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From Protection to Prosecution: Reconsidering Close-in-Age Exemptions in India

PUSHPENDRA KUMAR VERMA* AND NILAM SAH**

ABSTRACT

The Protection of Children from Sexual Offences Act, 2012 (POCSO), under which consent is legally invalid for anyone below the age of eighteen, represents India's commitment to a zero-tolerance policy on the sexual abuse of minors. Two regrettable outcomes of this protective framework are the criminalisation of consensual relationships between young people aged 16 to 18 and a shift from protection to prosecution. The Madras High Court identified this jurisprudential dilemma in Sabari v. Inspector of Police and Vijayalakshmi v. State, where the provisions of POCSO were applied to young couples in peer relationships rather than to exploitative scenarios. In the light of K.S. Puttaswamy v. Union of India and Shafin Jahan v. Asokan K.M., this over-criminalisation raises important constitutional questions concerning the rights to equality, privacy, dignity and decisional autonomy guaranteed under Articles 14, 19 and 21. The paper suggests that India maintain the age of consent at 18 while providing a limited close-in-age exception permitting consensual sexual activity between adolescents whose ages differ by no more than three years. Such an exception would align Indian law more closely with comparable jurisdictions such as South Africa, the United States and the United Kingdom, and would ensure that peer relationships are not equated with predatory exploitation. Without reducing the age of consent, the Law Commission's 283rd Report recommended "guided judicial discretion" in sentencing with regard to older adolescents. The proposed model incorporates strong safeguards, including clauses excluding from the exception any relationship based on coercion, force, grooming, manipulation, misuse of authority or a significant power imbalance, so that the exception cannot be used to enable exploitation. The paper concludes that a close-in-age exception would make India's child protection system more appropriate, adolescent-friendly and constitutionally compliant, while continuing to hold sexual abusers accountable and subject to severe sanctions.

Keywords: POCSO Act, Close-in-age exemption, Age of consent, Adolescent autonomy, Consensual peer relationships, Over-criminalisation, Romeo and Juliet clause, Constitutional rights (Articles 14, 19, 21), 22nd Law Commission Report No. 283

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I. INTRODUCTION

A. What “age of consent” means

The age of consent serves as a safeguard against the sexual exploitation or abuse of children and adolescents and against early sexual engagement, and seeks to ensure that sexual behaviour is informed and consensual. It rests on a societal agreement that a person below a certain age cannot meaningfully consent to sexual activity and should therefore be protected by the law.

Since 1860, the idea of the “age of consent” in India has evolved from a notion into a legal framework.

B. The Indian Penal Code, 1860

India’s understanding of the age of consent has changed significantly since colonial times. The original Victorian-era Indian Penal Code, 1860, by Section 375, fixed the age of consent at ten years. This threshold proved far too low: in *Queen-Empress v. Hurree Mohun Mythee*, an eleven-year-old wife was raped by her husband and died, sparking demands for social reform.¹

C. The Age of Consent Act, 1891

The *Hurree Mohun Mythee* case played a major role in igniting the legislative reform that led to the Age of Consent Act, 1891, which fixed the age of consent at twelve years for all girls, regardless of marital status. For the first time, the legal system acknowledged that children should be protected for longer than marriage custom allowed.²

D. The progressive reforms of 1925 to 1940

Subsequent reforms raised the protective threshold further. In 1925, the age was raised to fourteen years,³ and the Criminal Law Amendment Act of 1940 raised it to sixteen years.⁴ These changes reflected a growing understanding of adolescent development and the greater need to safeguard teenagers from the danger of exploitation.

E. The Criminal Law (Amendment) Act, 2013

The Criminal Law (Amendment) Act, 2013,⁵ enacted in the wake of the December 2012 Delhi gang rape (the “Nirbhaya” case, later decided by the Supreme Court in *Mukesh v. State (NCT of Delhi)*⁶), comprehensively revised the law on sexual offences and raised the age of consent

¹ *Queen-Empress v. Hurree Mohun Mythee*, (1891) ILR 18 Cal 49.

² Age of Consent Act, 1891, Act No. 10 of 1891.

