



LOVE ON TRIAL

*The Adolescent Lover, the POCSO Act and the Prison Door Between
Them*

A Study of the Sense of Love, the Present Legal Scenario and the Incarceration of
the Boy-Lover under the Protection of Children from Sexual Offences Act, 2012

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Abstract

A boy of nineteen falls in love with a girl of seventeen. They run away, marry in a gurdwara or a temple, and come back to find a POCSO case waiting for them. The girl is sent to a Nari Niketan or back to the parents she ran from. The boy goes to jail, often for months, sometimes for years, facing a minimum sentence that the law prescribes for the worst kind of child abuser. This paper is about that boy, and about the girl who is called a "victim" in a case she never wanted. It looks at the sense of love in adolescence, the present state of the law after the Supreme Court's 2026 judgment in *State of Uttar Pradesh v. Anurudh* and the continuing suo motu proceedings in *In Re: Right to Privacy of Adolescents*, and the real cost of incarceration on young lovers. It argues that the protective purpose of POCSO is best served not by lowering the age of consent but by a narrow, close-in-age exception, a discipline of investigation, and a sentencing law that allows the court to look at the human truth of each case. A practical guide for advocates appearing in such matters is added at the end.

1. A Story Every Trial Court Knows

Anyone who has spent a few years in the criminal courts of Punjab, Haryana or anywhere else in North India knows the file before it is opened. The FIR is lodged by the father. The words used are "kidnapped", "enticed", "took away". The age of the girl is shown as sixteen or seventeen, sometimes on the strength of a school certificate, sometimes on nothing more than the father's say-so. By the time the police find the couple, the girl has already told someone, a magistrate under Section 183 BNSS, a protection-petition bench of the High Court, or the investigating officer himself, that she went of her own will, that she loves the boy and that she wants to live with him.

None of that matters in law. Under Section 2(1)(d) of the Protection of Children from Sexual Offences Act, 2012, anyone below eighteen is a child, and a child cannot consent. The same rule now sits in Section 63 of the Bharatiya Nyaya Sanhita, 2023. So the boy is arrested for penetrative sexual assault, and very often for kidnapping as well. If the girl is shown to be under sixteen, the minimum punishment jumps to twenty years.

This is not a rare case. A study by Enfold Proactive Health Trust with UNICEF found that close to a quarter of POCSO cases in Maharashtra, Assam and West Bengal between 2016 and 2020 arose out of consensual "romantic" relationships between adolescents. Courts have said the same thing in their own words for over a decade. In January 2026 the Supreme Court itself took judicial notice of it.

The question this paper asks is simple to state and hard to answer: when the law meant to protect children ends up putting a young lover in jail and a young girl in a shelter home against her wishes, who exactly is being protected?

2. The Sense of Love in Adolescence

2.1 What the law sees and what the child feels

The law looks at adolescence through one number. Eighteen. Below it, you are a child for every purpose under POCSO. Above it, you are an adult who may consent. But adolescence is not a switch. It is a slow season of the mind and body, roughly from thirteen to nineteen, in which attraction, attachment and the first serious idea of a partner are all perfectly natural. Developmental psychology does not treat a sixteen-year-old's feelings for a classmate as a disorder. It treats them as growing up.

The Supreme Court put this in plain terms during the hearing of the suo motu case on 13 July 2026. The Bench led by Ms. B.V. Nagarathna, J. observed that fifteen to eighteen is a vulnerable age, an age of experimentation, and asked whether every



such relationship really becomes a POCSO case. The Court noted that parents often turn to criminal law after an elopement to save the family's "honour", and that POCSO was really meant for abuse inside the family, by a neighbour, by those in a position of power.

2.2 Love is not the same as exploitation

There is a world of difference between a seventeen-year-old girl and her nineteen-year-old classmate who decide to marry, and a forty-year-old man who grooms a fourteen-year-old. POCSO was written with the second man in mind. The trouble is that the statute, as drafted, cannot tell the two apart. The first boy and the second man face the same section, the same presumptions under Sections 29 and 30, the same minimum sentence.

That is the gap between the sense of love and the sense of the law. A good law should be able to see the difference. Ours, at present, leaves it entirely to the discretion of the police at the FIR stage and the mercy of the court at the bail stage.

