

The Romeo and Juliet Clause: Global Jurisprudence, Human Rights Considerations, and Applicability in India

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Abstract: The Romeo and Juliet clause represents a nuanced legal mechanism designed to address the intersection between child protection and adolescent autonomy. This research paper examines the global jurisprudential landscape surrounding age-of-consent exceptions, the human rights dimensions of statutory rape laws, and the emerging discourse in India regarding the potential introduction of such clauses. Through a comparative analysis of jurisdictions, including the United States, Europe, and other regions, this paper argues that while Romeo and Juliet clauses serve important protective functions by preventing the criminalization of consensual peer relationships, their implementation must remain grounded in robust human rights protections against genuine exploitation. The paper further explores the Supreme Court of India's recent observations on the misuse of the Protection of Children from Sexual Offences (POCSO) Act and the ongoing debate over whether India should adopt a modified version of the Romeo and Juliet clause to balance adolescent development with child protection imperatives.

Keywords: Human Rights; Adolescent Sexuality; Comparative Jurisprudence; Genuine Exploitation; Child Protection; Adolescent Autonomy; Romeo and Juliet Clause.

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1. Introduction

Across the world, legal systems grapple with a profound tension: how to protect children from sexual exploitation while simultaneously recognising that adolescents engage in consensual sexual relationships with peers [1]. This tension has given rise to what is colloquially known as the "Romeo and Juliet clause" a legal provision that exempts consensual sexual relationships between individuals close in age from statutory rape prosecution. The term, borrowed from Shakespeare's tragic lovers, evokes the timeless human experience of youthful romance and its potential criminalisation under rigid age-of-consent laws [2]. The existence of age-of-consent laws reflects a fundamental societal commitment to protecting young people from adult predation and exploitation. However, these same laws, when applied without exception to consensual relationships between near-age peers, can produce absurd and unjust results. A teenager who is technically above the age of consent but still a minor may face serious felony charges for a consensual relationship with another teenager who has not yet reached that

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threshold. This paradox has prompted lawmakers in numerous jurisdictions to carve out narrow exceptions, recognising that not all sexual conduct involving minors constitutes abuse worthy of criminal prosecution.

India stands at a crossroads in this ongoing debate. The country's Protection of Children from Sexual Offences Act, 2012 (POCSO Act) established the age of consent at 18 years, representing a rise from the previous standard of 16 years. While this Law has been instrumental in prosecuting genuine cases of child sexual abuse, mounting evidence suggests systematic misuse of the Act to criminalise consensual adolescent relationships and settle personal scores [3]. The Supreme Court of India's recent directives calling for consideration of a Romeo and Juliet clause signal a potential shift in how the nation simultaneously approaches adolescent sexuality and legal protection. This paper examines three essential dimensions of the debate over the Romeo and Juliet clause. First, it traces the global jurisprudential landscape, documenting how different jurisdictions have implemented close-in-age exceptions and the rationales underlying these decisions. Second, it analyses the human rights implications of both rigid age-of-consent laws and Romeo and Juliet exceptions, exploring how such provisions intersect with rights to privacy, autonomy, and protection from exploitation [4]. Third, it assesses the specific applicability of the Romeo and Juliet framework to the Indian legal context, examining both the necessity and the challenges of implementing such protections in a jurisdiction grappling with widespread child sexual abuse alongside adolescent misuse of protective laws.

1.1. Defining the Romeo and Juliet Clause

The Romeo and Juliet clause, also known as a "close-in-age exemption" or "age-gap defence," is a legal provision that permits consensual sexual activity between individuals when the age difference between them falls below a specified threshold, even if one or both parties are technically below the age of consent [5]. Unlike a complete exemption from age-of-consent laws, these clauses operate within carefully defined parameters that preserve protections against genuine exploitation while recognising the developmental realities of adolescence. The fundamental logic underlying Romeo and Juliet clauses rests on several interconnected legal and psychological principles [6]. First, developmental psychology has established that adolescents of similar ages typically exhibit comparable cognitive and emotional capacities for understanding sexual decision-making. Second, the criminalisation of consensual peer relationships between adolescents produces perverse consequences, transforming normal developmental experiences into felony offences. Third, the existence of such clauses reduces the likelihood that adolescents themselves become entangled in the criminal justice system as registered sex offenders for consensual activity with near-age peers [7].

