

**THE RIGHT TO PRIVACY OF ADOLESCENTS IN SEXUAL OFFENCE CASES:
DOCTRINAL AND PRACTICAL IMPLICATIONS OF IN RE: RIGHT TO PRIVACY
OF ADOLESCENTS (2024 INSC 614) FOR THE BHARATIYA NYAYA SANHITA, 2023
FRAMEWORK**

by

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ABSTRACT

In August 2024, a Bench of two judges of the Supreme Court of India found itself facing a decision of the Calcutta High Court that, in effect, had decriminalized an act of sex between a twenty-five-year-old man and a fourteen-year-old girl on the basis of judicial constructs of “non-exploitative relationships” and “older adolescents.” Nine months later, in May 2025, the same Bench, faced with the practical effects of its own corrective ruling, used Article 142 of the Constitution to stay sentence despite a wholly unchallenged conviction. When considered together, the two rulings in *In Right to Privacy of Adolescents* provide both definition of the law with respect to strict liability offenses as well as demonstrate the continuing uncertainties in the legislative field. This paper reviews the legislative landscape as it exists within BNS, 2023 and the BNSS, 2023, and places the resultant constitutional deficiency in context with the privacy law developed in *Puttaswamy*, as well as Canada’s and the United Kingdom’s close-in-age legislation.

1. Introduction — The Judgment, the Gap, and the Reform Imperative

A complaint regarding disappearance of a fourteen-year-old girl was made on 29 May 2018, nine days after she went missing on 20 May 2018, by mother of a child who ran away with a twenty-five-year-old man, whom she met through his sister, her neighbour. This resulted in cohabitation of the couple, their temple marriage, and the birth of a daughter. The Special Judge under the Protection of Children from Sexual Offences Act, 2012 found man guilty of committing aggravated penetrative sexual assault and rape, and sentenced him to rigorous imprisonment of

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twenty years.² In appeal, a Division Bench of the Calcutta High Court acquitted him of this charge, using its writ jurisdiction under Article 226 and Section 482 of the CrPC to call this relationship “non-exploitative” and “consensual,” while also creating a new classification of “older adolescents.”³ It seems that the Court has overlooked that Section 375 (sixthly) of the Indian Penal Code makes sexual intercourse with a woman under eighteen years of age rape even if she consents.⁴

It reversed the High Court’s acquittal, restoring the conviction, in August 2024, based upon a suo motu writ petition from its examination of the “objectionable and unwarranted” remarks made by the High Court. The Court, basing itself on the long-settled principle that “heinous offences against society cannot be compounded off by the Courts” via their writ and quashing jurisdictions, found that the High Court lacked the power to accept categories not recognised under the statute.⁵ The Bench’s oft-quoted remark “Courts cannot commit violence against the law” succinctly captured the doctrinal issue in question here.⁶ However, the very same judgment, being unable to simply put behind bars the man, who was now the wife’s husband and co-parent of the victim, without first getting into the facts of her life, deferred the sentence and appointed an expert committee to interact with her.⁷ Nine months and two committee reports later, in *In re: Right to Privacy of Adolescents* (2025 INSC 778), the Court faced the situation which had come up before the committee: the victim, a person abandoned by her family, society, and State’s machinery of child protection, for whom the imprisonment of her husband would have been a further injustice.⁸ The Court upheld the conviction but, exercising its extraordinary jurisdiction under Article 142, declined to impose any sentence.

²In re: Right to Privacy of Adolescents, 2024 INSC 614, ¶¶ 1–6 (S.C., Aug. 20, 2024).

³Id. ¶ 17 (recording the High Court’s invocation of the expression “non-exploitative” sexual relationship and its creation of the category of “older adolescents”).

⁴Indian Penal Code, 1860, § 375, cl. “sixthly”.

⁵Gian Singh v. State of Punjab, (2012) 10 S.C.C. 303 (India) (holding that heinous and non-compoundable offences, including those against the State and society at large, cannot be quashed merely on the ground of settlement between the parties).

⁶2024 INSC 614, ¶ 36.

⁷Id. ¶¶ 40–44 (directing constitution of a three-member expert committee, including a clinical psychologist and a social scientist, with the assistance of NIMHANS or TISS).

⁸In re: Right to Privacy of Adolescents, 2025 INSC 778, ¶¶ 8–12 (S.C., May 23, 2025) (recording the contents of the Committee’s preliminary report of October 16, 2024 and final report of January 28, 2025).

This paper identifies that the two judgments, read together, resolve an important but limited aspect of doctrinal uncertainty regarding the irrelevance of consent under the POCSO regime, while highlighting an underlying problem that goes beyond what doctrinal rules can solve. The Bharatiya Nyaya Sanhita, 2023 ("BNS") and the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS"), which were enacted shortly after the first judgment was delivered and which came into force on July 1, 2024, have completely redrafted India's substantive and procedural criminal law framework without resolving the specific factual situation of consensual close-in-age adolescent relations that led to the mistake made in the Calcutta High Court in the first place. Part II analyses the normative propositions in the two judgments. Part III highlights the lacuna in legislation under the BNS-BNSS regime. Part IV discusses this lacuna in light of Puttaswamy's constitutional privacy jurisprudence, Canada and United Kingdom's close-in-age provisions, and the Convention on the Rights of the Child obligations of India. Part V suggests a reform agenda for Parliament, Supreme Court, and State institutions. Part VI finds that the constitutional problem raised by this litigation case cannot be solved through mere judicial means.

