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POCSO ACT: CONSENSUAL RELATIONSHIPS, FALSE ALLEGATIONS, MISUSE IN MATRIMONIAL FIGHTS & NEED FOR LEGISLATIVE REFORM

Khushi Shukla[*]

I. ABSTRACT

The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) remains India's principal legislative response to child sexual abuse. Parliament enacted it to provide stringent punishment and a child-friendly justice process. This research paper examines three areas in which the operation of the Act has drawn sustained judicial concern: the criminalisation of consensual relationships between adolescents, the filing of false or motivated complaints, and the use of POCSO allegations in matrimonial and custody disputes. The paper analyses the statutory scheme, including the age threshold in s. 2(1)(d), the reporting duty in s. 19, the presumptions in ss. 29 and 30 and the false-complaint provision in s. 22, and assesses whether the framework balances child protection with fairness and due process. It follows a doctrinal method based on the Act, the Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagarik Suraksha Sanhita, 2023 and decisions of the Supreme Court and the High Courts, supported by the 283rd Report of the Law Commission of India and empirical studies of POCSO trials. The analysis finds that courts have repeatedly identified prosecutions arising from consensual adolescent relationships, and that the Supreme Court in State of Uttar Pradesh v. Anurudh (2026) asked the Union Government to consider a close-in-age exception. It further finds that the Supreme Court in Ishwar Chand Sharma v. State of Uttar Pradesh and R v. E (2026) recognised motivated POCSO complaints in matrimonial litigation and framed safeguards for such cases, while affirming that genuine allegations deserve full protection. The paper concludes that s. 22 offers only a narrow remedy against false complaints. It proposes a statutory close-in-age exception with safeguards, the

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codification of procedural protections in custody-linked cases, and a reworked s. 22 that punishes knowingly false complaints without deterring genuine reporting.

II. KEYWORDS

POCSO Act; Consensual Adolescent Relationships; False Complaints; Matrimonial Disputes; Close-in-Age Exception.

III. INTRODUCTION

The POCSO Act, 2012[1] was enacted, first, to fulfil India's obligations under the United Nations Convention on the Rights of the Child, to which India acceded in 1992, and secondly, to respond to the rising incidence of sexual offences against children. The Supreme Court had earlier recognised the need for such legislation, though indirectly, in the landmark case of *Sakshi v. Union of India*[2], where it noted the gravity of child sexual abuse and highlighted the need for appropriate legislation to safeguard the rights of the child. The Court also issued directions to make the trial process child-friendly and to prevent further trauma to the child, such as the use of screens, breaks during testimony and the protection of the child during cross-examination. These observations and directions contributed to the case for a special law, which Parliament enacted eight years later as the POCSO Act, 2012.

Against this background of judicial recognition and rising offences against children, Parliament enacted the Protection of Children from Sexual Offences Act in 2012. It has since become the most significant child protection legislation in India. Its primary purpose is to impose strict punishment on persons who commit sexual abuse, exploitation and harassment of children, and its provisions reflect a clear commitment to child protection.

[1] Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012 (India) [hereinafter POCSO Act].
[2] *Sakshi v. Union of India*, (2004) 5 SCC 518 (India).

Although the Act has largely achieved its principal objective, several concerns have emerged in recent years that deserve serious attention. Courts have repeatedly observed that the Act is being invoked in situations for which it was not designed, including consensual relationships between adolescents and complaints used as leverage after a personal dispute.[3] The scale of prosecution is considerable: the National Crime Records Bureau recorded 67,694 cases under the Act in 2023.[4] A study of e-Courts data found that 43.44 per cent of POCSO trials ended in acquittal and only 14.03 per cent in conviction,[5] and an analysis of 7,064 Special Court judgments from Assam, Maharashtra and West Bengal found that 24.3 per cent involved a romantic relationship between the victim and the accused.[6] An acquittal does not establish that a complaint was false, but these figures indicate that a significant share of prosecutions does not fit the paradigm of exploitative abuse. A further area of concern is the use of the POCSO Act in matrimonial disputes, which the Supreme Court addressed in 2026.[7]

In some instances, complainants invoke the criminal process not only to protect a child but also to gain leverage in a personal conflict, property dispute, custody case or matrimonial litigation. Every complaint deserves serious attention. Allegations that are false, or only partly true, can nevertheless cause severe harm to the reputation, liberty, education and well-being of the accused, and divert investigative resources from genuine victims of child sexual abuse. This raises a central question: how can a law intended to protect children also adversely affect the rights of children and adolescents? Any discussion of reform must therefore proceed with great caution.