The specific mechanics of these clauses vary considerably across jurisdictions. Some permits consensual activity between parties with age gaps of up to five years, while others restrict the exception to two or three years. Some jurisdictions limit the clause to relationships in which both parties are above a specified minimum age (such as 14), ensuring that the exception does not apply to relationships involving very young children. Still other jurisdictions employ more flexible standards, granting judges' discretion to consider the maturity and circumstances of the individuals involved [8]. In the United States, Romeo and Juliet laws vary significantly by state. Texas provides an affirmative defence for individuals within a three-year age difference when the younger party is at least 14 years old. Florida protects relationships in which the younger party is 16 or 17 years old, and the older party is no more than 4 years older. Such variations underscore the absence of any uniform national approach to adolescent sexuality in American Law, with each state crafting its own balance between protection and autonomy.

2. Global Jurisprudential Approaches to Age-of-Consent Exceptions

A comparative examination of global approaches to Romeo and Juliet clauses reveals significant variation in how countries conceptualise adolescent sexuality and legal protections [9]. This diversity reflects underlying cultural, philosophical, and institutional differences in how societies understand childhood, adulthood, and the transition between them.

2.1. The United States: State-Level Variation and Jurisprudential Development

The United States represents perhaps the most heterogeneous landscape for Romeo and Juliet jurisprudence, with significant variations across all fifty states and federal Law. Some states provide complete statutory defences that shield individuals from prosecution entirely, while others offer only reduced penalties. This variation reflects federalism's core principle of allowing states to craft legal frameworks responsive to local values and circumstances [10]. The jurisprudential development of Romeo and Juliet laws in America has proceeded through both legislative action and judicial interpretation. In several states, courts have grappled with constitutional challenges to Romeo and Juliet laws, particularly regarding equal protection and due process concerns. Of particular significance is Matthew Limon's case in Kansas, which raised questions about whether state Romeo and Juliet laws could discriminate based on sexual orientation by providing different protections for same-sex versus opposite-sex relationships. Such cases have pushed states toward more inclusive definitions of protected relationships [11]. The American approach generally reflects a pragmatic recognition that prosecuting consensual teenage relationships produces unjust results that undermine public trust in the criminal justice system. By allowing age-gap exceptions, states maintain the

deterrent force of statutory rape laws against genuine predation while avoiding the criminalisation of normal adolescent development.

2.2. European Approaches

European jurisdictions have generally taken more nuanced approaches to adolescent sexuality, often incorporating prosecutorial discretion alongside or instead of rigid statutory exceptions. Spain, for example, recently amended its laws to allow courts to exempt individuals from criminal responsibility when perpetrator and victim are proximate in age and degree of development or maturity. This formulation provides flexibility while maintaining a presumption of protection for younger individuals. The United Kingdom, while lacking explicit Romeo and Juliet statutory provisions, effectively achieves similar results through prosecutorial discretion and judicial practice [12]. The Crown Prosecution Service exercises significant latitude in deciding whether to prosecute consensual adolescent relationships, often declining to proceed when the parties are close in age and the relationship is genuinely consensual. This approach avoids creating explicit statutory exceptions while still preventing the harsh outcomes that rigid application of age-of-consent laws would produce. German Law similarly incorporates flexibility, criminalising sexual intercourse with individuals aged 14-15 only if the minor complains or if the older partner is more than three years their senior [13]. This approach places significant weight on the minor's own assessment of the relationship's consensual character, recognising that adolescents themselves are often the best judges of whether they feel exploited or respected within their intimate relationships.

