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RETHINKING THE AGE THRESHOLD UNDER POCSO BALANCING CHILD PROTECTION, ADOLESCENT AUTONOMY, AND A PROPOSED GRADUATED APPROACH FOR THE 16–18 AGE GROUP

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1. ABSTRACT

The Protection of Children from Sexual Offences Act, 2012 (POCSO) is India's principal special legislation for protecting children from sexual assault, sexual harassment, and sexual exploitation. Its defining statutory feature is the use of an age-based threshold: a "child" is a person below eighteen years. This bright-line rule creates a strong protective framework, but it also produces a difficult legal and policy question in cases involving older adolescents, particularly those between sixteen and eighteen years, where the factual background may include a close-in-age relationship, an adolescent romance, or an allegation arising from family or social opposition.

This paper examines the statutory framework of POCSO, the 2019 amendment, the POCSO Rules, 2020, and recent judicial developments. It gives special attention to the Supreme Court's 2024 judgment in *In Re: Right to Privacy of Adolescents*, which rejected the idea that a court can treat consensual sexual activity with a minor as legally outside POCSO merely because the relationship is described as romantic. The paper also considers the Supreme Court's January 2026 decision in *State of Uttar Pradesh v. Anurudh*, in which the Court directed that its judgment be circulated for consideration of legislative steps including a possible "Romeo-Juliet clause" for genuine adolescent relationships.

The paper argues for a carefully designed graduated approach rather than an unrestricted lowering of the age of protection. The author's proposed model is that children below sixteen should continue to receive uncompromising statutory protection, while the sixteen-to-eighteen age group could be subject to a narrowly defined close-in-age exception or judicial assessment in genuine, non-exploitative cases. Coercion, force, grooming, trafficking, abuse

of authority, significant age disparity, and exploitation should remain fully punishable. The aim is to preserve the protective purpose of POCSO while reducing the risk of treating every adolescent relationship as equivalent to predatory sexual abuse.

KEYWORDS: POCSO; child sexual abuse; consent; adolescent autonomy; 16–18 age group; Romeo-Juliet clause; child protection; judicial discretion; legal reform.

2. INTRODUCTION

The POCSO Act was enacted in 2012 as a dedicated legal framework for sexual offences against children. The statute is gender-neutral and creates specific offences, special courts, and child-friendly procedures. Under Section 2(d), a child means any person below eighteen years of age. The law therefore deliberately avoids making the legality of a sexual act depend upon the child's willingness or apparent maturity.

The policy reason for this approach is understandable. Children may be vulnerable to manipulation, grooming, coercion, dependency, and unequal power relationships. A simple age threshold gives investigators and courts a clear rule and avoids placing the burden on a child to prove lack of consent. At the same time, a strict threshold can capture situations involving adolescents who are close in age and describe their relationship as voluntary. The legal question is therefore not whether child protection is necessary—it clearly is—but whether one uniform criminal rule should operate identically across all stages of adolescence.

The issue has become increasingly important because contemporary adolescents experience relationships, communication, and social interaction differently from earlier generations. Digital communication, social media, and changing patterns of adolescent relationships have created new factual settings. These realities do not justify weakening protection against abuse; rather, they raise the question of whether the law should distinguish predatory conduct from genuinely close-in-age adolescent relationships.

3. OBJECTIVES OF THE STUDY

- To examine the statutory structure and protective purpose of the POCSO Act, 2012.
- To study the significance of the below-18 definition of "child" and its relationship with consent.
- To analyse the major legislative developments, particularly the 2019 amendment and POCSO Rules, 2020.

- To examine judicial treatment of adolescent consensual relationships under POCSO.
- To assess whether a rigid 18-year threshold can create unintended consequences in genuine close-in-age relationships.
- To develop a policy proposal for a graduated 16–18 framework without weakening protection against exploitation.
- To recommend safeguards that could distinguish genuine adolescent relationships from coercive or predatory conduct.

4. RESEARCH QUESTIONS

1. Does the present below-18 definition provide an appropriate balance between child protection and adolescent autonomy?
2. How does the statutory irrelevance of a child's consent operate in POCSO cases?
3. What problems arise when genuine adolescent relationships fall within the criminal process?
4. Can a narrowly drafted close-in-age exception reduce such unintended consequences without creating a loophole for abuse?
5. What safeguards should accompany any reform concerning the 16–18 age group?