2.3 The girl nobody listens to

It is easy to forget that the girl in these cases is also punished. She is examined medically, often against her will. She is questioned repeatedly. She may be sent to a children's home because her parents will not take her back and she will not go back to them. Her own statement, that she loves the boy, is treated as legally irrelevant. When the Supreme Court looked at one such case closely in 2025, it found that the young woman was left with no support from her family or the State, and described the whole episode as a failure of the legal, family and social systems. The law that claims to protect her ended up taking away her partner, her home and her voice at once.

3. The Legal Framework in Brief

3.1 POCSO Act, 2012

The structure is strict and deliberate.

- Section 2(1)(d): a "child" is any person below eighteen years¹.
- Sections 3 and 4: penetrative sexual assault, punishable with not less than ten years, extendable to life; not less than twenty years where the child is below sixteen² (after the 2019 amendment).
- Sections 5 and 6: aggravated penetrative sexual assault, not less than twenty years, extendable to imprisonment for the remainder of natural life³.
- Section 19: mandatory reporting. A doctor, teacher or hospital that learns of sexual activity with a minor must report it, whatever the minor says⁴.
- Sections 29 and 30: presumption of guilt and of culpable mental state. The burden effectively shifts to the accused⁵.
- Section 33(8) and Section 357A CrPC / Section 396 BNSS: compensation to the child⁶.

The age of the girl is fixed by the method under Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015⁷, which the Supreme Court in **P. Yuvaprakash v. State Rep. by Inspector of Police**⁸ held applies to victims as well: first the school matriculation or equivalent certificate, then a birth certificate from a municipal body or panchayat, and only in their absence an ossification or other medical test.

¹ Section 2, Protection of Children from Sexual Offences Act, 2012

² Section 3 and 4, Protection of Children from Sexual Offences Act, 2012.

³ Section 5 and 6, Protection of Children from Sexual Offences Act, 2012.

⁴ Section 19, Protection of Children from Sexual Offences Act, 2012.

⁵ Section 29 and 30, Protection of Children from Sexual Offences Act, 2012/

⁶ Section 357A, Criminal Procedure Code, 1973.

⁷ Act 2 of 2016.

⁸ Criminal Appeal No. 1898 of 2023, decided on 18.07.2023

3.2 The Bharatiya Nyaya Sanhita, 2023

Section 63 BNS⁹ defines rape and keeps the age of consent at eighteen. The marital exception survives only where the wife is not under eighteen, which follows *Independent Thought v. Union of India*¹⁰. Section 64¹¹ prescribes the punishment for rape, and Section 65¹² raises it for victims below sixteen and twelve. Kidnapping from lawful guardianship under Section 137¹³, and kidnapping to compel marriage under Section 87¹⁴, are usually added to the same FIR.

3.3 When the boy is also a child

If the boy is under eighteen, he is a "child in conflict with law" and goes before the Juvenile Justice Board. Since penetrative sexual assault is a heinous offence, a boy aged sixteen or seventeen may face a preliminary assessment under Section 15 of the JJ Act¹⁵ to decide whether he should be tried as an adult. So two children who love each other may find one of them labelled a victim and the other a possible adult offender. Section 24 of the JJ Act¹⁶ removes the disqualification attached to a finding, but the experience of the process does not go away.

4. The Present Scenario: Where the Law Stands in 2026

4.1 Law Commission, 283rd Report (2023)¹⁷

On 27 September 2023 the Law Commission headed by Ritu Raj Awasthi, J. submitted its Report No. 283 on the age of consent under POCSO. The matter had been referred by the Karnataka and Madhya Pradesh High Courts. The Commission

⁹ Bhartiya Nyaya Sanhita, 2023.

¹⁰ (2017) 10 SCC 800.

¹¹ Bhartiya Nyaya Sanhita, 2023.

¹² Bhartiya Nyaya Sanhita, 2023.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Act 2 of 2016.

¹⁶ Ibid.