³ Criminal Law Amendment Act, 1925.

⁴ Criminal Law Amendment Act, 1940.

⁵ The Criminal Law (Amendment) Act, 2013, No. 13, Acts of Parliament, 2013 (India).

⁶ *Mukesh v. State (NCT of Delhi)*, (2017) 6 SCC 1.

under Section 375 of the Indian Penal Code to eighteen. This created a protective framework aligning the age of consent with the legal age of marriage for women under the Prohibition of Child Marriage Act, 2006, although Exception 2 to Section 375 continued to exempt intercourse with a wife aged fifteen or more until the Supreme Court read it down in 2017.

F. The Protection of Children from Sexual Offences Act, 2012

The POCSO Act, 2012 represents a paradigm shift towards child-centric justice. Section 2(1)(d) defines a “child” as “any person below the age of eighteen years”.⁷ Its important characteristics include:

- Gender-neutral protection: all children, regardless of gender, are protected by POCSO.
- Strict liability: sexual activity with a child is an offence regardless of consent.
- Child-friendly procedures: Special Courts, in-camera trials and the protection of child witnesses.
- Comprehensive offences: penetrative sexual assault, non-penetrative sexual assault, sexual harassment and the use of children for pornographic purposes.

G. The Bharatiya Nyaya Sanhita, 2023

The Bharatiya Nyaya Sanhita, 2023 (BNS), which replaced the Indian Penal Code, 1860, maintains the age of consent at eighteen in clause (vi) of Section 63. Because Section 63 makes sexual intercourse with a woman under eighteen years of age rape whether or not she consents, the protective framework of POCSO is preserved. By grouping offences against women and children in Chapter V, the BNS reinforced the legislative aim of protecting them.⁸

The problem: the existing paradigm treats 18 as an absolute line between adults and children, and does not distinguish between a consensual relationship between older adolescents and an adult–child relationship.

II. CONSTITUTIONAL EVALUATION

A. Article 14: equality before the law and reasonable classification

Article 14 guarantees equality before the law and the equal protection of the laws, and permits reasonable classification founded on an intelligible differentia bearing a rational nexus to the object of the legislation. The present POCSO definition places all sexual activity under the age of 18 in a single category, without distinguishing between:

⁷ The Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012, § 2(1)(d) (India).

⁸ The Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023, § 63 (India).

- an adult over 40 who has intercourse with a child under 16 (exploitation); and
- consensual relationships between adolescents aged sixteen to eighteen who differ only slightly in age (peer relationships).

Although persons under 18 are involved in both scenarios, their vulnerability, power and developmental stage differ greatly. A close-in-age exemption would satisfy Article 14's requirements for a classification based on age, developmental similarity and the absence of exploitation. The failure to differentiate between consensual adolescent relationships and exploitative abuse is itself an artificial classification that violates the guarantee of equality.⁹

B. Article 19: freedom of speech and association

Article 19(1)(a) guarantees the freedom of speech and expression, and Article 19(1)(c) the freedom of association. The Supreme Court now treats intimate personal choices, including the choice of a spouse, as constitutionally protected. In *Shafin Jahan v. Asokan K.M.* (2018), Chandrachud J., concurring, observed that "the choice of a partner whether within or outside marriage lies within the exclusive domain of each individual". Although Article 19 rights are subject to reasonable restrictions, the criminalisation of consensual adolescent relationships is a disproportionate interference with expression, association and individual identity. The state's interest in child protection is here at odds with adolescents' constitutional rights and evolving autonomy.¹⁰

C. Article 21: life, liberty, privacy and dignity

Article 21 of the Constitution offers the strongest protection for adolescent autonomy. In *K.S. Puttaswamy v. Union of India*, the Supreme Court recognised privacy as a fundamental right encompassing intimate personal choices, decisional autonomy and dignity. Its important ideas are:

- Right to make private decisions: privacy includes the freedom to make private decisions without government interference.
- Dignity: dignity requires respect for one's individuality and interpersonal relationships.
- Decisional autonomy: decisions about personal relationships and bodily integrity are protected.¹¹

⁹ INDIA CONST. art. 14.