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[3] *See State of Uttar Pradesh v. Anurudh*, 2026 INSC 47 (India) (decided Jan. 9, 2026); *Vijayalakshmi v. State*, 2021 SCC OnLine Mad 317 (Mad. HC Jan. 27, 2021) (India) (Crl. O.P. No. 232 of 2021).

[4] Nat'l Crime Records Bureau, Ministry of Home Affairs, *Crime in India 2023* (2025) (recording 67,694 cases under the POCSO Act, constituting 38.2 per cent of all crimes against children registered in 2023).

[5] Justice, Access & Lowering Delays in India (JALDI) Initiative, Vidhi Ctr. for Legal Pol'y, *A Decade of POCSO: Developments, Challenges and Insights from Judicial Data* (2022).

[6] Shruthi Ramakrishnan & Swagata Raha, *"Romantic" Cases under the POCSO Act: An Analysis of Judgments of Special Courts in Assam, Maharashtra and West Bengal* 6 (Enfold Proactive Health Trust 2022) (1,715 of 7,064 judgments delivered between 2016 and 2020).

[7] *Ishwar Chand Sharma v. State of Uttar Pradesh*, 2026 INSC 587 (India) (decided May 29, 2026); *R v. E*, 2026 INSC 1049 (India) (decided Sept. 24, 2026).

A. Research Objectives

The objectives of this research paper are:

1. To examine the statutory scheme of the POCSO Act, 2012, including its age threshold, reporting duty, statutory presumptions and false-complaint provision;
2. To analyse the judicial treatment of consensual relationships between adolescents under the Act;
3. To assess how courts have dealt with POCSO allegations in matrimonial and custody disputes, including the decisions of the Supreme Court in 2026; and
4. To propose reforms that curb misuse without diluting the protection of children.

B. Research Questions

1. Does the POCSO Act, 2012 require a statutory close-in-age exception for consensual relationships between adolescents?
2. Can procedural safeguards curb the misuse of the Act in matrimonial and custody disputes without deterring genuine reporting?
3. Is Section 22 of the Act an adequate remedy against false complaints and false information?

C. Research Methodology

This paper follows the doctrinal method of legal research. The primary sources are the POCSO Act, 2012 as amended in 2019, the Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagarik Suraksha Sanhita, 2023 and the judgments of the Supreme Court and the High Courts. The secondary sources are the 283rd Report of the Law Commission of India, data of the National Crime Records Bureau, empirical studies of POCSO trials and scholarly commentary. The paper adopts a descriptive and analytical approach. It relies on reported and officially published decisions and does not undertake empirical fieldwork.

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IV. RESEARCH AND ANALYSIS

A. Offences And Punishments Under the POCSO Act, 2012

Sr. No.	Offence	Definition	Punishment (as amended in 2019)[8]
1.	Penetrative Sexual Assault	Section 3	Section 4: not less than 10 years, extendable to life imprisonment, and fine; where the child is below 16 years, not less than 20 years, extendable to imprisonment for the remainder of natural life, and fine.
2.	Aggravated Penetrative Sexual Assault	Section 5	Section 6: not less than 20 years, extendable to imprisonment for the remainder of natural life, and fine, or death.
3.	Sexual Assault	Section 7	Section 8: not less than 3 years, extendable to 5 years, and fine.
4.	Aggravated Sexual Assault	Section 9	Section 10: not less than 5 years, extendable to 7 years, and fine.
5.	Sexual Harassment	Section 11	Section 12: up to 3 years and fine.

[8] Protection of Children from Sexual Offences (Amendment) Act, 2019, No. 25, Acts of Parliament, 2019 (India) (in force from Aug. 16, 2019).

Sr. No.	Offence	Definition	Punishment (as amended in 2019)[8]
6.	Using a Child for Pornographic Purposes	Section 13	Section 14: not less than 5 years and fine (not less than 7 years on a subsequent conviction), in addition to punishment under ss. 4, 6, 8 or 10 where the use involves those offences.
7.	Storage of Pornographic Material Involving a Child	Section 15	Section 15: fine of not less than ₹5,000 for failure to delete or report; up to 3 years, or fine, or both, for transmission; 3 to 5 years, or fine, or both, for storage for commercial purposes.
8.	Abetment of an Offence	Section 16	Section 17: punishment provided for the offence abetted.
9.	Attempt to Commit an Offence	Section 18	Section 18: up to one-half of the longest term provided for the offence, or fine, or both.