5. RESEARCH METHODOLOGY

This is a doctrinal and qualitative legal research paper based on secondary sources. The study relies primarily on the POCSO Act, 2012; the Protection of Children from Sexual Offences (Amendment) Act, 2019; the POCSO Rules, 2020; relevant provisions of the Juvenile Justice framework; Supreme Court judgments; government publications; and recent NCRB crime statistics. No primary survey or interview data is claimed. The author's proposal is therefore presented as a normative legal-policy argument rather than as an empirical finding.

The analysis uses a balancing approach: first, it identifies the protective rationale behind the existing rule; second, it examines the unintended effects that may arise in adolescent relationships; and third, it proposes a limited reform that keeps coercion and exploitation outside any proposed exception.

6. LEGAL FRAMEWORK OF THE POCSO ACT, 2012

6.1 Definition of a Child and Consent

Section 2(d) defines "child" as any person below eighteen years of age. This is a bright-line statutory definition. Consequently, a person who is seventeen years and eleven months old

remains a child for the purposes of POCSO. The Act does not create a general statutory defence based on the child's consent.

The practical effect is significant: where the ingredients of a POCSO offence are established, the fact that the child agreed to the sexual act does not by itself remove the conduct from the statute. This approach is consistent with the protective design of the legislation and is particularly important where the accused is older, exercises authority, or uses coercion, deception, or grooming.

6.2 Principal Offences

Provision	Subject	Core Idea
Sections 3–4	Penetrative sexual assault	Defines the offence and prescribes punishment.
Sections 5–6	Aggravated penetrative sexual assault	Covers specified aggravated circumstances and imposes higher punishment.
Sections 7–8	Sexual assault	Sexual touching with sexual intent, without penetration.
Sections 9–10	Aggravated sexual assault	Higher gravity based on specified circumstances.
Sections 11–12	Sexual harassment	Includes specified sexual conduct, words, gestures, and related acts.
Sections 13–15	Child pornography-related offences	Addresses use of children for pornographic purposes and related storage/transmission conduct.
Sections 16–18	Abetment and attempt	Extends liability to assisting or attempting offences.
Section 19	Reporting	Creates a statutory reporting framework for knowledge/apprehension of an offence.
Section 29	Presumption	Creates a statutory presumption for specified offences, subject to the statutory scheme.

6.3 Child-Friendly Justice

POCSO contains provisions intended to reduce secondary trauma and make the criminal process more child-sensitive. The framework includes Special Courts, privacy protections, recording of evidence, medical examination safeguards, and procedures intended to reduce repeated exposure of the child to the accused and the formal criminal process. The POCSO Rules, 2020 further detail support, reporting, medical care, compensation, and rehabilitation measures.

7. MAJOR DEVELOPMENTS: 2019 AMENDMENT AND POCSO RULES, 2020

7.1 Protection of Children from Sexual Offences (Amendment) Act, 2019

The 2019 amendment strengthened punishment for serious sexual offences against children and introduced or revised provisions relating to aggravated offences and child pornography.

The legislative direction was clearly toward stronger deterrence and protection. The amendment did not, however, change the basic definition of a child from below eighteen years.

7.2 POCSO Rules, 2020

The POCSO Rules, 2020 provide a more detailed child-protection and victim-support framework. They address procedures concerning reporting, immediate support, medical care, legal aid, counselling, compensation, and rehabilitation. The Rules are important because effective child protection depends not only on the text of offences and punishments but also on the quality of investigation, support services, and trial processes.

A key policy lesson is therefore that reform should not focus only on changing the age threshold. Any reform must be accompanied by stronger investigation, evidence handling, child-friendly procedures, trained personnel, and effective access to support.

8. THE CENTRAL ISSUE: AGE, CONSENT, AND ADOLESCENT RELATIONSHIPS

The central tension can be stated simply: POCSO treats all persons below eighteen as children, while adolescence is a developmental period that extends through the teenage years. The law must protect adolescents from sexual exploitation, but it also has to confront situations in which two adolescents or a near-age pair describe their relationship as voluntary. The difficulty becomes especially visible when the age difference is small. For example, a relationship involving persons aged 17 years 10 months and 18 years 1 month is treated very differently from a relationship involving persons aged 13 and 25. The legal distinction is clear in terms of age, but the factual differences in maturity, power, vulnerability, and exploitation may be substantial. A policy debate therefore arises over whether a single threshold should automatically determine criminal liability in every case.