¹⁰ INDIA CONST. arts. 19(1)(a), 19(1)(c), 19(2), 19(4); *Shafin Jahan v. Asokan K.M.*, (2018) 16 SCC 368 (Chandrachud, J., concurring).

¹¹ INDIA CONST. art. 21.

In *Laxmibai Chandaragi B. v. State of Karnataka* (2021), the Court made clear that individual choice and dignity go hand in hand, and that the consent of the family or the community cannot override individual autonomy in matters falling within the constitutionally guaranteed sphere of dignity.¹²

Proportionality analysis:

- Legitimate aim: minors must be safeguarded, although this does not require that all sexual conduct under the age of 18 be criminalised.
- Suitability: an age-based bar serves a protective function, so this limb is met.
- Necessity: less restrictive options, such as close-in-age exemptions, exist, so this limb is not met.
- Proportionality in the strict sense: the impact on adolescent autonomy is disproportionate.

Constitutional position: the proposed exception does not grant everyone under the age of eighteen an unconditional “right to sexual autonomy”; it is directed at the unjustified and disproportionate criminalisation of limited and normal peer relationships.

III. JUDICIAL RESPONSE: CASE-LAW ANALYSIS

A. *Sabari v. Inspector of Police* (Madras High Court, 2019)

The issue: a POCSO prosecution arising from a consensual relationship between young people.

Judicial remarks: the Madras High Court observed that the provisions of POCSO were increasingly being invoked in cases of adolescent relationships, and was concerned at the severe legal consequences for teenagers close in age. It emphasised the importance of distinguishing genuine adolescent relationships from sexual exploitation, and proposed an amendment to the law that would differentiate between predatory abuse and consensual peer relationships.

Significance: the judgment is a recognition of legislative limits rather than an exemption for persons close in age. Acknowledging that it could not alter the statutory age limits, the Court recommended that Parliament do so.¹³

¹² *Laxmibai Chandaragi B. v. State of Karnataka*, (2021) 3 SCC 360.

¹³ *Sabari v. Inspector of Police*, (2019) 3 MLJ (CrI) 110 (Mad.).

B. *Vijayalakshmi v. State* (Madras High Court, 2021)

Facts: a minor girl and a young man who were in a consensual relationship left their families and married. The case was registered under Section 366 of the Indian Penal Code, Section 6 of POCSO and Section 9 of the Prohibition of Child Marriage Act, 2006.

Legal reasoning: the Court exercised its inherent power under Section 482 of the Code of Criminal Procedure, 1973 to quash the proceedings. It took note of the consensual nature of the relationship and of the recurrence of POCSO prosecutions arising from adolescent relationships, and emphasised that the object of POCSO is to protect children from sexual abuse, not to criminalise every adolescent relationship. It also referred to the developmental characteristics of adolescence that distinguish genuine relationships from exploitation.

Vijayalakshmi illustrates the difficulties that arise when factually complex relationships meet inflexible laws, and reflects the courts' reluctance to apply POCSO rigidly to adolescent relationships.¹⁴

C. *State v. Hitesh* (Delhi High Court, 2025)

Facts: the accused was prosecuted under Section 4 of POCSO in respect of a relationship with a girl aged over sixteen, who testified that the relationship was consensual. He was acquitted, and the State sought leave to appeal. The Court also held that the prosecution had not proved beyond reasonable doubt that the girl was a minor.

Legal reasoning: in dismissing the State's petition, the Court relied on the Full Bench decision in *Court on its Own Motion (Lajja Devi) v. State*, under which proceedings under Sections 363 and 376 of the Indian Penal Code may be set aside where a girl above sixteen years of age states that she went with the accused of her own will. There is no straitjacket formula; the decision calls for serious consideration of:

- the maturity and understanding of the girl;
- her social background;
- the ages of the boy and the girl; and
- the attending circumstances.

Significance: *Hitesh* shows judicial acknowledgement that, although adolescent consent is legally ineffective, it may be taken into account in the exercise of discretion. The judgment favours a context-based approach over a mechanical one.¹⁵

¹⁴ *Vijayalakshmi v. State rep. by the Inspector of Police*, CrI. O.P. No. 232 of 2021 (Mad. Jan. 27, 2021).