The table reflects the Protection of Children from Sexual Offences (Amendment) Act, 2019, which raised the minimum sentences under ss. 4 and 6, introduced the death penalty for aggravated penetrative sexual assault and substituted ss. 14 and 15. The Act also contains provisions that shape the analysis in this paper: s. 19 imposes a duty to report offences, s. 21 punishes failure to report, s. 22 punishes false complaints, and ss. 29 and 30 raise statutory presumptions against the accused. Part D examines these provisions.

Since 1 July 2024, the Bharatiya Nyaya Sanhita, 2023 (BNS), the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) and the Bharatiya Sakshya Adhiniyam, 2023 have replaced the IPC, the CrPC and the Indian Evidence Act for offences and proceedings after that date, while earlier matters remain governed by the old codes.[9] This paper therefore cites each former provision with its current equivalent.

B. Consensual Relationships and Weaponisation of POCSO Against Adolescents

Consensual sexual relationships between adolescents form one of the most debated aspects of the POCSO Act, 2012. Under the Act, a "child" is defined in section 2(1)(d) as "any person below the age of eighteen years".[10] The Act treats any sexual activity involving a child as an offence, irrespective of consent. Consequently, even where a relationship between two adolescents is voluntary and romantic, the law does not recognise the consent of the adolescent as valid consent. The general criminal law follows the same threshold: s. 63 of the Bharatiya Nyaya Sanhita, 2023 (formerly s. 375 IPC) treats sexual intercourse with a woman under eighteen years of age as rape, with or without her consent.[11] The legislature adopted this strict approach to provide comprehensive protection to children against sexual abuse.

Over the years, however, this age-based consent provision has attracted considerable judicial scrutiny. Courts have repeatedly observed that, although the POCSO Act serves the important objective of protecting children from sexual exploitation, its provisions are being invoked in cases involving consensual romantic relationships between adolescents. In *Vijayalakshmi v. State*[12], the Madras High Court quashed proceedings under s. 482 CrPC (now s. 528 BNSS) in a case of elopement and marriage, observing that the Act was never intended to punish an adolescent boy for a relationship with a minor girl. The Court

[9] Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023, § 531 (India) [hereinafter BNSS]; Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023, § 358 (India) [hereinafter BNS]; Bharatiya Sakshya Adhiniyam, 2023, No. 47, Acts of Parliament, 2023 (India).
[10] POCSO Act § 2(1)(d).
[11] BNS § 63(vi); *cf.* Indian Penal Code, 1860, No. 45 of 1860, § 375 (India) (repealed 2024).
[12] *Vijayalakshmi*, 2021 SCC OnLine Mad 317.

called upon the legislature to revisit the definition of "child" and the application of the Act to such relationships, and cautioned against viewing every case involving adolescents through the lens of criminality.

Social conditions have also changed. With wider access to technology and education, adolescents today often develop romantic relationships at an early age, and some engage voluntarily in physical intimacy. The Act nonetheless criminalises such relationships irrespective of the absence of coercion, exploitation or abuse. Empirical research confirms the pattern: in the three-state study cited above, the parents or relatives of the girl were the informants in over 80 per cent of the "romantic" cases.[13]

The High Court of Delhi, in *Court on Its Own Motion (Lajja Devi) v. State*[14], examined the elopement and marriage of minor girls and the consequences of such marriages under the general criminal law, including the significance of the girl's own volition. The Court decided the case on 27 July 2012, after the POCSO Act received Presidential assent on 19 June 2012 but before it came into force on 14 November 2012, and it therefore applied the IPC framework.

Its treatment of the distinction between coercion and voluntary association continues to inform the analysis of adolescent relationships. In *Sabari v. Inspector of Police*[15], the Madras High Court, while acquitting a young man convicted under the Act, observed that a significant number of POCSO prosecutions arise from consensual relationships between adolescents. The Court suggested that the definition of "child" be revised to a person below sixteen years, so that consensual acts above that age fall outside the Act, and proposed an age gap of not more than five years between the parties as a safeguard against exploitation.