The recurrence of this fact pattern well beyond the confines of West Bengal gives the present case a significance that extends past its own record. An empirical analysis of 7,064 judgments delivered under the POCSO Act between 2016 and 2020 in Assam, Maharashtra, and West Bengal found that 1,715 of them, or roughly one in four, arose from relationships that the victim, her family, or the trial court itself described as romantic, with parents and relatives together accounting for over eighty per cent of the complaints in such cases.⁹ The scale of this pattern suggests that *In re: Right to Privacy of Adolescents* is not an isolated instance of judicial improvisation meeting an unusual set of facts, but a visible symptom of a structural gap that Special Courts across the country encounter routinely, if less publicly than in the present litigation. It is this recurring quality, rather than the sympathies of any one Bench, that makes the silence of the BNS and BNSS on the point especially difficult to justify.

2. Doctrine Settled — The Normative Holdings of 2024 INSC 614 and 2025 INSC 778

⁹ Swagata Raha and Shruti Ramakrishnan, "“Romantic” Cases under the POCSO Act: An Analysis of Judgments of Special Courts in Assam, Maharashtra and West Bengal" (Enfold Proactive Health Trust, with support from UNICEF India, 2022), reported in "“Romantic Cases” Make Up Nearly 20% of POCSO Cases in Three States: Report" (The News Minute, 15 December 2022).

The two decisions function at different levels. In 2024, the decision focuses on questions of liability: whether in light of any interpretation of the facts, the High Court would consider the relationship as being outwith the statute. In 2025, the question focuses on consequence: once liability had been correctly established, did the sentence prescribed by the statute always have to follow? Differentiating between these two levels is key to an appreciation of what the Court decided, and what it left to Parliament.

2.1 Strict Liability Reaffirmed: Consent Irrelevance, the Calcutta High Court's Error, and the Supreme Court's Correction

The analysis of the Calcutta High Court can be dissected into three parts, each of which is individually unsustainable. Firstly, it considered the victim's subjective willingness to be consent of legal relevance, even though the "sixthly" clause of Section 375 IPC and the corresponding POCSO provisions deem a minor's consent of no legal consequence, regardless of statutory construction. Secondly, it introduced the concept of "older adolescents" in order to exclude the offence was committed, from the ambit of protection by creating a category without any textual support in the IPC, the POCSO Act or any other applicable statute. Thirdly, it resorted to its discretionary writ jurisdiction and quashing power under Article 226 and Section 482 CrPC to secure an acquittal that could not be sustained on the record of the trial, despite the well-established principle that these powers cannot be exercised to compound or terminate prosecutions of serious, non-compoundable offences solely due to a later reconciliation between the parties.

Seen in isolation, the Calcutta High Court's approach might appear to be an aberration confined to an unusually sympathetic Bench. In fact, it belonged to a wider pattern that had, by 2024, become visible across several High Courts of straining ordinary criminal procedure to accommodate adolescent relationships that the POCSO Act's bright-line rule left no room to distinguish from predatory abuse. Commentators have observed that the Madras High Court, in a line of decisions, had read the statutory definition of penetrative sexual assault as not satisfied where the act was genuinely consensual, and that the Delhi High Court had similarly read the POCSO Act's own statement of objects as never having been intended to criminalise consensual

relationships between adolescents close in age.¹⁰ Chief Justice D.Y. Chandrachud himself, speaking publicly in December 2022, had already described the resulting entrapment of teenage boys in POCSO prosecutions as a “growing concern” warranting legislative attention.¹¹ What distinguished the Calcutta High Court’s handling of the present case, and what ultimately drew the Supreme Court’s suo motu attention, was therefore not the underlying impulse, which several courts had independently come to share, but the manner of its execution: an acquittal secured through writ and quashing jurisdiction in a matter that the trial evidence otherwise supported without qualification.

The corrective intervention of the Supreme Court brought back all strands of law to their respective positions. First, the Supreme Court stated that the evidence in the case showed aggravated penetrative sexual assault leading to pregnancy; hence, there was nothing left to the characterisation of the High Court. Second, no exceptions to the provisions of the law based on affection or marital status when the girl child is under eighteen years old. Third, a High Court sitting in extraordinary jurisdiction cannot introduce new classes which have not been introduced by the legislature, even when it feels sympathetic towards the case before it. Thus, through the Supreme Court’s decision, it has been made clear that in cases governed by the POCSO Act or rape laws in the penal code, the age of the victim makes a bright line rule.

