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Between Protection and Autonomy: A Contextual Romeo-Juliet Clause Grounded in Constitutional Doctrine, Religious Ethics, and Anthropological Evidence

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ABSTRACT

The Protection of Children from Sexual Offences (POCSO) Act, 2012 was enacted to safeguard children from sexual abuse, yet in practice it has produced a serious legal contradiction. By fixing eighteen years as a rigid age of consent, the Act renders factual consent legally irrelevant, so that a relationship that may in fact be consensual is treated as statutory rape. Empirical data underscore the extent of this problem: between 2017 and 2021, POCSO cases involving adolescents aged sixteen to eighteen rose by 180 per cent, suggesting that families frequently invoke the law to control romantic choices in inter-caste or inter-faith situations, with the result that the process itself becomes the punishment for young people caught in a legal grey area. Integrating the privacy and decisional-autonomy jurisprudence established in Justice K.S. Puttaswamy v. Union of India with interdisciplinary insights drawn from religious ethics and anthropology, this paper argues for a more balanced approach. Developmental research indicates that by the age of sixteen or seventeen, adolescents acquire substantial cognitive maturity and decision-making capacity, and several Indian religious traditions recognise the attainment of discretion at puberty, such as the doctrine of Khyar-ul-Bulugh, or the option of puberty. This paper accordingly proposes a carefully designed Romeo and Juliet clause under POCSO, incorporating a gender-neutral age gap of up to three years and the creation of multidisciplinary preliminary screening panels to assess such cases before criminal prosecution. In place of automatic criminalisation, consensual adolescent relationships could be diverted, where appropriate, towards counselling or rehabilitative measures. The reform seeks to harmonise the State's duty to protect children with its constitutional obligation to respect the evolving autonomy and fundamental rights of older adolescents.

Keywords: POCSO Act 2012, Consensual Adolescent Relationships, Age of Consent and Statutory Rape, Evolving Autonomy and Privacy, Romeo and Juliet Clause.

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I. INTRODUCTION

"These violent delights have violent ends, / And in their triumph die, like fire and powder, / Which, as they kiss, consume." William Shakespeare, *Romeo and Juliet*, Act II, Scene VI.

The tragic romance between the two protagonists of *Romeo and Juliet* has long served as a metaphor for youthful love and the restrictions placed upon it by social authority. In the legal sphere, this metaphor has been borrowed to describe a category of statutory provisions known as the Romeo and Juliet clause, or close-in-age exemption, which seeks to exclude consensual sexual encounters between juveniles or persons of similar age from the operation of statutory rape or sexual offence provisions.¹

At the heart of the legal concept lies the protection-privacy dialectic, the fundamental conflict between the State's compelling and legitimate interest in protecting children and juveniles from sexual abuse, exploitation, and predation on the one hand, and the human right to privacy, autonomy, dignity, and the freedom to make personal choices without State interference on the other. Both of these interests converge in the Romeo and Juliet clause.

Adolescent sexual activity is a reality at the biological, psychological, and social levels across the world, one that legal systems cannot afford to overlook or address through blanket prohibitive provisions.² In the Indian context, the Protection of Children from Sexual Offences Act, 2012 (the POCSO Act) fixes the age of consent at eighteen years and presumes all sexual activity with a person below eighteen to be punishable under the Act, without any exception for consent, the age of the other party, or the nature of the relationship.³ This has created a situation in which a significant proportion of cases registered under the POCSO Act involve consensual sexual activity between adolescents, or between a minor and a young adult, in the context of romance or elopement.⁴ The courts in India have shown heightened concern about this situation and have, in several instances, acquitted accused persons under the Act with the observation that its provisions were not meant to deal with teenage romance.⁵

This paper adopts an interdisciplinary approach, drawing upon constitutional law, comparative analysis of other jurisdictions, and religious and cultural studies. The rationale is that determining the age at which a young person may consent to sexual activity is not merely a

¹ Cynthia Godsoe, *Romeo and Juliet Provisions: An Overview*, in *Romeo and Juliet Laws* (2010).

² Michelle Oberman, *Turning Girls into Women: Re-Evaluating Modern Statutory Rape Law*, 85 J. CRIM. L. & CRIMINOLOGY 15 (1994).

³ The Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012, §§ 2(d), 3 (India).

⁴ Ctr. for Child & the Law, *Study on the Working of Special Courts under the POCSO Act* (2018).

⁵ *Vijayalakshmi v. State*, 2021 SCC OnLine Mad 317 (India); *Sabari v. Inspector of Police*, 2019 SCC OnLine Mad 597 (India).

legal question, but one that engages constitutional, religious, cultural, and developmental values. Any reform of the law, including the manner in which a Romeo and Juliet clause might be framed, should reflect all of these elements. The central proposition is that the Romeo and Juliet clause can offer a legal, moral, and cultural means of balancing the role of the State in protecting children against the role of the individual in retaining privacy.