[13] Ramakrishnan & Raha, *supra* note 6 (parents or relatives of the girl were the informants in 80.2 per cent of the cases studied).
[14] *Court on Its Own Motion (Lajja Devi) v. State*, 2012 (6) AD (Delhi) 465 (Del. HC July 27, 2012) (India) (W.P. (Crl.) No. 338 of 2008).
[15] *Sabari v. Inspector of Police*, 2019 (3) MLJ (Crl) 110 (Mad. HC Apr. 26, 2019) (India) (Crl. A. No. 490 of 2018).

In some cases, parents file POCSO complaints after they learn of a relationship of which they disapprove, on grounds such as age, caste, religion or family reputation.[16] Even where the relationship is voluntary, families may initiate criminal proceedings to separate the couple or end the relationship. As a result, the accused, who is often an adolescent or a young adult, becomes entangled in the criminal justice system despite the absence of any predatory intent.

Courts have observed that a number of such prosecutions stem from parental disapproval rather than from coercion or exploitation, which makes a careful examination of the factual matrix of each case necessary before it is treated as one of child sexual abuse. In *State of Uttar Pradesh v. Anurudh*, the Supreme Court also noted the use of the Act by persons seeking to settle personal scores or exert social pressure.[17] These situations do not represent all prosecutions under the POCSO Act. They show, however, that the legislation may be misused in certain circumstances if adequate safeguards are not effectively implemented.

Recognising the possibility of malicious prosecution, the legislature incorporated Section 22 in the POCSO Act, which provides "punishment for false complaint or false information".[18] Section 22 therefore assumes considerable significance in the context of the alleged weaponisation of the Act. Prosecutions under the provision nevertheless remain infrequent, partly because of its narrow wording, which Part D examines. The volume of cases arising from consensual adolescent relationships has generated an important debate on the need to balance child protection with the evolving realities of adolescent development.

[16] Ramakrishnan & Raha, *supra* note 6 (parental disapproval of the relationship was among the principal reasons recorded for the girl leaving home).
[17] *Anurudh*, 2026 INSC 47.
[18] POCSO Act § 22.

C. Misuse Of POCSO Provisions in Matrimonial and Family Disputes

The POCSO Act, 2012 was enacted to protect children below eighteen years of age from sexual assault, sexual harassment and other forms of sexual exploitation. It is special legislation that provides a child-friendly procedure for reporting, investigation, trial and punishment of offenders, and it is considered one of the most stringent criminal statutes in India. Despite these purposes, courts have repeatedly encountered POCSO complaints that arise from, and are shaped by, matrimonial disputes.

In several matrimonial cases, one spouse has alleged sexual abuse of a child against the other spouse or the other spouse's family members during divorce, custody or separation proceedings. Where such allegations are false, they harm not only the accused but also the child, who becomes an instrument in the dispute between the adults. The motives identified in reported decisions include personal grievance, financial settlement, defamation of the opposite party and strategic advantage in litigation. Official statistics do not separately record false complaints in matrimonial cases, but the Kerala High Court and, more recently, the Supreme Court have observed a growing tendency to file such complaints during custody disputes.[19]

The POCSO Act does not itself restrict bail; arrest and bail are governed by the BNSS and by Article 21 of the Constitution. However, the presumptions in ss. 29 and 30, which operate once charges are framed, shape how courts approach bail and trial. The Delhi High Court held in *Dharmander Singh v. State* that the s. 29 presumption does not apply to a bail plea before charges are framed.[20] During matrimonial disputes, one spouse may attempt to weaken the other spouse's claim to custody, visitation rights or financial settlement by alleging sexual abuse of the child. Because such allegations concern minor

[19] *Suhara v. Muhammed Jaleel*, 2019 (2) KHC 596 (Ker. HC Apr. 10, 2019) (India) (Mat. Appeal Nos. 182 & 198 of 2019); *R v. E*, 2026 INSC 1049.
[20] *Dharmander Singh v. State (Govt. of NCT of Delhi)*, 2020 SCC OnLine Del 1267 (Del. HC Sept. 22, 2020) (India) (Bail Appl. No. 1559 of 2020).

children, courts and investigating agencies are naturally cautious, and this significantly affects proceedings before Family Courts.

Reported decisions show that such allegations are frequently directed against fathers in custody disputes, with the aim of denying them custody of, or access to, the child. The Act is, however, gender-neutral, and genuine abuse also occurs within matrimonial homes; the concern lies with motivated complaints, not with any category of complainant. Courts have clearly observed that children cannot be used as instruments in matrimonial battles. A false case damages the relationship of the child with one parent and causes emotional trauma and psychological harm. The Supreme Court addressed this pattern directly in *Ishwar Chand Sharma v. State of Uttar Pradesh*, which is discussed below.