The author does not suggest that a child's consent should become a general defence. Rather, the proposal is to consider a narrowly defined statutory exception for genuine, close-in-age relationships within the 16–18 age band, while retaining full criminal protection where there is coercion, exploitation, grooming, force, trafficking, abuse of trust or authority, or a significant age/power imbalance.

9. JUDICIAL DEVELOPMENTS: 2024 AND 2026

9.1 In Re: Right to Privacy of Adolescents (Supreme Court, 20 August 2024)

In *In Re: Right to Privacy of Adolescents*, the Supreme Court considered a case involving a fourteen-year-old girl and an adult accused. The Court restored the conviction under POCSO and emphasised that courts cannot create an exception to the statute by describing conduct as a "romantic" or "non-exploitative" relationship. The judgment is important for the present research question because it confirms the limits of judicial law-making: if a broad adolescent exception is desired, it must be created through appropriate legislative action rather than by rewriting the statutory definition through case-by-case acquittals.

At the same time, the judgment recorded the broader controversy around adolescent consensual relationships. This demonstrates that the issue is not merely theoretical; it has repeatedly reached constitutional courts.

9.2 State of Uttar Pradesh v. Anurudh (Supreme Court, 9 January 2026)

A significant later development came in *State of Uttar Pradesh v. Anurudh*. While deciding an appeal concerning age determination and bail in a POCSO matter, the Supreme Court set aside the High Court's directions that had gone beyond the statutory framework. However, in its post-script, the Court noted repeated judicial notice of misuse or misapplication of POCSO and directed that a copy of the judgment be circulated to the Secretary, Law, Government of India, for consideration of possible legislative steps, including the introduction of a "Romeo-Juliet clause" exempting genuine adolescent relationships from the stronghold of the law.

This 2026 development is particularly relevant to the present paper. It does not mean that the POCSO age threshold has already been reduced. Rather, it shows that the Supreme Court has expressly placed the possibility of a legislative close-in-age exception before the policy-making branch for consideration.

Research significance: The 2024 judgment reinforces that courts must apply the existing statute; the 2026 judgment demonstrates that a carefully framed legislative reform can nevertheless be considered. This distinction supports the paper's proposal for statutory reform rather than informal judicial dilution.

10. THE AUTHOR'S PERSPECTIVE: RETHINKING THE 18-YEAR THRESHOLD

Personal/Authorial View: In the author's view, the present age threshold deserves reconsideration for the 16–18 age group. The concern is not that children should lose

protection, but that the law currently applies one bright-line rule to adolescents who may differ considerably in age, maturity, circumstances, and vulnerability. A person who is only a few days or months below eighteen is legally in the same category as a much younger child, even though the factual circumstances may be very different.

From the author's perspective, contemporary adolescent relationships should be examined with greater sensitivity to the actual circumstances of the case. Adolescence is a transitional stage between childhood and adulthood, and the capacity for decision-making develops during this period. Therefore, where two persons are close in age and the relationship is genuinely voluntary and non-exploitative, automatic criminalisation may sometimes produce consequences that are disproportionate to the conduct.

However, the author does not propose a blanket decriminalisation of sexual activity involving 16–18-year-olds. The proposed reform is conditional and protective. The court should look at the age gap, nature of the relationship, presence or absence of coercion, grooming, threats, deception, exploitation, authority, dependency, trafficking, exchange of money or benefits, and whether the older person occupied a position of trust or control.

Core proposition: Protection should remain absolute where there is exploitation; flexibility should exist only for genuine close-in-age adolescent relationships.

11. PROPOSED GRADUATED MODEL FOR 16–18-YEAR-OLDS

The following model is proposed as an academic policy recommendation. It is not part of the present POCSO Act.

Age / Situation	Suggested Legal Approach
Below 16	Maintain strict POCSO protection. Consent should not operate as a defence to sexual offences against the child.
16–18, close-in-age & genuine relationship	Consider a narrowly drafted statutory Romeo-Juliet exception, subject to judicial scrutiny and strict safeguards.
16–18 with significant age/power gap	No exception. Full POCSO protection should continue where the facts disclose exploitation or statutory offence.
Any age below 18 with force/coercion/ grooming	No exception. The protective criminal framework should apply fully.
Authority/dependency relationship	Teacher, guardian, employer, caregiver, or similar authority should remain outside any close-in-age exception where the relationship is exploitative or prohibited by statute.