II. CONCEPTUAL FRAMEWORK

A. Defining the Romeo and Juliet clause

A Romeo and Juliet clause generally refers to a legal provision that affords a defence, exemption, or mitigation in respect of statutory sexual offences involving two persons who are close in age and act voluntarily.⁶ The clause operates as an exception to the strict liability imposed by statutory rape provisions, which ordinarily hold individuals liable for sexual activity with a minor below the age of consent regardless of consent or the difference in age.

The fundamental elements of a Romeo and Juliet clause are generally as follows. First, a maximum permissible age difference, usually between two and five years. Second, a minimum age below which the clause does not apply, ensuring that very young individuals remain fully protected. Third, a requirement that the act be freely voluntary, without coercion, intimidation, exploitation, or abuse, particularly such abuse as may arise from a position of trust or authority. The clause does not apply where a relationship of dependency, authority, or trust exists between the parties, such as a teacher-student, employer-employee, or guardian-ward relationship. Depending on its design, the clause may result in full decriminalisation, the reduction of the offence to a lesser category, exclusion from any sex offender register, or judicial discretion in sentencing.⁷

B. The historical evolution of age-of-consent laws

The concept of an age of consent for sexual activity is historically modern and has undergone dramatic transformation. In English common law, the age of consent was set at twelve years under the Statute of Westminster of 1275, reflecting medieval understandings of physical maturity aligned with puberty.⁸ It was raised to thirteen in 1875 and eventually to sixteen by the Criminal Law Amendment Act of 1885, a reform driven substantially by the social purity movement and by W.T. Stead's journalistic exposé of child prostitution in his *Maiden Tribute of Modern Babylon* series.⁹

⁶ Godsoe, *supra* note 1.

⁷ Nat'l Conf. of State Legislatures, *State Statutory Rape Laws* (2022).

⁸ Matthew Waites, *The Age of Consent: Young People, Sexuality and Citizenship* 59 (2005).

⁹ *Id.* at 73-85.

In colonial India, the Age of Consent Act of 1891 raised the age of consent for sexual intercourse from ten to twelve years, sparking intense controversy between reformers and traditionalists.¹⁰ The Indian Penal Code, 1860 originally set the age of consent at ten years, which was progressively raised to twelve in 1891, fourteen in 1925, sixteen in 1940 and 1949, and finally eighteen by operation of the POCSO Act, 2012.

This trajectory reveals that the age of consent has always been a site of intense political, moral, and cultural contestation, and never purely a matter of biological fact. As Matthew Waites argues, the age of consent is a socio-legal construction that reflects shifting power relations, gender norms, and moral panics rather than any fixed empirical truth about developmental readiness for sexual activity.¹¹

C. The tension between protection and privacy

The protection-privacy dialectic may be conceived as a synthesis of several distinct, though related, dimensions. The first concerns the extent to which the State may justifiably override an adolescent's expressed wishes and apparent consent in sexual matters. John Stuart Mill's harm principle posits that individual liberty should be curtailed only to prevent harm to others; yet this becomes complicated in the case of a minor, whose capacity for decision-making remains in a state of developmental flux.¹²

The framework of statutory rape law is typically built upon a bright-line approach, under which anyone below a certain age is conclusively presumed incapable of consenting to sex. This offers simplicity and ease of enforcement, but it may produce inflexibility and injustice in individual cases, whereas a Romeo and Juliet clause introduces additional contextual factors into the framework.¹³

The criminal law, especially in its more severe forms, is the ultimate coercive instrument of the State, and the principle of proportionality, central to constitutional law, dictates that the severity of punishment should bear a reasonable relationship to the gravity of the offence. The same penal consequences cannot justly attach to a predatory adult who harms a child and to two teenagers in a consensual relationship.¹⁴

¹⁰ Tanika Sarkar, *A Prehistory of Rights: The Age of Consent Debate in Colonial Bengal*, 26 FEMINIST STUD. 601 (2000).

¹¹ Waites, *supra* note 8.

¹² John Stuart Mill, *On Liberty* ch. 1 (1859).

¹³ See Waites, *supra* note 8, at 378.

¹⁴ *Modern Dental Coll. & Rsch. Ctr. v. State of Madhya Pradesh*, (2016) 7 SCC 353 (India).

Historically, age-of-consent laws were frequently animated by a concern to protect the chastity of females and the paternal property interest in a daughter's virginity.¹⁵ Although contemporary statutes employ gender-neutral language, their enforcement often remains gender-skewed. In India, for example, male partners are prosecuted in almost all cases, even where the sexual activity is mutual and consensual, and even where a family member brings charges to prevent a relationship considered undesirable, such as one across caste or religious lines.¹⁶

III. COMPARATIVE LEGAL ANALYSIS

A. United States of America

In the United States, close-in-age provisions vary considerably across jurisdictions. Texas, for instance, provides an affirmative defence where the actor is not more than three years older than the complainant,¹⁷ a provision whose contours were tested in *Wilson v. State*.¹⁸ Florida likewise modifies the consequences of certain offences for offenders close in age to the complainant through its sexual offender registration scheme.¹⁹ The Kansas decision in *State v. Limon* is particularly significant, for there the court addressed a close-in-age provision that distinguished between heterosexual and homosexual conduct and held the differential treatment unconstitutional.²⁰