In *N. Chandramohan v. State*[21], the Madras High Court addressed allegations made by a wife in a matrimonial and custody dispute. The mother alleged that the father had sexually assaulted their eleven-year-old daughter. The daughter consistently denied the allegations, both in her statement under s. 164 CrPC (now s. 183 BNSS) and when the Court questioned her directly. The Court concluded that the mother had filed the complaint with the ulterior motive of threatening the husband and securing custody of the child, and that the FIR was an abuse of the process of law. Expressing concern at the misuse of the POCSO Act in matrimonial disputes, the Court directed the police to proceed against the complainant under Section 22 for making a false complaint. The case thus confirms that the Act exists to safeguard children from sexual offences and cannot be used to gain an advantage in a matrimonial issue or a child custody dispute.

Similarly, in *Suhara v. Muhammed Jaleel*[22], the Kerala High Court observed a growing tendency to foist false allegations of sexual abuse on biological fathers during custody disputes, and held that the registration of a POCSO case does not by itself disqualify a

[21] *N. Chandramohan v. State*, 2019 SCC OnLine Mad 3666 (Mad. HC Aug. 20, 2019) (India) (Crl. O.P. No. 21414 of 2019).
[22] *Suhara*, 2019 (2) KHC 596.

parent from custody. The Court stated that Family Courts should carefully examine such allegations, as they affect both the child and the accused parent. In *XXXX v. State of Kerala*[23], a father was accused of sexually assaulting his son and showing him nude photographs of himself as a small child during court-ordered interactions, although the counsellor appointed by the Family Court had reported no such disclosure. While granting anticipatory bail to the father, the Kerala High Court held that courts must approach such allegations with caution where custody is under litigation, while keeping the safety of the child in view. In 2026, the Supreme Court endorsed *Suhara*, as Part E explains.

Further, in *Sheetal Vasant Thakur v. Chirag Arora*[24], the Supreme Court considered the psychological evaluation of a child in a custody and access dispute in which a POCSO prosecution, based on the mother's allegations, was pending against the father. The Court expressly declined to decide the truth of those allegations. It held that a court may direct the evaluation of a child victim in custody proceedings only on recorded reasons of demonstrable necessity, and that any such process must be minimally intrusive, proportionate and institutionally neutral. It modified the Bombay High Court's direction for evaluation by a four-member panel of experts and laid down guidelines to prevent the evaluation from becoming an adversarial tool. The decision is not authority on false allegations; it confirms that custody courts must handle POCSO allegations with care so that the child is not exposed to repeated and harmful processes.

In *XXX v. State (Govt. of NCT of Delhi)*[25], in which the Court masked the names of the parties to protect the complainant's identity, the Delhi High Court dealt with a POCSO case that a young woman had filed against her brother and his wife amid a family property dispute. After the chargesheet was filed, but before charges were framed, the complainant, supported by her mother, admitted that the alleged acts had never

[23] *XXXX v. State of Kerala*, Bail Appl. No. 1193 of 2023 (Ker. HC Mar. 7, 2023) (India).
[24] *Sheetal Vasant Thakur v. Chirag Arora*, 2026 INSC 638, ¶¶ 40, 79, 96, 97 (India) (decided June 11, 2026).
[25] *XXX v. State (Govt. of NCT of Delhi)*, CRL.M.C. 624/2026, ¶¶ 14, 17, 18, 19 (Del. HC Mar. 13, 2026) (India) (names of the parties masked by order of the Court).

occurred, and the parties settled their disputes. The Court described the complainant's conduct as unfair and inexcusable, and quashed the FIR and all consequential proceedings under its inherent powers in s. 528 BNSS, holding that continuing the trial would serve no purpose.

The Supreme Court has also raised concerns about the misuse of criminal laws, including the POCSO Act, in matrimonial disputes. In *Ishwar Chand Sharma v. State of Uttar Pradesh*[26], the Court quashed POCSO and BNS proceedings that an estranged wife had initiated against her husband and his family members, alleging sexual assault of their minor daughter. The Court found the allegations vague, omnibus and unsupported by any medical evidence, and noted that the statements of the complainant and the child were reproduced almost verbatim, which indicated the possibility of tutoring.