2.2 Article 142 as a Restorative Instrument — The Expert Committee Mechanism and Its Critical Evolution in 2025 INSC 778

With the revival of the conviction, the Court then found itself facing an issue not contemplated by the statute, namely that of a victim whose best interest, according to the case facts, seemed to lie in the opposite direction of the sentence required by the statute. Instead of resolving this contradiction by interpreting, which was exactly what the Calcutta High Court had tried to do illegally, the Supreme Court set up a three-member expert committee, to determine best wishes and situations of the victim with the help of premiere institutions like NIMHANS or TISS. According to the Committee’s preliminary and final reports submitted in October 2024 and

¹⁰ ‘Exposing Double Standards of Law Towards Adolescents: De-Criminalising Romantic Adolescent Relationships under the POCSO Act’ (Bar and Bench, 10 May 2024).

¹¹ ‘Study: Around 25 Percent of POCSO Cases Are Romantic Relation: “Growing Concern” over the Issue of Age of Consent under the POCSO Act’ (The Indian Wire, 13 December 2022).

January 2025 respectively, the victim was abandoned by her family members and was not being taken care of even by non-functional Child Protection Committees at the village level. Moreover, she was deprived of welfare schemes of the State especially meant for her. The final report concluded that her trauma arose less from the original incident than from the protracted legal battle and the absence of institutional support thereafter.¹²

Equipped with this doctrine, and with a direct meeting between the Bench and the Committee as well as the victim herself in April 2025, the Court in 2025 INSC 778 made use of the doctrine of Article 142 to avoid the imposition of the mandatory minimum sentence provided for the POCSO offence, holding that incarcerating the accused – at this stage her husband and the father of her child – would be placing her under yet another injustice.¹³ Here the Court was able to rely on *Shilpa Sailesh v. Varun Sreenivasan*, in which Article 142 was used to annul a marriage beyond the statutory grounds provided in the Hindu Marriage Act, 1955, in order to ensure complete justice.¹⁴ The legal innovation is found in the splitting apart that such doctrine allows: liability will always remain governed by statute and not subject to any kind of equitable lenience, but consequence can now be subject to residual constitutional power after the liability is determined. This is an elegantly structured solution to the problem presented to the Court, but as I discuss in Part III, it is an unsatisfactory substitute for legislative design in thousands of other cases like this one.

2.3 Judicial Overreach Condemned — The Procedural Propriety Imperative and Its Statutory Unaddressed Dimension

In its criticism, the Supreme Court was not harsh merely on account of the mistake in law but more so in the way it was rectified by the High Court in addressing what it considered to be a miscarriage of justice. In the 2024 decision, it is very clear that a High Court in exercising writ or inherent jurisdiction in the context of a serious, non-compoundable offence should never consider its power to bring about reform of the law.¹⁵ The High Court went as far as recommending to the legislature

¹²Id. ¶ 12.

¹³2025 INSC 778, ¶ 27.

¹⁴*Shilpa Sailesh v. Varun Sreenivasan*, (2023) 14 S.C.C. 231 (India) (holding that Article 142 empowers the Supreme Court to dissolve a marriage on the ground of irretrievable breakdown notwithstanding the absence of such a ground under the Hindu Marriage Act, 1955, to render complete justice).

the decriminalization of consensual sexual acts between adults and adolescents over sixteen. This was a recommendation which the Supreme Court itself deemed to be inappropriate in the context, since such issues “are best left to the wisdom of the legislature,” meaning, in any case, that the High Court had no business deciding the matter before the legislature did so through legislation.¹⁶

The irony, discussed in the following Part, is that the policy instinct underlying the ruling of the High Court — namely, that an unadorned bright-line rule yields unfair outcomes in close-in-age, peer-proximate circumstances — is not indefensible in and of itself; only the method by which it reached its conclusion was. In 2025, the Supreme Court itself would find it necessary to create its own equitable remedy via Article 142 since, despite the comprehensive recodification process undertaken by the BNS and BNSS, Parliament had not provided any graded solution through which such cases could be resolved without either strict injustice or judicial improvisation in excess of the statutory text. The appropriate means of accommodating the nuances desired by the High Court was always legislative action, but it was the lack thereof that rendered judicial improvisation so tempting in the first place.

3. The Legislative Gap — BNS 2023 and BNSS 2023 Under Constitutional Scrutiny

The Bharatiya Nyaya Sanhita and the Bharatiya Nagarik Suraksha Sanhita were brought into effect from July 1, 2024, seven weeks prior to the first judgment delivered in this case. Having had no reason to respond to the logic of the Calcutta High Court’s judgment, the drafters of the BNS 2023 were not required to revisit the bright-line, undifferentiated treatment of minority that the IPC and the POCSO Act had inherited from colonial-era drafting. That opportunity was not taken.