¹⁷ Age of Consent under the Protection of Children from Sexual Offences Act, 2012, Report No. 283, September 2023, Law Commission of India.

looked at three options: lowering the age of consent to sixteen, carving out an exception for children above sixteen, or giving courts discretion in sentencing. It rejected the first two, fearing that they would weaken the fight against child marriage, trafficking and child prostitution. It preferred the third, what it called "guided judicial discretion" in sentencing where there is tacit approval in fact, though not consent in law, by a child between sixteen and eighteen, and suggested amendments to the POCSO Act¹⁸, the JJ Act¹⁹ and the rape provisions. Those amendments have not yet been made.

4.2 In Re: Right to Privacy of Adolescents²⁰

This case began with a Calcutta High Court judgment that acquitted a young man on the reasoning that adolescent girls should "control their sexual urges". The Supreme Court took the matter up on its own. On 20 August 2024 a Bench of Justices Abhay S. Oka and Ujjal Bhuyan set aside the acquittal, restored the conviction and criticised the remarks. The law, the Court said, does not allow a High Court to acquit on such reasoning.

Then on 23 May 2025, after a committee had met the young woman and studied her circumstances, the Court did something unusual. It kept the conviction but, using its power under Article 142 of the Constitution, did not impose any sentence. The young woman by then was living with the accused and their child, and was dependent on him. Sending him to prison would only have punished her a second time. The Court directed the State to support her and the child, and made it clear that the order was not to be treated as a precedent.

The suo motu case did not end there. It has grown into a wider inquiry on adolescent privacy, rehabilitation and the working of POCSO. At the July 2026 hearings before

¹⁸ Act 32 of 2012.

¹⁹ Act 2 of 2016.

²⁰ Suo Motu Writ Petition (c) No. 3 of 2023.



Justice Nagarathna's Bench, Senior Advocate Madhavi Divan placed the committee's findings on record, the Union proposed age-appropriate adolescent and POCSO awareness education from Class VI onwards, and a national dashboard to track POCSO cases was suggested. The Court indicated that High Court committees and State governments could do that monitoring.

4.3 State of Uttar Pradesh v. Anurudh²¹

Decided on 9 January 2026 by Justices Sanjay Karol and N. Kotiswar Singh, this is the most important recent word from the Supreme Court. The Allahabad High Court, while granting bail to a POCSO accused, had directed that in every POCSO case the police must get a medical age-determination test done at the start of the investigation, and that bail courts could look behind school and birth records. The State appealed.

The Supreme Court set aside those general directions, holding that a High Court, though a constitutional court, cannot expand a statutory scheme beyond what the statute itself provides. The bail granted to the accused was left untouched. But the Court went further. It took judicial notice of the repeated misuse of POCSO, by misstating the girl's age and by families using the law against relationships they disapprove of, and directed that a copy of the judgment be sent to the Union Law Secretary to consider steps such as a Romeo-Juliet clause exempting genuine adolescent relationships, and a mechanism to prosecute those who use these laws to settle scores.

4.4 The stand of the Union

The Union Government has so far opposed any lowering of the age of consent and any statutory exception, telling the Supreme Court that eighteen is a carefully chosen bright line meant to give children an absolute shield. Senior Advocate Indira Jaising, assisting the Court as amicus, has argued the other way, for reading down the age of

²¹ 2026 INSC 47.

consent or carving out close-in-age exceptions. This is where the debate stands as of October 2026: the Court asking for change, the Executive resisting it, and Parliament not yet having acted.

4.5 The High Courts

The High Courts have tried to soften the blow, mostly at the bail stage. The Delhi High Court (Jasmeet Singh, J.) in **AK v. State (NCT of Delhi)**²² said in so many words that POCSO was meant to protect children from sexual exploitation and was never meant to criminalise consensual romantic relationships between young adults, and that a relationship "borne out of love" is a relevant consideration for bail even though consent has no legal value. The same Court has more recently spoken of "de facto approval" between teenagers that a bail court cannot ignore. The Madras High Court in **Sabari v. Inspector of Police**²³ and **Vijayalakshmi v. State**²⁴, the Kerala High Court and the Karnataka High Court have all said similar things and asked the legislature to act.

But the High Courts are not uniform. In other cases the same courts have refused bail, refused to quash and reminded everyone that consent of a minor means nothing. And after the Supreme Court's August 2024 judgment, an acquittal or quashing on the ground of love or later marriage stands on weak ground. The result is that two boys in identical situations may get very different outcomes depending on the judge and the district.