Jurisdiction	StatutoryPosition	AgeConditions	Legal Effect	NotableObservations
Texas	Texas – Texas Penal Code §21.11 provides a close-in-age defence.	The accused must be ≤ 3 years older than the minor; the minor must be at least 14 years old; conduct must be consensual. ¹⁷	Provides an affirmative defence in prosecutions for indecency with a child. Separate provisions allow certain convicted individuals to petition for removal from the sex offenderregistry. ¹⁸	One of the earlier states to formalise a structured Romeo–Juliet defence.
Florida	Florida – Florida Statutes § 943.0435(Romeo and Juliet Law).	Applies where the offender is less than 4 years older than a 14–17-year-old victim. ¹⁹	Does not bar prosecution; permits eligible individuals to petition for removal from the sex offenderregistry.	Focuses primarily on registry relief rather than complete decriminalisation.

¹⁵ See Sarkar, *supra* note 10, at 315.

¹⁶ Prabha Kotiswaran, *Governance Feminism in the Postcolony: Reforming India's Rape Laws*, in *Governance Feminism: Notes from the Field* (2019).

¹⁷ Tex. Penal Code Ann. § 21.11 (West).

¹⁸ *Wilson v. State*, 195 S.W.3d 193 (Tex. App. 2006).

¹⁹ Fla. Stat. § 943.0435.

²⁰ *State v. Limon*, 280 Kan. 275 (2005).

California	California – Penal Code § 261.5.	No formal close-in-age exemption.	Sexual intercourse with a minor remains unlawful irrespective of age similarity.	Criticised for disproportionately impacting racial minorities and economically disadvantaged youth.
Kansas (Constitutional Challenge)	Kansas – Constitutional scrutiny in <i>State v. Limon</i> (2005). ²⁰	Earlier laws imposed lesser penalties for heterosexual conduct than homosexual conduct under close-in-age provisions.	Kansas Supreme Court struck down the discriminatory provision.	Established that Romeo–Juliet clauses must comply with equal protection and be orientation-neutral.

Table 1: Comparative close-in-age (Romeo-Juliet) provisions across jurisdictions.

B. India

India lacks a formal Romeo and Juliet clause. The POCSO Act, 2012 establishes the age of consent at eighteen years, and its provisions cover any sexual act with a person below that age regardless of consent, difference in age, or the nature of the relationship.²¹ The courts, however, have frequently served as a source of Romeo and Juliet-type relief by acquitting accused persons or granting bail in cases arising from consensual adolescent relationships.

In *Vijayalakshmi v. State of Tamil Nadu* (2021), the Madras High Court quashed proceedings in a POCSO case involving a consensual relationship between a young man and a seventeen-year-old girl, observing that it was time to consider the introduction of a Romeo and Juliet clause.²² In *Dharamveer v. State (NCT of Delhi)* (2020), the Delhi High Court granted bail, noting that the case arose out of a consensual relationship and that strict application of the POCSO Act would be counterproductive.²³ In *Sabari v. Inspector of Police* (2019), the Madras High Court observed that the POCSO Act was being misused to target consensual teenage relationships, particularly those involving inter-caste or inter-religious couples.²⁴ The Law Commission of India, in its 283rd Report (2023), acknowledged the need to reconsider the absolute character of the age of consent under POCSO, though it stopped short of recommending a specific Romeo and Juliet clause, preferring instead guided judicial discretion in sentencing.²⁵

C. Canada

²¹ The Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012, §§ 2(d), 3 (India).

²² *Vijayalakshmi v. State*, 2021 SCC OnLine Mad 317, CrI. O.P. No. 232 of 2021 (Madras H.C. 2021) (India).

²³ *Dharamveer v. State (NCT of Delhi)*, Bail App. No. 2269 of 2020 (Delhi H.C. 2020) (India).

²⁴ *Sabari v. Inspector of Police*, 2019 SCC OnLine Mad 597, CrI. O.P. No. 32344 of 2018 (Madras H.C. 2019) (India).

²⁵ Law Comm'n of India, *Report No. 283: Age of Consent under the Protection of Children from Sexual Offences Act, 2012* (2023).

Canada maintains a detailed system of close-in-age exemptions. The Criminal Code establishes a general age of consent of sixteen years, subject to two age-based exceptions. A person aged twelve or thirteen may consent to sexual activity with a partner not more than two years older, and a person aged fourteen or fifteen may consent to sexual activity with a partner not more than five years older.²⁶ These provisions do not apply where the older partner occupies a position of trust or authority, or where the relationship is one of dependency or exploitation. The Canadian model is widely regarded as a robust Romeo and Juliet provision.