2.3. Latin America and Spanish-Speaking Jurisdictions

A 2021 comparative study of age-of-consent laws in Spanish-speaking countries found that, while these nations set age-of-consent requirements ranging from 13 to 18 years, only 6 countries have explicitly incorporated Romeo and Juliet clauses into their statutes. Guatemala's recent proposals to introduce a Romeo and Juliet clause represent emerging recognition that absolute age-of-consent rules can produce injustice when applied inflexibly to consensual peer relationships [14]. Latin American jurisprudence has increasingly grappled with questions about how to balance child protection with adolescent autonomy. These discussions frequently acknowledge the significant harms of child marriage and child sexual abuse while simultaneously recognising that not all sexual activity involving minors constitutes abuse [15]. The debate has prompted consideration of whether legal frameworks can incorporate graduated approaches that distinguish between predatory adult behaviour and consensual adolescent relationships.

3. Human Rights Dimensions of Age-of-Consent Laws and Romeo and Juliet Clauses

The intersection between age-of-consent laws, Romeo and Juliet provisions, and human rights represents a complex and often contested terrain [16]. Human rights frameworks offer important insights into both why societies criminalise child sexual abuse and why blanket criminalisation of consensual adolescent relationships may itself violate human rights principles.

3.1. The Right to Protection from Sexual Abuse

International human rights instruments, including the Convention on the Rights of the Child (CRC), establish unambiguous commitments to protecting children from sexual exploitation and abuse. The CRC explicitly recognizes childhood as a distinct developmental stage that requires specialized legal protections. These protections rest on well-established understandings that children possess developing cognitive capacities and are vulnerable to manipulation and coercion by adults who exercise greater power and authority [17]. The human right to protection from sexual abuse is non-negotiable in any legitimate human rights framework. A child's vulnerability to exploitation by an adult who controls resources, authority, and emotional attachment justifies legal prohibition of such relationships. The question is not whether children deserve protection, but rather how legal systems can calibrate protections to prevent genuine abuse while avoiding the overcriminalization of consensual peer relationships [18].

3.2. The Right to Privacy and Autonomy

Tension emerges when absolute age-of-consent requirements collide with recognised human rights to privacy and personal autonomy. The European Court of Human Rights has acknowledged that the right to private life encompasses the right to develop and express one's sexuality. Adolescents, as developing human beings, possess dignity and autonomy interests that deserve recognition even as they remain entitled to legal protection from exploitation. A human rights approach to age-of-consent laws must honestly grapple with this tension [19]. Criminalising all sexual expression involving individuals below a specified age potentially violates their autonomy rights without corresponding protection from genuine harm. A 17-year-old and an 18-year-old in a consensual relationship may both possess comparable maturity, comparable decision-making capacity, and comparable interests in autonomous sexual expression. Yet a purely chronological rule transforms one day's difference in

age into the difference between consensual expression and criminal abuse. Romeo and Juliet clauses, from this perspective, represent an attempt to recognise adolescent autonomy and privacy interests while maintaining protections against exploitation by significantly older individuals or those in positions of power [20]. The human rights case for such clauses rests on the principle that the Law should protect vulnerable individuals from genuine harm rather than imposing blanket restrictions on all conduct within a category, regardless of context.

3.3. Rights of the Girl Child and Gender Dimensions

International human rights instruments place particular emphasis on protecting the rights of girls, recognising that female adolescents often face gender-specific vulnerabilities to sexual exploitation. Girls are more likely to experience pressure for sexual activity, more likely to experience physical and emotional harm from sexual coercion, and more likely to suffer lasting consequences from early sexual activity, including early pregnancy and interrupted education [21]. This gender-specific vulnerability does not, however, necessitate identical age-of-consent rules for boys and girls. Many jurisdictions have moved toward gender-neutral age-of-consent statutes, recognising that boys also deserve protection from sexual exploitation. In contrast, girls deserve recognition as autonomous decision-makers capable of consenting to relationships with peers. The human rights framework supporting gender equality suggests that protections should be premised on vulnerability to exploitation rather than gender itself, though acknowledging that vulnerability may correlate with gender in specific contexts. A human rights approach to Romeo and Juliet clauses must ensure that such provisions do not become vehicles for reinforcing gender stereotypes or enabling gender-based exploitation [22]. Close-in-age exceptions should apply equally regardless of the gender composition of the relationship, and they should be coupled with robust protections against coercion and abuse that remain attentive to gender dynamics that may render apparently consensual relationships exploitative in practice.