¹⁵ *State v. Hitesh*, CrI. L.P. 10/2022, 2025:DHC:944 (Del. Jan. 30, 2025) (relying on *Court on its Own Motion (Lajja Devi) v. State*, 2012 (4) RCR (Civil) 821 (Del.) (FB)).

D. *Independent Thought v. Union of India* (Supreme Court, 2017)

Issue: the petition challenged Exception 2 to Section 375 of the Indian Penal Code, which exempted from the offence of rape sexual intercourse by a man with his own wife aged between fifteen and eighteen. The Supreme Court read down the Exception, holding that sexual intercourse with a wife below eighteen years of age is rape, and thereby harmonised the Code with POCSO and the protection of the girl child.

Significance: *Independent Thought* reaffirmed that the age of protection is 18, and showed that child protection need not be sacrificed when the law distinguishes between types of conduct. The position is now codified in Exception 2 to Section 63 of the BNS, which excludes intercourse with a wife from rape only where the wife is not under eighteen years of age.¹⁶

E. *K.S. Puttaswamy v. Union of India* (Supreme Court, 2017)

Holding: privacy is an inalienable fundamental right under Article 21, encompassing intimate choices, decisional autonomy and dignity.

Relevance: the judgment provides a constitutional basis for young people's autonomy in close relationships, within the limits of the law and subject to appropriate protection by the State.¹⁷

F. *Shafin Jahan v. Asokan K.M.* (Supreme Court, 2018)

The Court held that the choice of an intimate partner is a crucial component of the freedom of choice protected by Article 21.

Relevance: the judgment supports constitutional protection for choice in relationships, weighed against the interests of the State.¹⁸

G. *Ajith @ Ajithkumar v. State* (Madras High Court, 2022)

Observations: the Court reiterated concerns about criminal cases initiated at the instance of families opposed to adolescent relationships. Citing *Sabari* and *Vijayalakshmi*, it observed that where both parties are sixteen or older and the age gap between them is not great, a consensual relationship should be treated differently, and it quashed the proceedings.

Significance: the decision reflects the view that legislative policy intervention is necessary.¹⁹

¹⁶ *Independent Thought v. Union of India*, (2017) 10 SCC 800.

¹⁷ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

¹⁸ *Shafin Jahan*, *supra* note 10.

¹⁹ *Ajith @ Ajithkumar v. State*, CrI. O.P. No. 14708 of 2022 (Mad. June 28, 2022).

IV. THE 22ND LAW COMMISSION'S 283RD REPORT: ANALYSIS

A. Context and mandate

The 22nd Law Commission of India examined the age of consent under POCSO on references from the High Court of Karnataka (Dharwad Bench) and the High Court of Madhya Pradesh (Gwalior Bench). Adolescent couples were being prosecuted, frequently at the instance of families who disapproved of the relationship. Because a person cannot legally consent before the age of eighteen, police cases were registered and prosecutions launched even where the relationship was genuine.

B. Key findings

Preserving eighteen: the Commission did not recommend lowering the age of consent from eighteen to sixteen. It considered it inadvisable to tinker with the existing age of consent, observing that lowering it would have a direct and negative bearing on the fight against child marriage and child trafficking.

Recognising adolescent reality: the Commission acknowledged that older adolescents, between sixteen and eighteen, may be in relationships marked by “tacit approval in fact though not consent in law”, and that their consent is not legally valid.

Guided judicial discretion: the Commission recommended that Special Courts be given guided discretion in sentencing in cases involving consensual relationships with children aged between sixteen and eighteen, so that adolescents in non-exploitative relationships do not face the same penalties as perpetrators of predatory sexual abuse.

C. Critical evaluation

Advantages:

- The protective threshold of eighteen is maintained.
- The problem of excessive criminalisation is acknowledged.
- Sentences below the statutory minimum become available.

Limitations:

- Sentencing discretion concerns punishment, not criminalisation.
- Nothing changes at the level of liability: peer relationships remain subject to the criminal law.
- It does not prevent persons accused under POCSO from being arrested, investigated or stigmatised.