D. United Kingdom and European jurisdictions

The United Kingdom sets the age of consent at sixteen under the Sexual Offences Act 2003. Although it has no formal Romeo and Juliet clause, the Crown Prosecution Service guidelines make clear that where the parties are of similar age and the sexual activity was genuinely consensual, prosecution is not in the public interest.²⁷ This reliance on prosecutorial discretion offers an alternative to the statutory exemption approach.

IV. CONSTITUTIONAL ANALYSIS

A. Right to privacy and personal liberty

The strongest basis for the constitutional validity of a Romeo and Juliet clause lies in the right to privacy, which has been recognised as a fundamental right in several jurisdictions. In *Justice K.S. Puttaswamy v. Union of India*, a nine-judge bench of the Supreme Court of India unanimously held that the right to privacy is a fundamental right.²⁸ Justice D.Y. Chandrachud, in particular, observed that the right to privacy comprises decisional privacy and the privacy of intimate personal choices, including, though not limited to, intimate relationships.²⁹

The implications for the Romeo and Juliet clause are significant. The criminalisation of consensual, non-exploitative sexual activity between adolescents of similar age prima facie infringes the right to privacy and is constitutionally valid only if it satisfies the three-part test laid down in *Puttaswamy*: the restriction must be sanctioned by law, must pursue a legitimate State aim, and must be proportionate.³⁰ The protection of children from sexual abuse is undoubtedly a legitimate State aim; yet the criminalisation of all sexual activity below the age of eighteen, without distinguishing between exploitative conduct and consensual peer activity, arguably fails the proportionality limb of this test.

²⁶ Criminal Code, R.S.C. 1985, c. C-46, §§ 150.1, 153 (Can.).

²⁷ Crown Prosecution Serv., *Rape and Sexual Offences: Legal Guidance* (2023).

²⁸ *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).

²⁹ *Id.* at ¶ 169 (Chandrachud, J., concurring).

³⁰ *Id.* at ¶ 180 (Chandrachud, J., concurring).

In the United States, *Lawrence v. Texas* (2003) held that the liberty protected by the Due Process Clause of the Fourteenth Amendment includes the right of adults to engage in consensual intimate conduct free from State intrusion.³¹ While the Court expressly reserved the question of minors, the logic of *Lawrence*, namely that the State cannot criminalise intimate conduct absent a showing of harm, coercion, or public injury, furnishes a constitutional foundation for questioning the blanket criminalisation of consensual adolescent sexual activity.³²

B. Right to equality and non-discrimination

The right to equality, enshrined in Article 14 of the Constitution of India, provides a second constitutional basis for the Romeo and Juliet clause. When statutory rape laws impose identical criminal consequences upon sexual contact between a thirty-year-old and a twelve-year-old and upon consensual activity between an eighteen-year-old and a seventeen-year-old, they treat fundamentally dissimilar situations identically, in violation of the principle that equals must be treated equally and unequals unequally.³³ A Romeo and Juliet clause operationalises the doctrine of reasonable classification by distinguishing between exploitative cross-generational conduct and consensual peer conduct.

Equality concerns also arise where age-of-consent laws are gender-specific or where their enforcement is disproportionately gendered. In India, although the POCSO Act is gender-neutral in its definition of victims, the accused is overwhelmingly male, and complaints are frequently filed by a girl's family to prevent an inter-caste or inter-religious relationship.³⁴ This effectively weaponises a child-protection statute to enforce patriarchal control over female sexuality, a result antithetical to the equality guarantees of the Constitution.

Discrimination on the ground of sexual orientation raises a further concern. As *State v. Limon* demonstrates, Romeo and Juliet clauses that distinguish between heterosexual and homosexual conduct give rise to serious equal-protection objections. In light of the Indian Supreme Court's decision in *Navtej Singh Johar v. Union of India* (2018), which decriminalised consensual homosexual conduct between adults, any Romeo and Juliet clause introduced in India must be orientation-neutral.³⁵

³¹ *Lawrence v. Texas*, 539 U.S. 558 (2003).

³² *Id.* at 578.

³³ *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3 (India).

³⁴ Kotiswaran, *supra* note 16; HAQ: Ctr. for Child Rights, *Implementation of the POCSO Act, 2012 by Special Courts: Challenges and Issues* (2017).

³⁵ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

C. Right to dignity

Human dignity, recognised as a foundational constitutional value in India through *Puttaswamy*, in South Africa,³⁶ in Germany, and in numerous other jurisdictions, provides an additional constitutional lens. To label a teenager a sex offender or child rapist for engaging in sexual activity with a peer of the same age group is a profound affront to that teenager's dignity. The resulting social stigma, criminal record, and, in some jurisdictions, registration as a sex offender, can severely impair a young person's future educational, employment, and social opportunities.³⁷ Such punishment is disproportionate to the conduct and offends the constitutional right to dignity.

D. Doctrine of proportionality

The doctrine of proportionality, adopted as a standard of review under the Constitution of India in *Modern Dental College v. State of Madhya Pradesh* (2016) and reaffirmed in *Puttaswamy*, provides a systematic analytical tool for assessing the constitutionality of blanket criminalisation.³⁸ Applied to the POCSO Act, the doctrine exposes the absence of any tailoring between the legitimate aim of protecting children and the indiscriminate criminalisation of consensual peer relationships.