4. The Indian Context: Age of Consent, the POCSO Act, and Emerging Jurisprudence

India's legal framework governing the age of consent and child sexual abuse has evolved significantly over the past several decades, reflecting changing understandings of childhood protection and adolescent development [23]. Understanding India's current position requires examination of the historical development of these laws, the POCSO Act's enactment and implementation, and the mounting evidence of the Act's misuse that has prompted the Supreme Court's recent calls for reform.

4.1. Historical Evolution of India's Age-of-Consent Standards

For over seventy years, from the 1940s until 2012, India's age of consent remained fixed at 16 years. These standards reflected understandings prevalent in that era about adolescent development and the capacity for sexual decision-making. The 16-year threshold aligned with many other Commonwealth jurisdictions and represented a recognised point at which legal systems considered individuals capable of understanding sexual choices [24]. In 2012, with the enactment of the Protection of Children from Sexual Offences Act (POCSO Act), India raised the age of consent to 18 years for all individuals regardless of gender. This increase reflected the influence of international human rights standards, particularly the Convention on the Rights of the Child (CRC), which defines a child as anyone under 18 years old. The POCSO Act represented a significant legislative statement about India's commitment to child protection, creating a comprehensive statutory framework specifically addressing child sexual abuse crimes.

4.2. The POCSO Act: Protections and Unintended Consequences

The POCSO Act was a landmark piece of legislation designed to address the persistent problem of child sexual abuse in India. The Act applies to all sexual conduct involving individuals below 18 years of age, operating on what the Supreme Court has termed an uncompromising assumption that any sexual activity involving a person below eighteen years is inherently exploitative. Under the Act, consent becomes legally irrelevant—a person cannot consent to sexual activity if they are below 18, regardless of their actual maturity, understanding, or willingness. The Act's extraordinary breadth has produced significant unintended consequences. Evidence has accumulated showing that POCSO is increasingly being invoked in cases involving consensual adolescent relationships, often weaponised by parents, scorned partners, or others seeking to criminalise entirely consensual peer relationships. Cases have emerged involving two teenagers in a consensual relationship where the older party faces prosecution under POCSO once they turn 18, despite the relationship having begun when both were underage and consensual. The Supreme Court's acknowledgment of this systemic problem represents a pivotal moment in Indian jurisprudence. In recent decisions, the Court has noted the recurring systemic lapses wherein the police failed to obtain medical age reports, Trial Courts ignored scientifically assessed age, and consensual adolescent relationships were criminalised under the POCSO Act due to falsified age records. These observations suggest that India's most stringent child protection statute has, in practice, become an instrument of injustice when applied to consensual adolescent relationships.

4.3. The Supreme Court's Call for Romeo and Juliet Protections

In January 2026, a two-judge bench of the Supreme Court of India, comprising Justices Sanjay Karol and N. Kotiswar Singh, urged the Government of India to consider introducing a “Romeo and Juliet” clause into the POCSO Act. The Court emphasised that such a clause should exempt “genuine adolescent relationships” from the Act’s most severe provisions while maintaining robust protections against genuine exploitation, coercion, and abuse. The Court’s recommendations envision a narrowly tailored carve-out for consensual, close-in-age relationships, coupled with mechanisms to prevent misuse of the exception. The judges specifically suggested that a minimum age floor (e.g., 16 years) and a maximum age gap (e.g., 3 years) could set appropriate boundaries for the exception. Under such a framework, a relationship between a 16-year-old and a 19-year-old who are close in development and maturity would not trigger POCSO’s most severe penalties. However, it might still be subject to less severe sanctions or no sanctions at all, depending on the specific formulation adopted.

5. Challenges and Controversies: The Debate Within India

While the Supreme Court’s call for Romeo and Juliet protections has gained significant attention, the proposal has generated substantial debate and criticism within India’s legal community and civil society. These debates reflect genuine tensions about how to balance child protection with adolescent autonomy and how to prevent the criminalisation of consensual peer relationships while maintaining safeguards against exploitation.