Research advancement: a limited close-in-age exemption should not merely mitigate criminalisation but prevent it at the threshold; sentencing discretion alone is insufficient.²⁰

V. COMPARATIVE LEGAL ANALYSIS

A. United States: “Romeo and Juliet” laws

Age of consent: the United States has no single federal age of consent; each state sets its own, usually between sixteen and eighteen.

Close-in-age exemptions: several states have enacted “Romeo and Juliet” laws or exemptions, which allow adolescents close in age to engage in consensual sexual activity.

Important features:

- Depending on the state, the permitted age difference commonly ranges from two to four years.
- Some states provide complete exemptions, while others provide reduced offences or affirmative defences.
- Exemptions cover only voluntary relationships free from exploitation, coercion and force.

For instance, Section 22.011(e) of the Texas Penal Code establishes an affirmative defence where the victim was at least 14 years old, the actor was not more than three years older than the victim, and the conduct was consensual.²¹

Lesson for India: the American model shows that a strict age-gap requirement can coexist with a robust statutory prohibition of adult exploitation.

B. United Kingdom: Sexual Offences Act 2003

Age of consent: 16 in England and Wales under the Sexual Offences Act 2003.

Additional protections: in certain circumstances the Act protects persons under the age of eighteen, including in cases of:

- abuse of a position of trust (teachers, coaches, carers);
- relationships within the family; and
- exploitative situations.

²⁰ LAW COMMISSION OF INDIA, *Age of Consent under the Protection of Children from Sexual Offences Act, 2012*, Report No. 283 (Sept. 2023), <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2023/09/20230929466194485.pdf>.

²¹ TEX. PENAL CODE ANN. § 22.011(e).

The UK framework thus combines two methods: a standard age of consent of sixteen, and increased protection up to eighteen in situations of authority and dependence. India should learn to calibrate protection according to age, authority, vulnerability and other factors, rather than relying on criminalisation alone.

C. Germany: a differentiated approach

German Criminal Code (Strafgesetzbuch, StGB): the basic age threshold is 14.

Contextual protections:

- All sexual contact with children under the age of 14 is prohibited.
- Adolescents aged 14 and 15 are protected against persons aged 21 or older who exploit their lack of capacity for sexual self-determination.
- Minors in relationships of subordination, dependency or authority receive additional protection.²²

Approach: rather than a single rigid age limit, Germany applies a threshold-plus-context approach.

Lesson for India: the lesson lies not in Germany's chosen age but in its acceptance that age and exploitation can be regulated in different ways.

D. France: the 2021 reforms

Age of consent: 15 years.

Enhanced protections:

- Increased protection against sexual acts with younger children.
- Increased penalties in relationships involving authority or abuse.

Approach: France took a firm stance on child protection in its 2021 reforms, while not treating adult sexual conduct towards minors in the same way as adolescent relationships.²³

Lesson for India: protective structures need not treat all adolescent relationships uniformly.

E. South Africa: a statutory close-in-age exemption

South Africa offers India the most relevant and instructive model.

²² Strafgesetzbuch [StGB] [Penal Code], §§ 174, 176, 182 (Ger.).

²³ Code pénal [C. pén.] [Penal Code] arts. 222-22-1, 227-25 (Fr.); *see also id.* art. 222-23-1, *as inserted by* Loi 2021-478 du 21 avril 2021 visant à protéger les mineurs des crimes et délits sexuels et de l'inceste [Law 2021-478 of April 21, 2021 to Protect Minors from Sexual Crimes and Offences and Incest], Journal Officiel de la République Française [J.O.] [Official Gazette of France], Apr. 22, 2021.

Legislation: the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, which contains specific close-in-age provisions in Sections 15 and 16.²⁴

Key provisions:

- The age of consent is sixteen years.
- An act of sexual penetration or sexual violation with a child aged 12 to 15 is an offence despite the child's consent, unless the other party was also aged 12 to 15, or was 16 or 17 and not more than two years older than the child.
- Where the other party was 16 or 17 and the age difference exceeded two years, the conduct remains an offence, but a prosecution may be instituted only with the written authorisation of the Director of Public Prosecutions.