5. The Incarceration of the Boy

5.1 Arrest first, questions later

POCSO offences are cognizable and non-bailable. In practice the boy is arrested as soon as he is traced, very often with the girl. His bail application goes first to the

²² Criminal Appeal No. 48 of 2017, decided on 17.04.2026.

²³ Criminal Appeal No. 490 of 2018, decided on 26.04.2019.

²⁴ Crl. O.P. No. 232 of 2021, decided on 27.01.2021.

Special Court. Where the girl is shown below sixteen, the law requires the informant to be heard²⁵, and in practice the father is heard in almost every POCSO bail. He opposes. The Special Court, wary of the minimum sentence and the presumptions, often refuses. The matter goes to the High Court. Months pass.

5.2 The cost of those months

Consider what jail does to a nineteen-year-old boy. He loses a year of college or the job he had just found. He is lodged with hardened offenders, sometimes in the same barrack as men accused of real child abuse, and carries the same label. His family spends what little it has on lawyers. The girl, meanwhile, is either in a shelter home or under pressure at home to turn hostile. If she was pregnant, the child is born while the father is in jail.

Then comes the trial. In a large share of these cases the girl does not support the prosecution, or her age is not proved, or the court finds the evidence unreliable, and the boy is acquitted. The Supreme Court itself noted in July 2026 that many such cases end in acquittal. But nothing gives him back the time. The process has become the punishment.

5.3 Marriage is not the answer the law gives

Many of these couples marry, either before the case or during it. Advocates naturally look to quashing on compromise. But ***Gian Singh v. State of Punjab***²⁶ excluded heinous offences of a serious nature from compromise quashing, and POCSO offences are firmly in that class. The Supreme Court in August 2024 reaffirmed that such a prosecution could not simply be wiped out. Marriage may help at the bail stage. It may help the court, through the Supreme Court's Article 142 route, in a rare case. It does not by itself end the case. This paper does not treat marriage as the

²⁵ Section 439(1A) CrPC, now Section 483(2) BNSS.

²⁶ Special Leave Petition (Crl.) No. 8989 of 2010, decided on 24.09.2012.

solution either; the law should not push a seventeen-year-old into marriage as the price of her partner's freedom.

5.4 The other side must never be forgotten

None of this means every "love affair" claim is true. There are men who groom girls, pass off exploitation as romance, and use a later "marriage" to escape. The Law Commission was right to warn that consent can be manufactured after the event. Any reform must keep the shield firm for real victims. The point of this paper is not to weaken POCSO, but to aim it properly.

6. Comparative Glance

Many legal systems handle this through close-in-age or "Romeo and Juliet" rules. Several American states reduce or remove liability where both partners are adolescents and the age gap is small, typically three or four years. Canada's Criminal Code keeps the age of consent at sixteen but allows close-in-age exceptions for fourteen and fifteen-year-olds with partners less than five years older, and for twelve and thirteen-year-olds with partners less than two years older, provided there is no relationship of trust, authority or dependency. The common thread is that these exceptions are narrow, depend on a small age gap, and disappear the moment there is exploitation, authority or dependency. That is the kind of model the Supreme Court seems to have in mind.

7. A Proposed Way Forward

7.1 A narrow Romeo-Juliet clause

Parliament should add an exception to Sections 3 to 8 of POCSO²⁷ and the corresponding BNS²⁸ provisions, roughly on these lines:

- the child is aged sixteen or above;

²⁷ Act no. 32 of 2012.

²⁸ Act no. 45 of 2023.

- the other person is not more than three or four years older;
- the act was in fact voluntary, as shown by the child's own statement before a magistrate;
- there is no relationship of trust, authority, guardianship, employment, teaching or dependency;
- there is no use of force, threat, intoxication, recording or circulation of images, or commercial element.

If any condition fails, the full rigour of POCSO²⁹ applies. This keeps the shield for every real victim while taking the genuine adolescent couple out of the criminal net.