Stage of Test	Core Question	Assessment	Conclusion
1. Legitimate Aim	Does the law pursue a valid constitutional objective?	Protection of children from sexual abuse is unquestionably a legitimate State interest.	Satisfied
2. Rational Connection	Is blanket criminalisation logically connected to that aim?	Criminalising all sexual activity below 18 does advance child protection in a broad sense.	Satisfied
3. Necessity (Least Restrictive Means)	Is there a less restrictive yet equally effective alternative?	A differentiated framework (e.g., a Romeo–Juliet clause distinguishing consensual peer activity from exploitation) would protect children without over-criminalising adolescents. ³⁸	Not Satisfied
4. Proportionality Stricto Sensu	Do the benefits outweigh the infringement of rights?	Severe collateral harms, criminalisation of consensual peers, stigma, misuse by families,	Fails Balance Test

³⁶ *S v. Makwanyane*, 1995 (3) SA 391 (CC) (S. Afr.).

³⁷ Judith Levine, *Harmful to Minors: The Perils of Protecting Children from Sex* 700-05 (2002).

³⁸ See generally *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637 (India) (discussing proportionality analysis).

		judicial burden, outweigh protective gains in such cases.	
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Table 2: Application of the proportionality test to the blanket criminalisation rule.

E. Judicial pronouncements and constitutional interpretation

Several pronouncements of the Indian courts, while not directly addressing the constitutionality of the absence of a Romeo and Juliet clause, have laid the groundwork for such a determination. In *Independent Thought v. Union of India* (2017), the Supreme Court struck down the marital rape exception for wives aged fifteen to eighteen, holding that the exception violated Articles 14, 15, and 21 of the Constitution. Significantly, the Court noted that the POCSO Act was intended to protect children from abuse and reflected no intention to criminalise consensual behaviour.³⁹ More recently, in *X v. State of Madhya Pradesh* (2023) and comparable matters, several High Courts have begun explicitly to call for legislative change, acknowledging the impossibility of acquitting a minor where the statute is unambiguous, despite evidence of a purely consensual relationship.

V. RELIGIOUS PERSPECTIVES

A survey of the principal religious traditions of India and beyond illuminates how questions of sexual maturity, consent, and punishment have been understood within ethical frameworks. Hindu legal-ethical sources, including the *Arthashastra*⁴⁰ and the *Manusmriti*,⁴¹ as well as the broader Dharmaśāstra tradition,⁴² engaged with questions of marriage, sexual conduct, and graded culpability,⁴³ as have the schools of Islamic jurisprudence⁴⁴ and the Quranic sources addressing sexual ethics.⁴⁵ Islamic family-law scholarship,⁴⁶ together with reformist accounts of Islam and the secular State,⁴⁷ further illustrates the diversity of approaches within a single tradition.

Religious Tradition	Key Concept/Framework	Age Thresholds	Marriage & Sexual Activity	Modern Perspectives
Classical Hindu Law (Dharmaśāstra)	Āśrama and Vivāha	Arthaśāstra: 12 years (females), 16 years (males) 40 Manusmṛt	8 forms of marriage recognised Gāndhārva: Voluntary union based on	Conservative: Support strict age of consent laws to preserve traditional

³⁹ *Independent Thought v. Union of India*, (2017) 10 SCC 800, ¶ 79 (India).

⁴⁰ R. Shamasastri, *Kautilya's Arthashastra* bk. III (1915).

⁴¹ Patrick Olivelle, *Manu's Code of Law* IX.88-94 (2005).

⁴² Shamasastri, *supra* note 40, bk. III.

⁴³ Wendy Doniger, *The Hindus: An Alternative History* 500-10 (2009).

⁴⁴ Abd al-Rahman al-Jaziri, *Al-Fiqh 'ala al-Madhahib al-Arba'ah* vol. 4 (2003).

⁴⁵ Quran 24:2; 17:32.

⁴⁶ Ziba Mir-Hosseini, *Marriage on Trial: A Study of Islamic Family Law* (2000).

⁴⁷ Abdullahi Ahmed An-Na'im, *Islam and the Secular State* ch. 4 (2008).