3.1 Sexual Offences Under BNS 2023 (Sections 63–73) — Substantive Strength and Doctrinal Silence on Evolving Capacities

Chapter V of the BNS, which includes Sections 63 to 73, reflects the structure of the corresponding sections in the IPC quite extensively.¹⁷ Section 63 continues to recognize the seven conditions

¹⁶2024 INSC 614, ¶ 33 (recording the High Court’s observation that the question of decriminalising consensual sexual acts of adolescents above sixteen years “should be best left to the wisdom of the legislature”).

¹⁷Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, §§ 63–73, India Code (2023), Chapter V (Of Offences Against Woman and Child).

invalidating the consent of the victim, including the condition described as the “sixthly” making sexual intercourse with a minor female child under the age of eighteen rape irrespective of whether there is consent provided, with an exception for the marriage of the wife who is older than that age.¹⁸ Section 64 continues to stipulate the minimum penalty for a period ten years and up to life imprisonment in the case of rape, including aggravated rape.¹⁹ Section 65 continues to provide the minimum sentence framework for rape under the age of sixteen & under the age of twelve, imposing imprisonment for life in the most serious case.²⁰ On their own terms, the provisions form a strong, even an enhanced scheme for the paradigmatic scenario the legislature certainly had in mind.

What Chapter V of the BNSS does not do is recognize the presence of a second, statistically significant fact situation: consensual liaisons between minors who happen to be proximately similar in age but straddle the eighteen-year line. By the time the BNS came up in Parliament, there existed a considerable number of cases under POCSO where courts were struggling to reconcile themselves with the conflict between bright-line statutory demarcations and cases of romantic elopement. An analysis of POCSO judgments delivered between 2016 and 2020 in three States, including West Bengal itself, found that in nearly a quarter of all cases the courts themselves identified an underlying romantic relationship, and that in a majority of these the Special Court expressly found the relationship to be consensual in nature, with almost half involving a girl between sixteen and eighteen years of age, precisely the peer-proximate cohort with which this paper is concerned.²¹ This pattern was not a matter of speculation available only with hindsight: it had already been placed before the public and the legal community well before the BNS was enacted. This silence on doctrinal grounds, therefore, is not that of a hurried drafting process but an intentional retention of the old system, now written into statute despite being fully aware of its controversies.

¹⁸Id. § 63, clause (vi) of the seven descriptions in sub-section (1) and Exception 2.

¹⁹Id. § 64(1)–(2) (prescribing rigorous imprisonment of not less than ten years, extendable to life imprisonment, for rape and rape in specified aggravated circumstances).

²⁰Id. § 65 (prescribing enhanced minimum sentences, including imprisonment for the remainder of natural life, where the victim of rape is under sixteen or under twelve years of age).

²¹Swagata Raha and Shruti Ramakrishnan, “‘Romantic’ Cases under the POCSO Act: An Analysis of Judgments of Special Courts in Assam, Maharashtra and West Bengal” (Enfold Proactive Health Trust, with support from UNICEF India, 2022), reported in ‘24.3% POCSO Cases from Assam, Maharashtra, West Bengal Were “Romantic” Relationships: Analysis’ (Siasat, 12 December 2022).

That Parliament had the means to close this gap, and chose not to, is confirmed by the fate of the Law Commission of India's 283rd Report, published in September 2023, several months before the BNS received presidential assent. The Report was prepared at the request of the Karnataka and Madhya Pradesh High Courts, both of which had asked the Commission to reconsider the age of consent in light of the rising number of prosecutions arising from consensual relationships between older adolescents.²² The Commission declined to recommend lowering the age of consent itself, citing the risk that doing so would furnish an easier route of escape for genuine predators and traffickers, but it did recommend a form of graded judicial discretion: an amendment permitting a Special Court to impose a sentence below the statutory minimum where the child was sixteen or above and the relationship was found to have been genuinely intimate, having regard to factors such as the age difference between the parties and the birth of a child from the relationship.²³ Parliament had this recommendation before it, articulated in precisely the terms this paper argues are needed, at the very moment the BNS was moving through its final legislative stages, and did not act on it.

3.2 Procedural Architecture Under BNSS 2023 — Progressive Intent, Incomplete Safeguards

There have been certain procedural innovations made by the BNSS which are relevant to sexual offense proceedings: provisions for a time limit on session trial hearings, enhanced provisions regarding video audio recording of statements of survivors, and continuation of the zero FIR and e-FIR system which makes it easier to approach the proper police station in cases of sexual abuse offenses.²⁴ These are positive steps towards improving the procedure of the Code of Criminal Procedure of 1973, and would have helped in this case too, if these were implemented properly at the time.

There is no procedural differentiation of cases involving close-in-age relationships in the BNSS. The procedure does not provide for diversion, no psychological evaluation process, and no special procedure for the presentation of evidence or bail in cases where a consensual domestic

²² 'Law Commission Recommends Amendments to POCSO Act & JJ Act to Avoid Imprisonment for Adolescents Involved in Sexual Activity' (LiveLaw, 29 September 2023).