It expressed serious concern at the practice of filing multiple criminal cases in matrimonial disputes, observing that "[t]his 'matrimonial bouquet' often includes claims of dowry demands", cruelty and domestic violence, and noted that a child is often used by one parent against the other. It held that complaints that are prima facie vague and lack material support should be nipped in the bud, and cautioned advocates against advising the initiation of frivolous criminal proceedings.

Another important decision of the Supreme Court in such cases is *A.A.S. v. State of Maharashtra*[27]. The Court quashed an FIR under s. 354 IPC and s. 8 of the POCSO Act that a divorced mother had lodged against the paternal aunt of her five-year-old son. The mother lodged the FIR a few hours after the father had lodged an FIR alleging a sexual offence by the maternal uncle against the boy's twin sister, and the Court treated the mother's FIR as a counterblast to the father's earlier FIR. The Court did not pronounce on the father's FIR.

[26] *Ishwar Chand Sharma*, 2026 INSC 587, ¶¶ 7.5, 7.6, 7.11, 9.3, 9.4, 9.8, 10.1.
[27] *A.A.S. v. State of Maharashtra*, Crim. Appeal arising out of SLP (Crl.) No. 2163 of 2025, ¶¶ 2, 3, 4, 5, 7 (India) (decided July 23, 2026), *reported in* 2026 LiveLaw (SC) 720.

It noted that the boy's statement under s. 164 CrPC (now s. 183 BNSS) did not support the allegation, and that the High Court had refused to quash the FIR without examining that statement. The Court also observed that in-laws are commonly drawn into matrimonial disputes to settle scores, and that children are often used by parents to vilify each other. This decision demonstrates that courts examine the timing of complaints and the surrounding matrimonial litigation when considering whether criminal proceedings amount to an abuse of process.

These decisions show that a substantial body of case law has developed on POCSO complaints arising from matrimonial discord between the parties. They also show the need for safeguards that prevent the misuse of provisions designed for the safety and protection of children, without weakening the protection that the Act extends to genuine victims.

D. Statutory Provisions on Reporting, Presumptions and False Complaints

The statutory design of the Act explains both why misuse is possible and why it is difficult to remedy. Section 19 obliges any person who apprehends that an offence is likely to be committed, or who knows that one has been committed, to inform the Special Juvenile Police Unit or the local police, and s. 21 punishes the failure to report or record an offence with imprisonment of up to six months, or fine, or both.[28] This mandatory reporting regime leaves the police little room to decline registration, even when a complaint arises from a matrimonial or family dispute.

Once charges are framed for offences under ss. 3, 5, 7 or 9, s. 29 requires the Special Court to presume that the accused committed the offence unless the contrary is proved, and s. 30 presumes a culpable mental state, which the accused must rebut beyond reasonable doubt.[29] The Delhi High Court has held that the s. 29 presumption operates only after charges are framed,[30] but once it applies, it places a substantial burden on the accused.

[28] POCSO Act §§ 19, 21.
[29] *Id.* §§ 29, 30.
[30] *Dharmander Singh*, 2020 SCC OnLine Del 1267.

Section 22, the principal remedy against false complaints, is narrowly drawn. It covers false complaints or information only in respect of offences under ss. 3, 5, 7 and 9, and it requires proof that the complainant acted solely with the intention to humiliate, extort, threaten or defame. The punishment is imprisonment of up to six months, or fine, or both. Section 22(2) exempts a child from punishment for a false complaint, and s. 22(3) separately punishes a person who makes a false complaint against a child.[31]

Complaints concerning sexual harassment or pornographic use therefore fall outside s. 22, and a complainant who acts with mixed motives, such as obtaining custody, may escape it. The combined effect of mandatory reporting, statutory presumptions and a narrow false-complaint provision explain why false cases are hard to dismiss at an early stage and why prosecutions under s. 22 remain rare. These features provide the statutory footing for the reforms proposed below.

E. The 2026 Supreme Court Framework on Custody-Linked Allegations

In September 2026, the Supreme Court decided two cases that together form the current judicial framework on custody-linked POCSO allegations. In ***R v. E***[32], the Court quashed a POCSO FIR that a mother had lodged against the father and his family members after custody of their daughter was transferred to him, once an investigation by the Central Bureau of Investigation found the allegations unreliable. Noting a growing trend of such complaints, the Court framed safeguards that apply where the accused is a parent or a member of the child's household and a matrimonial dispute exists between the parents.