11.1 Suggested Judicial Factors

1. Exact ages of both persons and the age difference.
2. Whether the relationship was genuinely voluntary and whether there is evidence of force,

threats, or coercion.

3. Whether grooming, manipulation, blackmail, deception, or inducement was involved.
4. Whether the accused occupied a position of authority, trust, care, or dependency.
5. Whether there is evidence of exploitation, trafficking, commercial sexual activity, or exchange of money/ benefits.
6. Whether the relationship was continuous and close-in-age rather than a predatory relationship disguised as romance.
7. The child's welfare, safety, and best interests, without placing the burden on the child to justify the conduct of an adult.

11.2 Why a Narrow Exception Is Preferable to a General Consent Defence

A general consent defence could create serious risks because it might be used to disguise grooming or exploitation. A narrow close-in-age clause is preferable because it can focus on the relationship between the parties and exclude circumstances associated with unequal power. The purpose should be to distinguish adolescent mutuality from adult exploitation, not to declare every adolescent capable of consenting to every sexual situation.

12. SAFEGUARDS AGAINST EXPLOITATION AND MISUSE

Any reform must be accompanied by safeguards. The following safeguards are recommended:

- **Close-in-age requirement:** The exception should apply only where the age gap falls within a clearly defined statutory range.
- **No coercion or grooming:** Evidence of threats, manipulation, blackmail, intimidation, or grooming should defeat the exception.
- **No abuse of authority:** Teachers, guardians, caregivers, and persons in positions of trust should not receive protection merely because the child is 16–18.
- **Child-friendly Judicial Inquiry:** The court should assess the circumstances without humiliating or repeatedly questioning the adolescent.
- **Independent legal representation/support:** The child should have access to a support person, counselling, and legal assistance.
- **Evidence-based age determination:** Age disputes should be handled according to the statutory age-determination framework rather than informal assumptions.
- **Protection from retaliation:** The law should discourage use of POCSO as a tool for settling personal or family disputes while never discouraging genuine reporting.
- **Digital safety:** Any proposed close-in-age exception must not legalise child sexual abuse

material, exploitative recording, circulation, or commercial use of sexual content involving minors.

13. IMPLEMENTATION CHALLENGES

The scale of POCSO litigation demonstrates why both strong protection and careful implementation are necessary. According to reporting based on NCRB's Crime in India 2024 data, 69,191 cases were registered under POCSO in 2024, involving 70,132 child victims; POCSO accounted for about 36.9% of all registered crimes against children in that year. The data indicates that the statutory framework remains highly relevant and that sexual offences against children are a major child-protection concern.

The same 2024 data, as reported from NCRB tables, shows that among cases under Sections 4 and 6, the 16–18 age group formed the largest victim-age category. This is directly relevant to the research question because it shows that older adolescents are not a marginal category within POCSO litigation.

However, statistics on registered cases must be interpreted carefully. Registration figures do not by themselves prove guilt, prevalence, conviction, or the absence of under-reporting. A research paper should therefore avoid equating the number of FIRs with the number of proven offences.

13.1 Key Practical Challenges

- **Delays and pendency** can reduce the effectiveness of child-centred justice.
- **Investigative quality and evidence collection** vary across jurisdictions.
- **Age disputes** can become highly consequential because the below-18 threshold is central to POCSO applicability.
- **Family opposition** to adolescent relationships can sometimes trigger criminal proceedings; genuine abuse and such disputes must be distinguished carefully.
- **Digital evidence** creates new challenges involving chats, images, recordings, deletion, and authentication.
- **Strong punishment alone** cannot substitute for prevention, awareness, counselling, rehabilitation, and institutional accountability.

14. FINDINGS

1. POCSO's below-18 definition provides clarity and strong protection, but its uniform operation can create difficult outcomes in close-in-age adolescent relationships.

2. Consent of a person below eighteen is not presently a general legal defence to a POCSO sexual offence.
3. The 2019 amendment strengthened punishment but did not alter the fundamental below-18 definition.
4. The POCSO Rules, 2020 strengthened the procedural and support framework surrounding child victims.
5. The Supreme Court's 2024 decision demonstrates that courts cannot create a general adolescent-consent exception contrary to the statutory text.
6. The Supreme Court's January 2026 decision is a significant policy development because it expressly suggested that the legislature consider a Romeo-Juliet clause for genuine adolescent relationships.
7. Any reform should be narrow and should preserve full protection against coercion, grooming, exploitation, and abuse of authority.
8. A graduated 16–18 model could potentially better balance child protection and adolescent autonomy if accompanied by strict safeguards.