²³ Vedant Choudhary, 'The 283rd Law Commission Report: Better If Not Implemented' (NLUJ Criminal Law Studies Blog, 15 December 2023).

²⁴ Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, India Code (2023) (replacing the Code of Criminal Procedure, 1973).

relationship exists between close-in-age individuals, and the prosecution itself makes that fact apparent. All POCSO cases – be it the case of predatory grooming or teenage elopement – are processed through the same procedural structure with differentiation being possible only at the sentencing phase, but as shown in Part II, even this discretion is limited to mandatory minimums that only the Supreme Court can override using its residual Article 142 power.

3.3 The Missing Framework — Absence of Privacy Protocols, Secondary Victimisation Safeguards, and Peer-Age Nuance

The very litigation process shows the cost of such lack of differentiation through a different means than sentencing: the victim was interviewed first by investigating police officers, then by the Special Court, then again by the Calcutta High Court, and after Supreme Court's intervention once again by a three-person expert panel before being finally heard in person by the Supreme Court Bench.²⁵ No provision in the BNS, the BNSS, or even the POCSO Act coordinates such successive interactions into a comprehensive trauma-sensitive protocol. The POCSO Act requires in-camera trials under Section 37, while Section 72 of the BNS continues with the legacy of Section 228A of the IPC by making disclosure of the identity of the victim an offense,²⁶ but neither deals with the burden of multiple official interactions within different agencies nor imposes an obligation of confidentiality upon the court-appointed committees, welfare officers, or the press reporting on committee meetings.

Missing, in similar fashion, from the Indian law as well as Part IV is any peer-age differentiation like that which is present in other regimes mentioned above. Indian laws do not provide for any middle ground between complete criminal liability (punishable by a mandatory minimum of twenty years) and complete non-liability. In cases where the Special Court is dealing with a consensual relationship between, say, a seventeen-year-old and an eighteen-year-old, it is provided with exactly the same legislative tools as in cases where the Special Court is dealing with a predatory relationship between a fourteen-year-old and a forty-year-old.

²⁵Id. ¶¶ 18–20 (recording the Court's interaction with the Committee and the victim on April 3, 2025).

²⁶Id. § 72 (corresponding to § 228A of the Indian Penal Code, 1860, and penalising disclosure of the identity of victims of specified sexual offences).

3.4 Overlapping Regimes — POCSO 2012 and JJ Act 2015 in the BNS-BNSS Era: Coordination Failures

The POCSO Act still remains a special law superseding general provisions of the BNS, whereas the Juvenile Justice (Care and Protection of Children) Act, 2015 prescribes the framework in terms of institutional mechanisms – Child Welfare Committees, Child Protection Committees and child care institutions – which are supposed to work for rehabilitation of victims such as the one discussed above.²⁷ The Committee's findings highlighted how inefficiently those regimes were interrelated in reality: the village level Child Protection Committees worked only nominally; the welfare programme of the State government for the benefit of girls in the circumstances similar to those of the victim was never provided; and Section 46 of the JJ Act giving right to monetary compensation to the children who exit from institution after turning 18 lacked uniform Rules across the States.²⁸ Among the specific gaps the Committee identified was the inadequate implementation, in the victim's own district, of the State of West Bengal's Kanyashree Prakalpa scheme, a conditional cash transfer programme designed precisely to keep adolescent girls in education and delay early marriage, together with the absence of accessible free legal aid and the presence of touts and intermediaries who financially exploited the victim's family during the litigation.²⁹ These findings indicate that the coordination failure identified above was not confined to the interaction between statutes on paper, but extended to the schemes and personnel meant to give those statutes effect on the ground. None of the above mentioned issues is something unique for West Bengal: the Supreme Court ordered the Secretaries of Law and Justice Departments of all the States and UTs to hold meetings to make sure that Section 19(6) of the POCSO Act and other pertinent JJ Act provisions are followed, which presupposes – correctly – the structural nature of the coordination problem discussed above.³⁰ Since the BNS and BNSS recodification was restricted to substantive and procedural criminal law alone, the challenge of inter-statutory coordination remained completely beyond its scope, which means that the process of recodification

²⁷ Protection of Children from Sexual Offences Act, 2012, No. 32 of 2012, §§ 6, 19(6), 37, India Code.

²⁸ Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2 of 2016, § 46, India Code (providing for financial support to children leaving child care institutions on attaining eighteen years of age).

²⁹ 'Right to Privacy of Adolescents' (BiharWatch, Journal of Justice, Jurisprudence and Law, 24 May 2025).

³⁰ 2024 INSC 614, ¶¶ 46–48.

that could have coordinated the POCSO Act, the JJ Act, and the new criminal codes ended up being pursued along three distinct and disconnected lines.

4. The Constitutional Deficit and Comparative Perspectives

To bridge the legislative lacuna discussed in Part III in a way that is compatible with India's constitutional and international obligations, it would need to be based on two key reference points: firstly, the privacy law as it has been developed by the Supreme Court after Puttaswamy; and secondly, the comparative jurisprudence on close-in-age legislation in foreign jurisdictions.