Features:

- The exemption is statutory, not judicial, and its grounds are explicit.
- It operates within a fixed age-gap threshold of two years.
- It protects adolescents from exploitation by significantly older persons.

Lesson for India: a close-in-age exemption is not an automatic exemption; as the South African experience shows, it should be supported by age- and power-related safeguards, including safeguards at the stage of prosecution.

VI. LEGISLATIVE MODEL

General rule under POCSO and the BNS: maintain eighteen years as the general age of consent.

A. Proposed exemption and recommendation

The following clause should be added to POCSO (or to the corresponding provision of the BNS):

“Close-in-Age Exemption: (1) Nothing in this Act shall be held to be an offence under the provisions of the relevant sections if:

- (a) there is mutual consent to the sexual activity;
- (b) both parties are sixteen or more but less than eighteen years of age at the time of the act;
- (c) the ages of the parties are not more than three years apart; and

²⁴ Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 §§ 15–16 (S. Afr.), as substituted by Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act 5 of 2015 (S. Afr.).

(d) none of the exclusions listed in sub-section (2) applies.

(2) The exemption shall not be available where:

- (a) force, threat or intimidation is used;
- (b) coercion or undue influence is proved;
- (c) grooming, manipulation or psychological exploitation is involved in any way;
- (d) the relationship is one of trafficking or commercial sexual exploitation;
- (e) the accused is in a position of trust, authority or dependency (including teachers, coaches, employers, guardians or institutional authorities);
- (f) the older party has a “significant influence” over the younger party;
- (g) the act involves the production, possession or dissemination of child pornography; or
- (h) the age difference exceeds the maximum stated in sub-section (1)(c).”

B. Rationale for a three-year age gap

Balancing considerations:

Two-year rule:

- Advantage: it offers stronger protection against exploitation.
- Disadvantage: it may exclude relationships such as those between a 17-year-old and a 14-year-old, although they may be at a similar developmental stage of adolescence.

Five-year rule:

- Disadvantage: it does not necessarily foster positive peer relationships.
- Disadvantage: it risks exempting young adults who are considerably older.

Three-year compromise:

- A relatively tight margin that respects adolescent peer relationships.
- It reflects the developmental similarities of those aged 16 to 18.
- It is in line with the approach of several U.S. states.
- It allows some flexibility while retaining protective measures.

Empirical basis: the final age gap should be determined on the basis of:

- evidence on adolescent development;
- consultation with child-rights practitioners, psychologists and teachers; and

- a documented process of legislative review and stakeholder consultation.

C. Safeguards against misuse

Essential safeguards:

1. No force or violence: if there is any evidence of physical force, threat or intimidation, the exemption is not available.
 2. No grooming: the exemption does not apply where the older person deliberately cultivated an emotional dependency or exploited the adolescent for sexual gratification.
 3. No position of authority: the exemption does not extend to teachers, coaches, employers, guardians or anyone holding institutional authority, or authority arising from a familial relationship, over the child.
 4. No exploitation: economic dependency, emotional manipulation, trafficking or commercial exploitation revokes the exemption.
- Strict age determination: the age difference must be determined objectively, as at the time of the offence.
 - No exception for offences relating to the creation, possession or sharing of child sexual abuse material.
 - Judicial scrutiny: courts must scrutinise the factual circumstances of consent, not merely take them on trust.
 - Burden of proof: the accused must establish that the exemption applies.

D. Addressing counterarguments

i. Age exemptions undermine the protection of children

Response: the proposed model does not lower the general age of consent of 18 years.

- The exemption would be limited to a specific kind of peer relationship.
- Adults who exploit children remain fully accountable.
- The safeguards ensure that the exemption serves genuine peer relationships rather than enabling exploitation.

ii. Adolescents cannot give informed consent

Response: the law already recognises the differing vulnerabilities of adolescents in different contexts.

- The exemption does not treat adolescents as fully fledged adults.

