

2. Romeo – Juliet Clause- Polity

A 'Romeo-Juliet' clause in POCSO may be needed to prevent over-criminalisation of behaviour that is developmentally typical. The Supreme Court has urged the introduction of a "Romeo-Juliet clause" in the POCSO Act to decriminalize consensual relationships between adolescents close in age, distinguishing them from predatory sexual abuse. This aims to prevent the weaponization of the strict age of consent (18 years) which currently classifies all such acts as statutory rape, often criminalizing teenage romance.

Context- Supreme Court's Recommendation

Judicial Directive- The Supreme Court of India has urged the Union government to consider introducing a "Romeo-Juliet clause" within the Protection of Children from Sexual Offences (POCSO) Act.

Case Background- The observation stemmed from an appeal filed by the State of Uttar Pradesh challenging an Allahabad High Court order that granted interim bail to an accused. The High Court had granted bail based on significant inconsistencies in the victim's age, noting discrepancies between school records and the victim's own statements regarding her age and intimacy.

Supreme Court's Observations on POCSO Abuse

The Court highlighted a disturbing trend where a law designed for protection is being misused.

1. Weaponisation of Law

Noble Intent vs. Misuse- The Court warned that the POCSO Act, enacted with "noble intent" to protect children, is increasingly being used to "settle scores" and exact revenge.

Judicial Alarm- Courts across the country have repeatedly sounded the alarm regarding the misapplication of these stringent provisions.

2. Familial Opposition and Social Control

Disrupting Relationships- The law is frequently invoked by families to break up consensual relationships they oppose (often due to caste, class, or religion), rather than to protect the child from actual abuse.

Criminalizing Romance- Parents use the machinery of criminal law to police adolescent behavior rather than addressing coercive crimes.

3. Two Contrasting Realities

The Court observed a dichotomy in how the law affects different strata of society-

Genuine Victims- Child survivors of heinous, coercive sexual offences often remain "silenced by fear" and are further constrained by poverty, stigma, and lack of support.

Privileged Manipulation- Conversely, families with literacy, social standing, and monetary capital are better positioned to manipulate the law to their advantage, often filing cases to punish rebellious adolescents.

Understanding the "Romeo-Juliet Clause"

1. Definition and Origin

Origin- The concept was first developed in the United States and parts of Europe.

Definition- It is a legal provision that acts as an exception to statutory rape laws for consensual relationships between minors.

2. Core Purpose

Decriminalization- To providing a legal exemption aimed at decriminalizing consensual sexual activity between adolescents who are close in age.

Prevention of Over-criminalization- The objective is to prevent the distortion of child protection laws into tools for prosecuting non-coercive, age-proximate relationships as "statutory rape."

3. Crucial Limitations

Age of Consent- It does not lower the general age of consent.

Scope- It does not decriminalize sexual offences against minors generally; it applies strict conditions regarding the age gap between the two parties.

Data Analysis– Social Reality vs. Legal Thresholds

Evidence suggests a significant gap between the legal age of consent and the social reality of adolescent behavior.

1. Key Statistical Trends

Early Sexual Experience (NFHS-4)– Data indicates that nearly 39% of Indian girls reported having their first sexual experience before the age of 18.

Consensual Relations– Studies by Enfold and Project 39A (2016–2020) revealed that approximately 25% of POCSO cases involved consensual adolescent relationships rather than sexual exploitation or abuse.

2. Changing Case Patterns

There is a visible shift where POCSO cases are increasingly reflective of parental disapproval of teenage romantic relationships rather than instances of predation.

Legal Framework– Age of Consent and Penalties

1. The Age of Consent

Definition– The legally prescribed age at which an individual is deemed capable of giving valid consent to sexual activity.

Indian Standard– The age is set at 18 years.

Statutes– This is mandated under the POCSO Act, 2012, the Indian Penal Code (IPC), and the new Bharatiya Nyaya Sanhita (BNS), 2023.

2. Existing Penal Provisions

Strict Liability– Under the POCSO Act, IPC Section 375, and BNS Section 63, any penetrative sexual act involving a person below 18 is a crime.

Irrelevance of Consent– The consent of the minor is legally invalid and irrelevant; the act is treated as statutory rape.

Severity– Section 6 of the POCSO Act, Section 9 of the Prohibition of Child Marriage Act (2006), and relevant IPC/BNS sections prescribe severe penalties (including mandatory minimum sentences) even for consensual acts if the subjects are under 18.

Comparison– Current Law vs. Proposed "Romeo-Juliet" Approach

Feature	Current Legal Framework (Status Quo)	Proposed "Romeo-Juliet" Clause
Treatment of Consent	Consent by anyone under 18 is void and legally irrelevant.	Recognizes consent if both parties are adolescents and close in age.
Nature of Offence	Statutory Rape (Strict Liability).	Decriminalized (Exemption from prosecution).
Judicial Discretion	Judges often have limited discretion regarding conviction due to mandatory minimums.	Grant's judge's discretion to differentiate between "predatory abuse" and "consensual romance."
Objective	Blanket protection against all sexual acts involving minors.	Protects children while preventing the criminalization of adolescent experimentation.

About the POCSO Act, 2012

1. Primary Objective

Enacted to protect children from sexual abuse, sexual harassment, and pornography, ensuring the healthy physical, emotional, intellectual, and social development of the child.

2. Key Provisions

Definition of Child– Any person below the age of 18 years.

Gender Neutrality– The Act is gender-neutral, protecting male, female, and transgender children equally.

Burden of Proof- Unlike general criminal law, POCSO places the presumption of guilt on the accused (Reverse Burden of Proof); the accused must prove their innocence once the foundational facts are established.

3. Procedural Safeguards

Special Courts- Establishment of designated courts for speedy trials.

Child-Friendly Process

1. Trials must be conducted in-camera (private).
2. Testimonies must be video-recorded.
3. Procedures must be time-bound to prevent trauma to the victim.
4. The child should not come into contact with the accused during proceedings.

Source- <https://indianexpress.com/article/opinion/columns/a-romeo-juliet-clause-in-pocso-may-be-needed-10468733/>