4.1 Article 21 and the Dignity-Protection Duality — The Puttaswamy Framework Applied to Adolescent Sexual Offence Proceedings

Privacy, according to Justice K.S. Puttaswamy (Retd.) v. Union of India, decided by a nine-judge Bench of the Supreme Court of India, is an inherent, non-derogable aspect of the right to life and personal liberty under Article 21, involving both decisional autonomy and informational self-determination.³¹ Transposing this finding to adolescent sexual offence cases involves difficulty, since the two prongs of Puttaswamy point in opposite directions insofar as the rights-holder is a child. The decisional-autonomy prong of Puttaswamy, which safeguards the right of the individual to be free to choose intimate matters without State intrusion, is not directly applicable to a fourteen-year-old, as it would amount to destroying the entire protection provided by the POCSO Act – something that was expressly precluded by the Supreme Court itself in 2024 INSC 614, where it ruled that consent on the part of a minor is inconsequential. The State's duty to protect children against sexual exploitation is itself a constitutional obligation, both as a special power under Article 15(3) and as a directive principle under Article 39(e)–(f).³²

The informational privacy aspect of Puttaswamy, however, is equally applicable to children of adolescent age without qualification, and this is the aspect of informational privacy that is under-protected by Indian law. The identity of the child, the particulars of her relationship, and the information exchanged with the expert committee was, in itself, protected from intrusion regardless of whether the child was capable of giving informed consent to the sexual act in

³¹Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1.

³²Constitution of India, art. 15(3) and art. 39(e)–(f).

question. The failure of BNS and BNSS to mandate information security throughout the process, including interviews conducted by the expert committee, school disclosure, and welfare program implementation.

4.2 Comparative Frameworks — Close-in-Age Exceptions in Canada and the United Kingdom

In Canada, the close-in-age issue is addressed by rule-based mechanisms codified within the Criminal Code. Specifically, Section 150.1 sets a general age of consent of sixteen years, but provides for two exceptions in which individuals aged twelve or thirteen and fourteen or fifteen respectively may consent to sexual activity with a person up to two and five years their senior respectively, on the condition that the latter does not occupy a position of trust, authority, or dependency over the former.³³ Exceptions are straightforward and mechanical: a prosecutor, the defence, or the trial court judge may ascertain exceptions from birth dates of parties involved and the lack of any aggravating relational factor without recourse to an uncertain inquiry on maturity and real affection — that uncertain inquiry which misguided Calcutta High Court.

In the case of the United Kingdom, an altogether different mechanism is provided for the same basic purpose. Section 13 of the Sexual Offences Act 2003 makes no provision for a statutory close-in-age exception whatsoever; anyone under the age of 18 engaging in sexual activity with another minor will be deemed to have committed an offence under Section 13 of that act. But the subtlety comes not in the statute but in the prosecutorial discretion of the Crown Prosecution Service which requires prosecutors to consider the following under the Public Interest Test of the Code for Crown Prosecutors when deciding whether to prosecute at all: relative ages and maturity of the persons involved, voluntariness of the relationship, and the presence or absence of coercion.³⁴ Sexual activity between adolescents of similar age is ordinarily excluded from the public interest in prosecution.

³³Criminal Code, R.S.C. 1985, c. C-46, § 150.1(1)–(2.1) (Can.) (setting a general age of consent of sixteen years, with close-in-age exceptions permitting consent between persons aged twelve or thirteen and a partner less than two years older, and between persons aged fourteen or fifteen and a partner less than five years older, in each case subject to the absence of a relationship of trust, authority, dependency, or exploitation).

³⁴Sexual Offences Act 2003, c. 42, § 13 (Eng. & Wales) (creating an offence, with a lower statutory maximum penalty, where a person under eighteen commits an act that would constitute an offence under §§ 9–12 of the Act if committed by an adult).

A third comparative model, rooted directly in constitutional rights rather than in either codified exceptions or prosecutorial guidance, is furnished by the Constitutional Court of South Africa. In *Teddy Bear Clinic for Abused Children v Minister of Justice and Constitutional Development*, the Court struck down statutory provisions criminalising consensual sexual conduct between adolescents aged twelve to fifteen, holding that such provisions, by exposing developmentally normative conduct to the criminal process, violated the constitutional rights to dignity and privacy and the best-interests-of-the-child principle, without being shown to advance the State's protective purpose any better than non-criminal alternatives.³⁵ The reasoning tracks closely the dignity and privacy analysis this paper draws from *Puttaswamy* in Part IV.1: a bright-line criminal prohibition that fails to distinguish exploitation from consensual peer intimacy can itself become a source of the very harm the law was designed to prevent. India's position is at present closer to the pre-*Teddy Bear Clinic* South African position than to its post-2013 one, in that Indian law affords adolescents in genuinely consensual relationships neither a codified defence nor an authoritative judicial recognition that blanket criminalisation may itself infringe their constitutional rights.