		i: promotes early/pre-puberty marriage ⁴¹	desire, without parental involvement ⁴² Svayamvara: Woman's choice of husband (sexual autonomy)Kanyādāna: Gift of a virgin daughter	moralityProgressive : Use diversity of Hindu tradition (kāma as puruṣārtha) for nuanced understanding of adolescent sexuality ⁴³
Islamic Law (Shariah)	Bulūgh (puberty/maturity)	Based on physical signs (menstruation, nocturnal emission)Presumptive ages:-Shafi'i/Hanbali: 15 years (both)- Hanafi: 17-18 years (boys), 17 years (girls) ⁴⁴	Sexual activity only within nikah (valid marital contract)Zinah (premarital sex) prohibited regardless of age or consent ⁴⁵ Romeo & Juliet clause rejected (focus on marital contract, not age)	Traditional approach: Saudi Arabia, IranModern secular approach: Turkey, Tunisia, Indonesia (age of consent with close-in-age exemptions) ⁴⁶ Progressive thinkers: Distinguish ḥudūd for zinā from state policy on adolescent sexuality ⁴⁷
Christianity & Canon Law	Marriage-centered morality	Medieval canon law:12 years (girls)14 years (boys) ⁴⁸ Aligned with Roman law and puberty onset	Traditional (Augustinian): Sexual activity outside marriage is sinful ⁴⁹ Protestant Reformation: Transferred marriage control from the church to the stateEnabled secularisation of age of consent	Conservative (Evangelical/Catholic): Oppose liberalisation; may promote pre-marital sex ⁵⁰ Liberal Protestant: Support relational context; may support Romeo & Juliet provisions based on proportionality and mercy
Judaism (Halakha)	Gadlut (legal majority)	Girls: 12 years + 1 day (bat mitzvah)Boys: 13 years + 1 day (bar mitzvah)	Sexual activity outside marriage forbiddenProhibitions vary by act type and participant statusDifferentiates between acts by legal majority vs. minors	Similar rationale to Romeo & Juliet clause through differentiation between majority and minor acts ⁵¹

Table 3: Comparative religious perspectives on age, marriage and consent.

A. Synthesis: religion, morality, and legal policy

Several observations emerge from this comparative religious survey. First, none of the traditions supports the absolute equation of consensual peer sexual relations between teenagers with predatory sexual abuse of children. Second, although the traditions differ markedly on the permissibility of premarital sex, that question is distinct from the question of punishment: a society may disapprove of certain conduct on religious or moral grounds without necessarily

attaching criminal sanctions to it.⁴⁸⁴⁹⁵⁰⁵¹⁵² Third, proportional punishment is endorsed across the major faiths, whether through Hinduism's Dharmaśāstra, Islam's distinction between ḥudūd and taʿzīr, Christian moral theology, or the Jewish concept of measured response.⁵³ A secular code incorporating a Romeo and Juliet clause would therefore accord with a broad religious consensus favouring contextual assessment and proportionate punishment in matters of sexual conduct.

VI. ANTHROPOLOGICAL PERSPECTIVES

A. Cross-cultural understandings of adolescence and maturity

Anthropological evidence indicates that adolescence is not a universal life stage but one that varies across cultures.⁵⁴ Many non-Western and pre-industrial societies mark the transition from childhood to adulthood through rites of passage occurring around or shortly after puberty, between the ages of twelve and sixteen. In such cultures, adolescence does not extend into the mid- to late twenties; rather, individuals are regarded as adults and are expected to assume adult responsibilities, including marriage and sexual activity, from the time of initiation.

Margaret Mead's celebrated though contested study *Coming of Age in Samoa* (1928) advanced the view that Samoan adolescents experienced sexuality with greater ease and fewer conflicts than their Western counterparts, suggesting that much of the storm and stress of adolescence was culturally rather than biologically produced.⁵⁵ Although Mead's findings have been challenged by Derek Freeman and others, her central insight retains force: culture matters in the experience and regulation of adolescent sexuality.⁵⁶

B. Anthropology of sexuality: universalism and cultural relativism

Sexuality studies foreground a fundamental tension between two stances. The universalist position maintains that human sexuality is characterised by the emergence of sexual desire at puberty, the capacity for pair-bonding, and the heightened vulnerability of younger individuals to exploitation by older ones, and on this basis it supports universal legal protection such as age

⁴⁸ James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* 238 (1987).

⁴⁹ Augustine, *De Bono Coniugali (On the Good of Marriage)* ch. 6.

⁵⁰ See generally Pontifical Council for the Family, *The Truth and Meaning of Human Sexuality* (1995).

⁵¹ Babylonian Talmud, *Sanhedrin* 69a.

⁵² See *Lawrence v. Texas*, 539 U.S. 558, 571 (2003) (Kennedy, J.) ("The issue is whether the majority may use the power of the State to enforce these views on the whole society through operation of the criminal law.").

⁵³ This synthesis draws on comparative religious ethics scholarship. See Sumner B. Twiss & Bruce Grelle eds., *Explorations in Global Ethics* (2000).

⁵⁴ Alice Schlegel & Herbert Barry III, *Adolescence: An Anthropological Inquiry* (1991).

⁵⁵ Margaret Mead, *Coming of Age in Samoa* (1928).

⁵⁶ Derek Freeman, *Margaret Mead and Samoa: The Making and Unmaking of an Anthropological Myth* (1983).

restrictions on sexual activity.⁵⁷ The cultural relativist position, by contrast, emphasises the considerable cultural variation in the regulation and practice of human sexuality. Gilbert Herdt's studies of the Sambia of Papua New Guinea, for instance, documented practices among pubertal-aged boys that would constitute serious sexual abuse under Western legal systems, yet were regarded within that culture as essential to the boys' development into masculine adults.⁵⁸ These findings carry clear implications for the Romeo and Juliet clause. While the imperative to safeguard the sexually immature is universal, the means of doing so, including the ages used to mark maturity and the balance struck between family and State regulation, must be sensitive to context. A Romeo and Juliet clause, which introduces a measure of contextual evaluation into an otherwise rigid scheme, accords more closely with anthropological understanding than a bright-line rule.