- It recognises the difference between relationships and exploitation, which is fundamental to the criminal law.
- Developmental psychology indicates that 16- to 18-year-olds have a higher level of decision-making capacity than younger children.

iii. Parents would lose an important protective role

Response:

- Any complaint by a parent alleging force, coercion, grooming or exploitation remains legitimate.
- The reform will prevent parental disapproval of a consensual peer relationship from triggering a prosecution for a serious sexual offence.
- Parents retain civil and protective rights, but these should not criminalise adolescent autonomy.

iv. The exemption will increase child marriage and child trafficking

Response: the exemption would apply only to consensual relationships, not to relationships involving trafficking or coercion.

- Trafficking and commercial exploitation are expressly excluded.
- The Prohibition of Child Marriage Act, 2006 continues in force as separate legislation.
- No evidence has been identified, in South Africa or in the U.S. states, of any link between close-in-age exemptions and an increase in trafficking.

VII. FINDINGS

The key findings of this research are as follows.

First, India should maintain the general age of consent at 18 years. There is no case for reducing the statutory age, which is critical to the prevention of child sexual exploitation, child marriage and child trafficking.

Second, the existing POCSO framework does not differentiate between adolescent peer relationships and adult–minor relationships, which are cases of exploitation. This over-criminalisation violates the constitutional rights guaranteed under Articles 14, 19 and 21.

Third, Indian courts have recognised the issue on several occasions. *Sabari*, *Vijayalakshmi* and *Hitesh* display judicial sensitivity to the criminalisation of adolescent relationships, yet observe that no exception can exist in the absence of legislation.

Fourth, the 283rd Report of the 22nd Law Commission provides helpful legislative background. It recommends retaining 18 as the minimum age while providing scope for “guided judicial discretion” in sentencing for those aged between 16 and 18, and does not propose to reduce the age of protection.

Fifth, comparative law shows that close-in-age mechanisms can supplement strong anti-exploitation rules. South Africa’s two-year statutory model is of special interest because it clearly differentiates adolescent peer relationships from sexual exploitation.

VIII. CONCLUSION

The Protection of Children from Sexual Offences Act, 2012 protects children in India from sexual offences, including sexual abuse, sexual harassment and sexual exploitation. The Act’s laudable choice of 18 as the age of consent should not be watered down by arguments about maturity or the “consent of the parties”.

But the absolute wording of the current framework has had a number of unintended consequences, notably the criminalisation of consensual adolescent relationships, especially between persons aged 16 to 18. By failing to differentiate between exploitation and consensual relationships, the law risks the prosecution of many young people, particularly boys, even where there is no evidence of abuse or coercion. The Law Commission recorded a growing concern that such cases are filed by family members who disapprove of the relationship, and that disapproval has at times extended to inter-caste, inter-religious and inter-class relationships, a use of POCSO contrary to the intent of the Act.

The Madras High Court (*Sabari*) and the Delhi High Court (*Hitesh*) have made clear that instances of exploitation differ from genuine adolescent relationships, while acknowledging that they cannot themselves create statutory exceptions; and the Law Commission, in its 283rd Report, found legislative change necessary, although in the form of guided sentencing discretion rather than an exception.

A study of jurisdictions including the United States, the United Kingdom, Germany, France and South Africa shows that each distinguishes adolescent relationships from exploitation, whether through close-in-age exemptions or by other means, without compromising child protection. South Africa’s specific two-year statutory model is especially pertinent to India.

Proposed legislative solution:

- General rule: retain eighteen as the age of consent.

- Three-year exception: decriminalise consensual sexual activity with a person aged between sixteen and eighteen where the other party is not more than three years older.
- Exclusions: exclude from the exemption relationships involving force, coercion, grooming, manipulation, exploitation, trafficking, commercial sexual exploitation, abuse of trust or authority, dependency or a significant power imbalance.
- Further protections: retain offences relating to child sexual abuse material, trafficking and child exploitation as independent offences.

The close-in-age exemption should be seen not as a step backwards in child protection but as a move towards child protection that is more proportionate, constitutionally sound and appropriate to adolescents. The underlying principle must be that the law differentiates between protection and prosecution, vulnerability and exploitation, and adolescent intimacy and sexual abuse.