India lacks both mechanisms at present. It has no such codified close-in-age defence based on the Canadian model. It also lacks any formal discretionary power based on guidelines similar to British prosecutorial discretion of CPS guidance. What India has got is a surrogate method which is illegitimate because it involves the exercise of writ and quashing jurisdiction of High Courts under Articles 226 and 482 CrPC (or its current BNSS counterpart) to obtain acquittal in order to obtain a result which neither Parliament nor any legitimate executive discretion has provided for. The Supreme Court's 2024 decision is rightly closing this illegitimate surrogate method. However, it cannot give the legitimate mechanism in lieu of it.

4.3 The UNCRC Evolving Capacities Doctrine and India's International Obligations

In fact, India has ratified the Convention on the Rights of the Child in 1992. According to Article 5 of the Convention, the responsibility of the State Parties should be "to respect the responsibilities, rights, and duties of parents... in providing direction to the child in a manner consistent with the evolving capacities of the child," making evolving capacity, not some fixed age of majority, the

³⁵ David McQuoid-Mason, 'The Teddy Bear Clinic Constitutional Court Case: Sexual Conduct between Adolescent Consenting Children Aged under 16 Years Decriminalised and a Moratorium on the Reporting Duties of Doctors and Others' (2014) 104 South African Medical Journal 283.

key principle of the Convention.³⁶ General Comment No. 20 of the Committee on the Rights of the Child, devoted to adolescence, explicates the above principle by emphasizing adolescents as holders of rights who deserve participation and expanded decision-making powers, without losing sight of the State's obligation to protect from exploitation and abuse.

When read together with Articles 51(c) and 253 of the Constitution, directing the State to promote respect for international law and vesting Parliament with power to enact laws in discharge of international obligations, the POCSO-BNS scheme for India comes across as somewhat inconsistent with its own international obligations, since it is designed to meet only the protection side of the evolving capabilities of the child and does not provide any legal mechanism to achieve the participation and autonomy side for adolescents in a relationship close to peers.³⁷ The error of the Calcutta High Court, however, was not that it tried to incorporate this evolving capabilities philosophy into Indian domestic law, which is consistent with India's treaty commitments, but that it sought to do so by means of judicial creation of statutory categories and not the legislative process as envisaged by Articles 51(c) and 253.

5. Toward a Unified Reform Agenda — Legislative, Judicial, and Institutional Proposals

The reform program outlined below revolves around the three institutions that must work in concert as a result of the above analysis: the Parliament, that alone can provide the required substantive graduation of BNS 2023; the Supreme Court of India, that can mandate certain procedural precautions under Art. 142 until parliamentary changes are enacted; and State governments, whose implementation mechanism was found to be the weakest link in the chain of this litigation's proceedings.

5.1 Legislative Proposals — Graded Consent Provisions, Mandatory Privacy Protocols, and the Enhancement of Section 72 BNS

³⁶Convention on the Rights of the Child art. 5, Nov. 20, 1989, 1577 U.N.T.S. 3 (recognising the basis for the progressive exercise of rights with diminishing parental and State direction).

³⁷Constitution of India, art. 51(c), read with art. 253 (Parliament's power to legislate for giving effect to international agreements).

Parliament needs to consider enacting a close-in-age provision to the POCSO Act and BNS 2023, modeled after but not identical to the Canadian approach: limited exclusively to situations where both the accused and the victim exceed a certain minimum age (e.g., sixteen), the age gap does not surpass a certain limit, and there are no signs of abuse such as a trusted or subordinate relationship. The enactment of such provision would not affect the bright line rule regarding sexual offences against those underage of the specified age limit, leaving intact the strict liability principle established in 2024 INSC 614 as applied to the archetypical case of predatory child molestation, but providing a Special Court with the legitimate framework to use in peer-proximity situation.

Parliament need not design such a provision from first principles. The Law Commission's 283rd Report already provides a detailed legislative template, recommending that sub-sections be added to Sections 4 and 8 of the POCSO Act permitting a Special Court, where the child was sixteen or above at the time of the offence, to impose a sentence below the prescribed minimum on a reasoned finding that the relationship was intimate in nature, having regard to factors including the age difference between the parties, the existence of any relationship of trust or authority, and whether a child had been born of the relationship, together with a corresponding amendment to Section 18 of the Juvenile Justice Act.³⁸ The Report's proposal is more cautious than the Canadian model discussed in Part IV, since it operates only at the sentencing stage and stops short of a full defence to liability, a limitation that has itself drawn criticism from commentators who argue that the underlying problem is unnecessary prosecution rather than excessive punishment.³⁹ Even on its own terms, however, the Report demonstrates that a workable, India-specific mechanism was available to the drafters of the BNS well before the statute came into force.