In such cases, the investigating officer should ordinarily obtain an evaluation of the child by an expert in child psychiatry or clinical psychology before forming the "reason to believe" required for arrest under s. 35 BNSS, and a Special Court should ordinarily obtain such an evaluation before taking cognizance of a private complaint under s. 33 of the POCSO Act. The expert report guides, but does not bind, the decision-maker. The

[31] POCSO Act § 22(1), (2), (3).
[32] *R v. E*, 2026 INSC 1049.

Court also held, following *Suhara*, that the mere registration of a POCSO case must not automatically defeat a parent's claim to custody.

The counterweight is *Debarati Bhunia Chakraborty v. Suman Sankar Bhunia*[33], decided a day earlier, in which the Court held that a father facing prosecution under the Act, after the investigation had culminated in a chargesheet, could not be granted custody while the prosecution was pending, and expunged the Delhi High Court's remarks questioning the veracity of the allegations. Read together, the two decisions presume neither the truth nor the falsity of allegations made during matrimonial disputes; they require courts and investigators to test such allegations through neutral, child-sensitive processes.

Genuine abuse does occur within matrimonial homes, and any reform must therefore curb motivated complaints without deterring genuine reporting. The *R v. E* safeguards rest on judicial directions, not on statute, and apply only where both threshold conditions exist. The recommendations below consider whether they should be codified.

F. Judicial and Law Commission Responses on the Age of Consent

Courts and law reform bodies have responded to the consent question in different ways. In *State of Uttar Pradesh v. Anurudh*[34], the Supreme Court held that the age of a victim must be determined at trial under s. 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, and not at the bail stage.

Taking note of the misuse of the POCSO Act, it directed that a copy of the judgment be sent to the Secretary, Ministry of Law and Justice, to consider steps such as a Romeo-Juliet clause exempting genuine adolescent relationships and a mechanism to prosecute those who misuse the law. The Law Commission of India, in its 283rd Report of September 2023, recommended retaining eighteen years as the age of consent. It proposed instead guided judicial discretion in sentencing where a child aged between sixteen and

[33] *Debarati Bhunia Chakraborty v. Suman Sankar Bhunia*, 2026 INSC 1043, ¶¶ 53, 54, 56 (India) (decided Sept. 23, 2026).
[34] *Anurudh*, 2026 INSC 47; Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2016, § 94 (India).

eighteen years gave tacit approval, though not consent in law, and the age difference between the parties does not exceed three years.[35]

In *In Re: Right to Privacy of Adolescents*[36], the Supreme Court, having restored the conviction of an accused who later married the adolescent victim, invoked Article 142 of the Constitution to direct that he would not undergo any sentence, in view of the welfare of the victim and their child. The Court treated the outcome as an exceptional exercise of its power and not as a precedent.

No legislative amendment has followed these decisions or the Law Commission's recommendation. In February 2026, the Union Government informed the Lok Sabha that any dilution of the age of consent, or any exception to it, may undermine child safety.[37] The Act therefore continues to criminalise all sexual activity with persons below eighteen years of age.

V. SUGGESTIONS AND RECOMMENDATIONS

As social circumstances evolve and information becomes more readily available, relationships between young people are also changing. Some provisions of the Act therefore merit review and amendment. The following reforms respond to the findings of the preceding analysis:

1. **Rethinking the age criteria:** As per the current law, a person below 18 years of age is a "child" as defined under section 2(1)(d)[38] of the POCSO Act. The Act thus covers consensual sexual activity between adolescents, and between an adolescent and a young adult, and in such cases the rigid threshold can produce injustice. Parliament should therefore consider a statutory close-in-age exception for adolescents aged sixteen to eighteen years, as contemplated in *Sabari* and

[35] Law Comm'n of India, Report No. 283, *Age of Consent under the Protection of Children from Sexual Offences Act, 2012* (2023).
[36] *In Re: Right to Privacy of Adolescents*, 2025 INSC 778 (India) (decided May 23, 2025).
[37] Ministry of Women & Child Dev., Written Reply in Lok Sabha on the Age of Consent under the POCSO Act (Feb. 6, 2026).
[38] POCSO Act § 2(1)(d); Law Comm'n of India, *supra* note 35.

Anurudh. The Law Commission preferred guided judicial discretion at the stage of sentencing, but that model leaves the accused exposed to arrest, a prolonged trial and the s. 29 presumption, and offers relief only after conviction. A statutory exception would prevent such prosecutions at the threshold. The two models can be combined: the exception could apply where the age difference between the parties does not exceed three years, the relationship is free of coercion and the accused holds no position of trust or authority, while guided sentencing discretion could govern cases just outside these limits. Such safeguards would ensure that the protection of children from sexual exploitation is not compromised and that the purpose of the Act is not diluted.