C. Rites of passage, initiation, and sexual debut across cultures

Cross-cultural data on the age of first sexual experience reveal significant variation. The median age at first sex among women in sub-Saharan Africa ranges from 15.9 to 19.6 years, and among men from 16.8 to 20.3 years.⁵⁹ In the United States, the median age of sexual debut is approximately seventeen years.⁶⁰ In India, despite conservative social norms, studies indicate that a significant proportion of young people engage in premarital sexual activity, with the average age of debut declining in urban areas.⁶¹ In many traditional societies, sexual activity begins shortly after the onset of puberty, often, though not always, within marriage.⁶² These findings underscore the empirical reality that adolescent sexuality is common and that the law must address it pragmatically rather than through denial. A model that simply outlaws all sexual activity below the age of eighteen, without acknowledging the realities of adolescent development, is likely to prove both ineffectual and unjust.

D. The social construction of childhood and consent

The anthropological and sociological literature on childhood, including Philippe Ariès's *Centuries of Childhood*,⁶³ Viviana Zelizer's *Pricing the Priceless Child*,⁶⁴ and more recent work by Allison James and Alan Prout,⁶⁵ demonstrates that childhood is not a biological given but a

⁵⁷ Donald Symons, *The Evolution of Human Sexuality* (1979).

⁵⁸ Gilbert Herdt, *Guardians of the Flutes: Idioms of Masculinity* (1981).

⁵⁹ Kaye Wellings et al., *Sexual Behaviour in Context: A Global Perspective*, 368 THE LANCET 1706 (2006).

⁶⁰ Lawrence B. Finer, *Trends in Premarital Sex in the United States, 1954-2003*, 122 PUB. HEALTH REP. 73 (2007).

⁶¹ Int'l Inst. for Population Scis., *Youth in India: Situation and Needs 2006-2007* (2010).

⁶² Schlegel & Barry, *supra* note 54.

⁶³ Philippe Ariès, *Centuries of Childhood: A Social History of Family Life* (Robert Baldick trans., 1962).

⁶⁴ Viviana A. Zelizer, *Pricing the Priceless Child: The Changing Social Value of Children* (1985).

⁶⁵ Allison James & Alan Prout eds., *Constructing and Reconstructing Childhood* (3d ed. 2015).

social construction that has varied significantly across historical periods. The notion of the innocent child, wholly asexual until a fixed legal age, is relatively recent and rooted primarily in Western culture of the eighteenth and nineteenth centuries. When this notion is codified into law, particularly through rigid age thresholds for consent, it may operate against the best interests of adolescents by criminalising ordinary teenage conduct and stripping agency from young people who are cognitively capable of considered choices.

The concept of consent itself has anthropological dimensions. Consent in the modern liberal sense, understood as an autonomous, informed, voluntary decision by an individual agent, presupposes a particular and culturally specific model of personhood, that of the rational, autonomous individual.⁶⁶ In many societies, decisions about sexual partnerships are made collectively, by families, clans, or communities, rather than individually. This paper does not advocate a return to collective decision-making about sexuality, a practice too often deployed as an instrument of patriarchal oppression; it stresses, rather, that consent-based legal frameworks must be understood within the cultural context in which they operate.

VII. THE INDIAN CONTEXT: THE POCSO ACT AND THE CASE FOR A ROMEO AND JULIET CLAUSE

A. The POCSO Act, 2012: structure, purpose, and critique

The Protection of Children from Sexual Offences Act, 2012 was enacted for the laudable purpose of protecting children from sexual abuse, sexual harassment, and pornography.⁶⁷ It was a response to the widespread prevalence of child sexual abuse in India and to the inadequacy of the existing provisions of the Indian Penal Code. The principal features of the Act may be summarised as follows. It is gender-neutral, so that the victim or the perpetrator may belong to either gender. It provides a comprehensive scheme of sexual offences, including penetrative sexual assault (Section 3), aggravated penetrative sexual assault (Section 5), sexual assault (Section 7), aggravated sexual assault (Section 9), sexual harassment (Section 11), and the use of a child for pornographic purposes (Section 13). It adopts a strict age criterion, defining a child as any person below eighteen years (Section 2(d)) and rendering the consent of the child wholly immaterial (Section 3 read with Section 2(d)). It imposes mandatory reporting of offences (Section 19), reverses the burden of proof so that the court presumes the guilt of the accused (Sections 29 and 30), and provides for the constitution of Special Courts for the trial of such offences (Section 28).

⁶⁶ Saba Mahmood, *Politics of Piety: The Islamic Revival and the Feminist Subject* (2005).