Parliament must enact a unified privacy policy in respect of FIR registration, investigation, trial, and post-procedure rehabilitation/committee procedure, in place of the present system of fragmented and sequential interviews that has been the practice until now. The provisions of Section 72 of the BNS need to be amended to make this section apply not just to the court or media but also to expert committees and welfare officers, and in light of the new problems of disclosure

³⁸ 'Law Commission Recommends Amendments to POCSO Act & JJ Act to Avoid Imprisonment for Adolescents Involved in Sexual Activity' (LiveLaw, 29 September 2023).

³⁹ Vedant Choudhary, 'The 283rd Law Commission Report: Better If Not Implemented' (NLUJ Criminal Law Studies Blog, 15 December 2023).

that have arisen since the formulation of Section 228A of the IPC, at a time when the problem of social media and case-management information systems was not envisaged.

5.2 Supreme Court Guidelines Under Article 142 — Mandating Privacy-Protective Procedures at Investigation, Trial, and Rehabilitation

Until Parliament acts, the Supreme Court will be well-placed institutionally to issue such guidelines under Article 142, as it had done earlier in the case of *Vishaka v. State of Rajasthan*,⁴⁰ for an imposed uniform one-point-of-contact rehabilitation process for adolescent victims of sexual offences across the country, in place of the jury-rigged committee process developed litigation. Guidelines might include a mandated time-frame within which benefits of state welfare schemes would be disbursed, regular checks to see whether guidelines were being followed by State Legal Services Authorities, and a presumptive sentence framework whereby trial courts would make, prior to sentencing in “close-in-age” situations, a reasoned determination of the existence or non-existence of precisely those aggravating circumstances — namely, trust, authority, dependency and exploitation — that are key to other comparable systems of law.

5.3 Institutional Reforms — Training, Legal Aid, and the Prevention of Secondary Victimisation

The capacity deficits highlighted by the Committee’s findings cannot be addressed merely through the rewriting of statutes. Special POCSO judges, investigating officers, and members of Child Welfare Committees must receive sustained training in adolescent psychology and interview techniques, to ensure that this victim does not become an exception but the rule when it comes to the many different interviews required. Village and District level Child Protection Committees need dedicated funding and periodic performance audits, given the Committee’s own observation that these committees had been effectively defunct in this particular case. Thirdly, competent legal assistance needs to get to the victims and their families before predatory intermediaries and cynical lawyers are able to take advantage of the vacuum created by the abandonment of the family and

⁴⁰*Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241 (laying down binding interim guidelines on workplace sexual harassment under Article 32 read with Article 142, pending enactment of legislation by Parliament).

the non-intervention of the State in this respect, which was pointed out by the Committee in its final report.

6. Conclusion — The Constitutional Gap Demands a Legislative Response

Right to Privacy of Adolescents resolves, quite rightly inexorably, the issued liability: the consent of a minor cannot be used as a defence under the POCSO Act, and no court, even one that sympathizes with the realities of a particular relationship, may make up statutory classes in order to circumvent that principle. The question which that litigation does not resolve, and which could not be resolved through judicial means alone, is the question that had led to the misstep of the Calcutta High Court in the first place: How should Indian law address those adolescents who are involved in consensual, peer-proximate relationships, when an inflexible rule and a mandatory twenty-year minimum sentence seem out of place with the evolving-capacities approach that India accepts as an international obligation?

The urgency of this question has, if anything, grown since the two judgments discussed in this paper. In January 2026, a different Bench of the Supreme Court, in *State of Uttar Pradesh v Anurudh*, took judicial notice of the recurring misuse of the POCSO Act by families opposed to consensual adolescent relationships and formally directed that its judgment be forwarded to the Secretary, Ministry of Law and Justice, so that the Union Government might consider introducing what the Court itself termed a “Romeo-Juliet clause” exempting genuine adolescent relationships from the Act’s strict liability framework.⁴¹ That a second Bench, in a wholly unrelated proceeding concerned principally with age determination at the bail stage, felt compelled to return to precisely the gap identified in Part III of this paper confirms that the difficulty is systemic rather than confined to the unusual facts of the present litigation, and that the invitation extended to Parliament in 2024 and 2025 remains, as of this writing, unanswered.

BNS, 2023, and BNSS, 2023 constituted a genuine chance to fill that lacuna by means of precisely such a process of recodification that put the IPC and the CrPC to rest after a period of well over one-and-a-half centuries. Such an opportunity was not availed. The reliance on Article 142 by the Apex Court of India in 2025, explicitly disavowing any precedential import, and relying solely on

⁴¹ ‘Supreme Court Urges Union to Bring “Romeo-Juliet” Clause in POCSO Act to Shield Consensual Adolescent Relationships from Prosecution’ (SCC Online Blog, 12 January 2026).

the facts uncovered in its own expert committee's report, cannot be taken as such a template for dealing with the next similar situation. Until Parliament provides a codified scheme for such situations resembling those close-in-age provisions available under comparative law, or Supreme Court provides general guidelines in accordance with Article 142, each successive case arising out of an adolescent elopement will be faced by the courts of trials and appeals with a choice between rigidity of injustice and judicial improvisation — none of which is compatible with the spirit of rule of law for the sake of which was decided.



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