15. RECOMMENDATIONS

1. **Consider legislative review of the 18-year threshold:** Parliament should examine whether a narrowly tailored close-in-age provision is appropriate, rather than relying on courts to create exceptions.
2. **Consider a Romeo-Juliet clause:** A statutory provision could protect genuine, close-in-age adolescent relationships within a defined age band, subject to strict conditions.
3. **Keep exploitation outside the exception:** Force, coercion, grooming, trafficking, commercial exploitation, significant power imbalance, and abuse of authority should remain fully prosecutable.
4. **Develop uniform judicial guidelines:** Courts should have a structured checklist for distinguishing adolescent relationships from exploitative conduct.
5. **Improve investigation and trial capacity:** Special Courts, prosecutors, police, and child-protection personnel require specialised training and adequate resources.
6. **Strengthen prevention:** Age-appropriate sexuality education, digital safety awareness, counselling, and child-protection policies should accompany criminal law.
7. **Improve data quality:** NCRB and justice institutions should publish more detailed data on age bands, relationship between accused and victim, case outcomes, conviction/disposal, and the proportion of cases involving close-in-age relationships.

8. **Protect the integrity of POCSO:** The law should remain a shield for children and should not become a mechanism for settling private disputes; at the same time, genuine complaints must never be discouraged.

16. CONCLUSION

POCSO has transformed India's legal response to child sexual offences by creating a dedicated, child-centred criminal framework. Its decision to define a child as a person below eighteen provides a simple and powerful protective rule. That protection remains essential, especially because children can be subjected to grooming, coercion, manipulation, and abuse by persons they know and trust.

Nevertheless, a mature legal system must also examine the unintended consequences of its rules. The difficult category is the adolescent aged sixteen to eighteen who may be involved in a genuinely close-in-age, non-exploitative relationship. Treating every such situation as legally identical to predatory abuse may, in some circumstances, create disproportionate consequences and place the protective law under strain.

The author therefore proposes a balanced reform: retain uncompromising POCSO protection for younger children and for every case involving exploitation, coercion, grooming, force, trafficking, or abuse of authority, while considering a narrowly drafted close-in-age exception for genuine relationships involving adolescents in the 16–18 range. The court should examine the actual circumstances, but only within a statutory framework created by Parliament.

The most important point is that protection and autonomy need not be treated as opposites. A well-designed law can protect children from abuse while avoiding unnecessary criminalisation of genuine adolescent relationships. The Supreme Court's 2026 call for consideration of a Romeo-Juliet clause makes this debate particularly timely. The objective should not be to weaken POCSO; it should be to make POCSO more precise, proportionate, and responsive to the realities it is intended to regulate.

Final position of the paper: The age of 18 should not simply be discarded. Instead, the law should be reviewed to consider whether a carefully defined 16–18 close-in-age framework can preserve the core protective purpose of POCSO while recognising the evolving capacity and circumstances of older adolescents.

17. REFERENCES

1. *The Protection of Children from Sexual Offences Act, 2012*, India Code, Government of India: <https://www.indiacode.nic.in/handle/123456789/2079>
2. *The Protection of Children from Sexual Offences (Amendment) Act, 2019*, Ministry of Women & Child Development / Mission Vatsalya: <https://wcd.nic.in>
3. *Protection of Children from Sexual Offences Rules, 2020*, Ministry of Women & Child Development / Mission Vatsalya: <https://wcd.nic.in>
4. Supreme Court of India, *In Re: Right to Privacy of Adolescents*, Suo Moto Petition (Crl) No. 3 of 2023 with Criminal Appeal No. 1461 of 2024, judgment dated 20 August 2024.
5. Supreme Court of India, *State of Uttar Pradesh v. Anurudh & Anr.*, Criminal Appeal / SLP (Crl) No. 11059 of 2025, judgment dated 9 January 2026.
6. National Crime Records Bureau, Ministry of Home Affairs, Government of India, *Crime in India 2024* statistics.
7. Press Information Bureau, Government of India, material concerning the POCSO framework and child sexual abuse protection.
8. World Health Organization, "Adolescent health," describing adolescence as the 10–19 years phase.