing young men — disproportionately from marginalised caste and economic backgrounds — to prosecution, remand and, on the Supreme Court's own recent characterisation, prolonged incarceration for conduct that involved no exploitation whatsoever.

At the same time, feminist and public-health scholarship has identified a distinct harm inflicted upon adolescent girls by the Act's design: because Section 19's mandatory reporting obligation extends to healthcare providers, adolescent girls who are, or may be, sexually active are systematically deterred from seeking contraceptive counselling, pregnancy-related care, or treatment for sexually transmitted infections, for fear that disclosure will trigger a criminal complaint against a partner and expose the girl herself to institutionalisation.²⁵ This reporting

to-fifteen-year-olds where the age gap does not exceed two to five years and no relationship of trust, authority or dependency exists.

²⁴ National Crime Records Bureau, *Crime in India 2022* (Ministry of Home Affairs, Government of India, 2023), reporting a substantial proportion of registered POCSO cases involving adolescents in the sixteen-to-eighteen age bracket and family-initiated complaints against inter-caste or inter-faith relationships.

²⁵ Veenashree Anchan, 'POCSO Act, 2012: Consensual Sex as a Matter of Tug of War Between Developmental Need and Legal Obligation for the Adolescents in India' (2023) *Journal of Psychosexual Health*.

requirement is somewhat at odds with the Rashtriya Kishor Swasthya Karyakram, India's premier adolescent health program, since the program's declared objective of increasing adolescents' access to sexual and reproductive health services is hard to reconcile with a legal framework that criminalizes the very behavior it aims to make safe.²⁶

This is not, then, a debate in which 'protection' sits neatly on one side and 'autonomy' on the other, with each interest represented by a distinct constituency. Rather, the current legal design produces harms distributed unevenly along lines of gender, caste, and class: it exposes young men to disproportionate criminal liability while simultaneously compromising adolescent girls' access to the healthcare and reproductive autonomy that a genuinely protective legal regime would be expected to secure. A reform proposal that ignores either half of this asymmetry — that focuses solely on decriminalising male liability without addressing the reporting-driven healthcare deterrent, or vice versa — will reproduce, in a different form, the very protection-autonomy conflict it purports to resolve.

Testing the Age Bar Against the Proportionality Standard

Indian constitutional doctrine now subjects legislation restricting fundamental rights to a structured four-fold proportionality standard: the restriction must pursue a legitimate State aim; it must be a suitable means of achieving that aim; it must be necessary, in the sense that no less restrictive alternative would serve the aim equally well; and it must strike a fair balance between the significance of the goal being pursued and the degree of the rights violation.²⁷ Applying this standard to POCSO's uniform age bar as it operates against genuinely consensual adolescent relationships yields a mixed but instructive result.

The legitimate-aim and suitability limbs are readily satisfied: protecting children from sexual exploitation, coercion and grooming is unquestionably a compelling State interest, and a legally enforced age threshold is, in the ordinary case, a suitable means of pursuing that interest. The difficulty arises at the necessity and balancing stages. On necessity, the comparative survey in Part VI demonstrates that a less restrictive alternative — a close-in-age exception coupled with a categorical exclusion for relationships of trust, authority or dependency, of the kind found in Canadian law³⁵ — is capable of protecting children from exploitation with materially less collateral criminalisation of nonexploitative conduct than the present undifferentiated bar. The State has not, in its submissions opposing reform,³⁶ demonstrated why such a calibrated alternative would be administratively unworkable or would meaningfully increase the risk of exploitation, beyond asserting, without further particularisation, that any exception creates a 'loophole'.

On the balancing limb, the accumulated evidence surveyed in Parts V and VII — recurrent High

²⁶ Rashtriya Kishor Swasthya Karyakram (Adolescent Health Program), Ministry of Health and Family Welfare, Government of India, Operational Framework (2014).

²⁷ *Modern Dental College and Research Centre v. State of Madhya Pradesh* (2016) 7 SCC 353; see also *Union of India v. Anuradha Bhasin* (2020) 3 SCC 637, applying the four-fold proportionality standard — legitimate aim, suitability, necessity and balancing — to State restrictions on fundamental rights.

Court criticism, the Supreme Court's own 2026 characterisation of a 'grim societal chasm' produced by the Act's misuse, and documented harms to adolescent healthcare access — suggests that the present bar's infringement of adolescents' decisional and bodily autonomy, in the narrow category of genuinely consensual, non-coercive, similarly aged relationships, is disproportionate to any marginal protective gain over a properly safeguarded close-in-age exception. This is not a conclusion that the age of consent should be lowered as a general matter, nor that consent should become a defence in cases involving power imbalance, family authority, or a material age gap; it is the narrower conclusion that a wholly undifferentiated bar, applied without exception to a factual category the law itself is capable of defining with precision, does not survive the necessity and balancing limbs of the proportionality standard properly applied.