7.2 An Equilibrium Test for courts until Parliament acts

Until the law is amended, courts dealing with bail, quashing and sentencing in such cases can apply a simple balancing test, which the author calls the Equilibrium Test.

The court asks five questions:

- Age gap: how far apart are the two in age, and is either of them also a child?
- Voice: what has the girl said, consistently, before the magistrate, the High Court or the committee, and was she free to say it?
- Power: is there any relationship of authority, trust or dependency between them?
- Harm: is there any element of force, threat, recording, trafficking or commerce?
- Welfare: what will actually serve the girl and any child born of the relationship, today, not in theory?

Where the answers point to a genuine relationship of near-equals, the boy should ordinarily get bail, the trial should be expedited, and the sentencing court should be

²⁹ Ibid.

told about the Law Commission's recommendation and the Supreme Court's 2025 approach under Article 142. Where they point to exploitation, there should be no hesitation at all.

7.3 Discipline at the police station

The worst damage happens before any judge sees the file. Three simple steps would help.

- Verify age at once, in the order laid down in Section 94 of the JJ Act, and record the documents in the case diary. A father's word is not proof of age.
- Get the girl's statement before a magistrate at the earliest, as the law already requires, and place it before the bail court.
- Where the statement and the surrounding facts show a voluntary relationship of near-equals, the arrest decision should be reviewed by a senior officer, keeping in view the principles of Arnesh Kumar and Section 35 BNSS on the necessity of arrest.

7.4 Guided judicial discretion in sentencing

The Law Commission's 283rd Report³⁰ should be acted on. A court that convicts in such a case must have the power to go below the minimum, or to release on probation, where the relationship was in fact voluntary and between near-equals. Today only the Supreme Court can do this, through Article 142³¹, and it has said its order is not a precedent. A boy in a district court in Bathinda or Bareilly cannot be told to wait for Article 142³².

7.5 Accountability for misuse

The Supreme Court in Anurudh asked for a mechanism to prosecute those who use these laws to settle scores. Deliberately falsifying a girl's age or filing a case only to

³⁰ Ibid.

³¹ Constitution of India.

³² Ibid.

break up a relationship should carry consequences. Section 22 of POCSO³³ already punishes false complaints made to humiliate or harm, but it is almost never used.

7.6 Education and support

The Union's proposal to teach age-appropriate POCSO³⁴ awareness from Class VI is welcome. Adolescents should know the law before they are caught by it. Equally, the girl in these cases needs a support person, counselling and, where she wishes, a safe place to stay that is not a punishment.

8. Practical Notes for Advocates

For the young advocate who will meet this file in the bail court, a few points from experience may help.

- Start with age. Ask for the matriculation certificate or the original birth record. Many cases change once the true age is on the record.
- Bring the girl's own words before the court: her statement under Section 183 BNSS (Section 164 CrPC), any protection petition she filed in the High Court and the order passed on it, and any statement to a Child Welfare Committee.
- Show the relationship: photographs, messages, the marriage record, the age gap, the absence of any position of authority.
- Cite the current law fairly: **Anurudh**³⁵ for the judicial notice of misuse, In **Re: Right to Privacy of Adolescents**³⁶ for the human approach and its limits, the **Law Commission's 283rd Report**³⁷, and the High Court judgments on consideration of a consensual relationship at bail. Do not overstate them. None of them makes consent a defence.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

- Remember the informant must be heard on bail. Be ready for the father's objection and answer it with documents, not emotion.
- If bail is refused at the Special Court, move the High Court quickly, and press for an early trial date. Delay is the boy's real enemy.
- At sentencing, if it comes to that, place the welfare of the girl and any child on the record in full.

9. Conclusion

The POCSO Act is one of the best things Parliament has done for children. It has given a name and a remedy to abuse that families once buried. Nothing in this paper argues for taking that away. But a law that cannot tell a predator from a schoolboy in love is a law that will, sooner or later, wound the very children it was meant to guard.

The Supreme Court has now said, clearly and more than once, that something must change. The Law Commission has offered one route. The Court has suggested another. What remains is for Parliament to listen, and for police officers and trial judges, in the meantime, to look at each file as a human story and not just a date of birth.

Love in adolescence is not a crime. Exploitation is. The law's whole task is to know the difference.

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