5.1. Arguments Supporting the Introduction of Romeo and Juliet Provisions

Advocates of introducing a Romeo and Juliet clause into India’s legal framework advance several key arguments. First, they note that POCSO’s current absolute prohibition on all sexual activity involving individuals below 18 creates absurd results, criminalising many consensual relationships that ordinary social and moral judgment would not characterise as abusive. Second, they argue that such criminalisation places adolescents themselves within the criminal justice system as registered sex offenders for conduct that constitutes normal development. Third, they suggest that introducing clear boundaries for consensual adolescent relationships would reduce false prosecutions and allow law enforcement resources to focus on genuine predation. Proponents further contend that Romeo and Juliet provisions would bring Indian Law closer into alignment with global jurisprudential trends, recognizing adolescent autonomy and human rights principles, including the right to privacy and personal development. They note that numerous developed democracies have found ways to protect children from genuine exploitation while respecting adolescent relationships, suggesting that India too can craft a balanced approach.

5.2. Concerns and Opposition

Critics of Romeo and Juliet clauses in the Indian context raise significant concerns about both their feasibility and wisdom. Anant Kumar Asthana, an advocate specialising in child justice, argues that the idea of introducing a close-in-age exception (Romeo-Juliet clause) in the POCSO regime does not fundamentally advance the cause of decriminalisation of consensual or genuine adolescent sexual relations. Instead, it binds judges to a more rigid, mandatory formula that can be applied only in a regulated manner and to a specific set of facts and figures. Critics emphasise that India’s widespread sexual violence against girls and women creates a context in which vigilant child protection laws serve vital functions. They fear that explicit Romeo and Juliet clauses might become vehicles for enabling exploitation, allowing abusers to invoke proximity in age as cover for relationships that are genuinely coercive and harmful. In societies where girls often face intense pressure for sexual activity and where power imbalances rooted in gender exist even among apparent peers, strict protective standards may be justified despite their costs. Furthermore, critics note that India’s actual enforcement problems lie not in overly broad statutory language but in systemic implementation failures. Age determination remains inconsistent, with courts sometimes ignoring medical evidence about victims’ actual ages. If the underlying problems are procedural and evidentiary, critics argue, statutory modifications may provide only superficial relief while failing to address the systemic causes of POCSO’s misuse.

5.3. Crafting Effective Romeo and Juliet Protections: Constitutional and Practical Considerations

Were India to adopt a Romeo and Juliet clause, multiple constitutional and practical questions would require careful attention. These questions concern the scope of any exception, the procedural mechanisms for invoking it, the standards courts would apply, and the safeguards against misuse.

5.4. Constitutional Foundations and Limitations

Any Romeo and Juliet clause introduced into Indian Law would operate within the constitutional framework established by the Indian Constitution. Article 21, which guarantees the right to life and personal liberty, has been interpreted by Indian courts to encompass a fundamental right to privacy and to develop one’s sexuality. Romeo and Juliet provisions could be justified constitutionally as necessary limitations on absolute age-of-consent rules to protect the privacy and autonomy rights of

adolescents while maintaining protections against genuine exploitation. However, constitutional concerns might arise regarding discriminatory application or insufficient protection for vulnerable adolescents. Any Romeo and Juliet clause would require careful drafting to ensure that its availability does not vary based on the gender, caste, religion, or other protected characteristics of the individuals involved. Similarly, courts would need to ensure that Romeo and Juliet exceptions never excuse relationships involving coercion, force, or abuse of authority, regardless of how close in age the parties are.