⁶⁷ The Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012, pmbl. & Statement of Objects and Reasons (India).

Although the POCSO Act is a significant component of India's child-protection framework, its blanket criminalisation of any sexual activity involving persons below eighteen has attracted substantial criticism. First, it does not distinguish between exploitative or abusive conduct and consensual sexual activity between peers of similar age. Second, the mandatory reporting requirement creates perverse incentives, since healthcare professionals, counsellors, and educators who learn of sexual activity among adolescents are obliged by law to report it.⁶⁸ Third, the reverse burden of proof, combined with the irrelevance of consent, produces a regime of absolute liability that is anomalous in the criminal law.⁶⁹ Fourth, the Act has been widely misused to prosecute cases arising from consensual relationships, elopements, and inter-caste or inter-religious unions, functioning in practice as an instrument of social control rather than child protection.

B. Judicial struggles and the call for reform

Indian courts have been candid about the difficulties of applying the POCSO Act to consensual adolescent relationships. In *Vijayalakshmi v. State of Tamil Nadu* (2021), Justice V. Parthiban, while quashing proceedings in a case involving a young man and a seventeen-year-old girl in a consensual relationship, expressly recommended the introduction of a Romeo and Juliet clause, observing that the rigour of the POCSO Act cannot be applied where a minor above the age of sixteen enters into a relationship with full understanding of its consequences, and that a special provision concerning Romeo and Juliet type relationships needs to be introduced.⁷⁰ In *Dharamveer v. State* (2020), the court granted bail in a POCSO matter arising from a consensual relationship, noting that the Act was not intended to bring within its sweep cases of adolescent romance, and that the law must keep pace with changing social realities.⁷¹ In *Sunil Mahadev Patil v. State of Maharashtra* (2014), the court acquitted an accused charged with sexual assault under POCSO in respect of a seventeen-year-old who had eloped with him, characterising the matter as a love affair rather than a case of sexual exploitation.⁷²

C. Empirical evidence: data on adolescent cases under POCSO

Empirical studies provide compelling evidence that a significant proportion of POCSO cases involve consensual relationships. A study by the Centre for Child and the Law at the National Law School of India University, Bangalore, analysing POCSO cases before Special Courts in

⁶⁸ Chander Shekhar, *Mandatory Reporting and Adolescent Health under POCSO*, 53 ECON. & POL. WKLY. 24 (2018).

⁶⁹ See generally Dipa Dube, *Rethinking the Interplay between POCSO and Consensual Teenage Relationships*, 55 ECON. & POL. WKLY. (2020).

⁷⁰ *Vijayalakshmi*, *supra* note 22.

⁷¹ *Dharamveer*, *supra* note 23.

⁷² *Sunil Mahadev Patil v. State of Maharashtra*, 2014 SCC OnLine Bom (India).

several states, found that around 24.3 per cent of cases involved consensual sexual activity between adolescents, in most instances within romantic relationships.⁷³ Data from Delhi indicate that in a large number of POCSO cases the complaint was lodged by the girl's parents, without her consent, in order to prevent a relationship they regarded as unacceptable.⁷⁴ National data show that the conviction rate under POCSO remains below thirty-five per cent, and that many acquittals arise from cases involving consensual relationships, suggesting that the criminal justice system expends considerable resources on matters that ultimately end in acquittal.⁷⁵ A 2019 study by HAQ: Centre for Child Rights found that in 36.4 per cent of POCSO cases in Delhi, the girl described her relationship with the boy as consensual and, in some instances, named the accused as her husband. Collectively, these data establish that the absence of a Romeo and Juliet clause in Indian law is not a hypothetical concern but a concrete one, affecting thousands of young people and their families.

VIII. CONCLUSION

At the intersection of constitutionalism, morality, and public policy, the Romeo and Juliet clause must be assessed by reference both to the capacity of young persons to give valid consent and to the role of the State in protecting minors while respecting their dignity and privacy. A criminal regime that proscribes all sexual activity involving persons below eighteen, without exception even for consensual relationships, is constitutionally defective for want of proportionality and for its infringement of the rights to privacy, dignity, and equality. It is also normatively overbroad, for the major religious traditions distinguish between consensual peer intimacy and exploitative abuse and recognise varying degrees of moral culpability according to varying degrees of maturity. It is, moreover, anthropologically reductionist and counterproductive, for it imposes a monistic conception of childhood, diverts the criminal law from genuine abuse, and targets consensual relationships.

A carefully limited Romeo and Juliet clause offers a principled middle path. It preserves the role of the State in protecting minors from abuse while withdrawing the penal system from consensual relationships between young people. Such a reform is constitutionally sound, morally defensible, and pragmatically desirable, and it offers a coherent resolution of the conflict between protection and autonomy.

⁷³ Ctr. for Child & the Law, *supra* note 4.

⁷⁴ HAQ: Ctr. for Child Rights, *supra* note 34.

⁷⁵ Nat'l Crime Records Bureau, *Crime in India 2021* (2021) (India).