The Constitutional Reform Model

The preceding analysis suggests that constitutional reform of the POCSO Act need not — and should not — proceed by lowering the general age of consent or by treating a child's consent as a defence at large. It should proceed instead by carving out a narrowly defined, safeguard-laden exception targeted specifically at the fact pattern that has generated the bulk of judicial concern: consensual, non-coercive relationships between adolescents close in age. The following elements, drawn from the comparative and doctrinal analysis above, would constitute the core of such a model.

A. A Close-in-Age Exception Rather Than a Reduced Consent Age

Following the Canadian model³⁷ the exception should apply only where the age differential between the parties falls within a legislatively fixed band — for instance, no more than two to three years — preserving the general eighteen-year threshold as against any older party. This design directly answers the Union Government's principal objection: it creates no general 'loophole' exploitable by adult predators, since any material age gap would take the conduct outside the exception and back within POCSO's ordinary, stringent regime.

B. A Categorical Exclusion for Relationships of Trust or Authority

The exception should be unavailable, regardless of age proximity, wherever the accused stood in a position of power, reliance, or trust over the complainant — as teacher, guardian, employer, religious instructor or the like — mirroring the structural safeguard found in comparative close-in-age regimes. This addresses the legitimate concern that even a narrow exception could be manipulated by those in positions of institutional power.

C. Procedural Safeguards at the Investigative Stage

Consistent with the Supreme Court's holding in *Anurudh*³⁸ that age and relationship determination is properly a matter for trial rather than summary resolution at the bail or investigative stage, any close-in-age exception should nonetheless be capable of preliminary assessment by the investigating agency and the Special Court at the earliest stage — through a

structured inquiry into the voluntariness of the relationship, corroborated where possible by the complainant's own statement — so as to avoid automatic arrest and prolonged pre-trial incarceration in cases falling squarely within the exception.

D. Decoupling Mandatory Reporting from Adolescent Healthcare Access

Section 19's reporting obligation should be qualified so that healthcare providers rendering sexual or reproductive health services to an adolescent are not obliged to report the fact of sexual activity as such, as opposed to indicators of coercion, exploitation or a material age or power differential — a reform that would address the healthcare-access harms identified in Part VII without diluting the reporting obligation in cases of genuine abuse.

E. A Deterrent for Retaliatory Misuse

Finally, giving effect to the Supreme Court's direction in *Anurudh*³⁹ that a mechanism be introduced to penalise the deployment of the Act to 'settle scores', the reform model should empower Special Courts to record findings, on a case-by-case basis, where a complaint is found to have been actuated by objection to caste, communal or religious choice of partner rather than by any genuine child-protection concern, with consequences — short of criminal liability, so as not to chill legitimate reporting — calibrated to deter vexatious invocation of the Act.

None of these elements requires the wholesale preconception of the POCSO Act's protective purpose. Each is, instead, an application of the proportionality standard developed in Part VIII to the specific respects in which the Act's present, undifferentiated design has been shown — by more than a decade of accumulated judicial experience, culminating in the Supreme Court's own 2026 intervention — to sweep more broadly than its protective object requires.

Conclusion

The POCSO Act's constitutional future will be written neither by wholesale deference to its protectionist premise nor by an unqualified assertion of adolescent sexual autonomy, but at the calibrated intersection the Supreme Court itself gestured toward in *State of Uttar Pradesh v Anurudh*⁴⁰: an intersection at which the State's compelling and undiminished interest in shielding children from exploitation coexists with a narrowly bounded recognition that adolescents close in age, acting without coercion, possess a degree of decisional and bodily autonomy that the Constitution — read through Articles 14, 15, 19 and 21 as construed in *Puttaswamy*⁴¹ — does not permit the State to deny absolutely.

Whether that intersection is realised through legislative amendment, as the Court has urged, or is instead left to accumulate through case-by-case judicial quashing under The Code of Criminal Procedure's Section 482, will determine whether the next decade of POCSO jurisprudence is characterised by principled, prospectively certain reform or by the continued, unevenly distributed hardship of ad hoc litigation. The 283rd Report of the Law Commission suggests that the legislative branch remains reluctant to take the fuller step; the judiciary, most

recently and most emphatically in *Anurudh*, has signalled that it can no longer treat the resulting hardship as a mere enforcement anomaly. The constitutional future of the POCSO Act lies, in the end, not in a choice between protecting children and respecting their autonomy, but in the recognition — already implicit in the doctrine of evolving capacity, and increasingly explicit in the Court's own language — that the two are, for the adolescent approaching the threshold of majority, not opposites but companions.

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