5.5. Proposed Parameters and Procedural Safeguards

The Supreme Court's suggestion of a minimum age of 16 and a maximum age gap of 3 years provides a reasonable starting point for formulating precise statutory language. Such parameters would protect relationships between, for example, a 16-year-old and a 19-year-old, while maintaining the absolute prohibition on relationships between adults and very young adolescents. The specific numbers might be adjusted based on empirical evidence and expert consultation, but they provide a useful framework. Crucial to any Romeo and Juliet clause's success would be rigorous procedural safeguards ensuring that the exception is not weaponised against its intended beneficiaries. Such safeguards might include requirements that the party invoking the exception bear the burden of proving that it applies, that courts conduct searching inquiries into the nature of the relationship to exclude coercive or exploitative scenarios, and that false invocation of the exception be itself a criminal offence. Additionally, provisions could restrict the exception's application to cases where both parties consent to its invocation and where no third party (such as an angry parent) seeks its application over the parties' wishes.

5.6. Global Lessons and Comparative Insights for India

Examination of how other jurisdictions have implemented Romeo and Juliet provisions offers valuable lessons and cautionary insights for India as it considers potential legal reforms.

5.6.1. The Importance of Clear Statutory Language and Judicial Training

Jurisdictions that have successfully implemented Romeo and Juliet provisions typically invest in clear statutory language defining the exception's scope, coupled with comprehensive judicial training on applying the exception appropriately. Vague or ambiguous statutory language creates opportunities for inconsistent application and invites litigation about the exception's boundaries. Indian courts would require similar clarity and consistency in any Romeo and Juliet provision adopted.

5.6.2. The Role of Prosecutorial and Police Discretion

Some jurisdictions rely more heavily on prosecutorial and police discretion than on explicit statutory exceptions. Germany's approach, in which prosecutors may decline to prosecute relationships involving 14-15-year-olds if the age gap is small and other factors indicate consensuality, illustrates how discretionary approaches can achieve similar protective outcomes while maintaining flexibility. India's law enforcement and prosecutorial systems would need to develop analogous guidelines and training to ensure regular exercise of discretion, as the discretionary approach depends on institutional cultural change rather than statutory modification alone.

5.6.3. Addressing Gender and LGBTQ+ Dimensions

Comparative experience demonstrates the importance of ensuring that Romeo and Juliet protections apply equally regardless of the genders involved or the parties' sexual orientation. Several American states initially created Romeo and Juliet provisions that excluded same-sex relationships, an approach that courts have increasingly recognised as unconstitutional. India's legal community should learn from these mistakes and ensure that any Romeo and Juliet clause applies uniformly to all consensual relationships, regardless of the gender composition involved.

6. Conclusion

The Romeo and Juliet clause debate in India represents a mature reckoning with how legal systems can simultaneously protect children from genuine exploitation while respecting adolescent autonomy and avoiding the criminalisation of normal development. The debate is not about whether to protect children—that commitment is unambiguous but rather about how to calibrate legal protections to prevent genuine harm without producing absurd injustices. India's recent jurisprudence, as exemplified by the Supreme Court's call for Romeo and Juliet protections, suggests an emerging consensus that absolute age-of-consent rules applied without exception produce counterproductive results. When the law criminalises conduct that most observers would recognise as consensual peer relationships, it loses legitimacy and invites disrespect. Moreover, when the law ensnares adolescents themselves in the criminal justice system for normal developmental conduct, it undermines the Law's

child-protective purposes. Yet the introduction of Romeo and Juliet protections into Indian Law would require careful attention to implementation details.

Clear statutory language, comprehensive judicial training, robust procedural safeguards against misuse, and continued attention to gender and power dynamics are essential. India's legal framework must ensure that Romeo and Juliet exceptions protect the young people they are intended to serve rather than become vehicles for exploitation. Looking forward, India has an opportunity to craft a legal framework that reflects both the hard-won global recognition of the need for child protection and the growing consensus that such protection need not require the criminalisation of all sexual activity involving minors. By carefully studying global jurisprudence, attending to human rights principles, and engaging in genuine dialogue with diverse stakeholders, India can develop an approach to adolescent sexuality that is simultaneously protective and respectful of developing autonomy. The stakes of getting this right are high: The lives and futures of millions of adolescents, the legitimacy of the legal system, and the possibility of directing law enforcement resources toward genuine predators rather than toward adolescent relationships that require understanding, guidance, and support rather than criminalisation.

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