2. **More emphasis on the child's maturity while recording statements:** Courts should pay closer attention to the manner in which the statement of a child is recorded and assessed. While the statement of the child is an integral component of POCSO proceedings, children and adolescents have varying degrees of understanding and maturity, which the law should recognise. Courts should therefore have wide latitude to consider the child's age, level of understanding, maturity and ability to comprehend the circumstances. If a child is mature enough to comprehend the questions, the court should give appropriate weight to the statement in accordance with the rules of evidence. This does not mean that a child's statement should be accepted at face value merely because of the child's age. Instead, in every case, the court should evaluate the reliability and understanding of the child concerned.

3. **Reworking Section 22 to address deliberately false complaints:** A false POCSO complaint can seriously damage an innocent person's reputation, employment, family life and mental health. Section 22 should therefore extend to false complaints concerning any offence under the Act, and should replace the requirement that the complainant acted "solely" with an improper intention with a requirement that the complainant knew the complaint to be false. Where a court

finds a complaint deliberately false, it should be required to consider action under Section 22, as the Madras High Court directed in *N. Chandramohan*. The exemption for a child in s. 22(2) should remain. An acquittal does not by itself mean that the complaint was false, and the provision should apply only on clear proof that the allegations were knowingly false, so that genuine complainants are not deterred.

4. **Codifying procedural safeguards in custody-linked cases:** Parliament should codify the *R v. E* safeguards by requiring an expert evaluation of the child within a fixed period before arrest or cognizance, where the accused is a parent or household member and a matrimonial dispute is pending, so that the safeguard does not delay protection in genuine cases. The provision should also direct Family Courts to assess custody claims independently of the mere registration of a POCSO case, consistent with *Suhara* and *Debarati Bhunia Chakraborty*. Codification would give these safeguards uniform application and statutory certainty, while the urgent protective measures available under the Act would remain unaffected.

The purpose of these changes is not to weaken the POCSO Act but to make it fairer and more balanced. A close-in-age exception, attention to the child's maturity while examining statements, codified safeguards in custody-linked cases and effective action against deliberately false complaints can together help prevent misuse while keeping the protection of children as the main priority.

VI. CONCLUSION

The POCSO Act, 2012 has undoubtedly played a significant role in strengthening the legal protection of children against sexual abuse and exploitation in India. This research paper set out to answer three questions, and its findings support a calibrated reform of the Act. On the first question, the analysis shows that the rigid age threshold in s. 2(1)(d) brings a significant number of consensual adolescent relationships within the criminal process. The Madras High Court in *Vijayalakshmi* and *Sabari*, and the Supreme Court in *Anurudh*, have recognised this problem, and the Law Commission has acknowledged it while

preferring sentencing discretion. A statutory close-in-age exception, with safeguards against coercion and abuse of trust, offers the more effective remedy.

On the second question, the decisions in *Ishwar Chand Sharma*, *A.A.S.* and *R v. E* show that motivated complaints do arise in matrimonial and custody disputes, while *Debarati Bhunia Chakraborty* confirms that genuine allegations demand full protection. Procedural safeguards, such as an expert evaluation of the child before arrest or cognizance, can curb misuse without deterring genuine reporting, and their codification would give them uniform force. On the third question, Section 22 proves inadequate: it covers only four offences, demands proof of a sole improper intention and carries a light penalty, so it rarely operates. A reworked Section 22 that punishes knowingly false complaints, while protecting children and genuine complainants, would restore the balance.

Any reform must keep the safety of children as its main priority while ensuring fairness and justice for every person involved in the criminal process. Further research should examine empirical data on the outcomes of POCSO cases arising from matrimonial disputes, the working of the *R v. E* safeguards in practice, and comparative models of close-in-age exceptions in other jurisdictions.

VII. REFERENCES

A. Statutes

1. Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India).
2. Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023 (India).
3. Bharatiya Sakshya Adhiniyam, 2023, No. 47, Acts of Parliament, 2023 (India).
4. Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2016 (India).
5. Protection of Children from Sexual Offences (Amendment) Act, 2019, No. 25, Acts of Parliament, 2019 (India).

6. Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012 (India).

B. Cases

1. *A.A.S. v. State of Maharashtra*, Crim. Appeal arising out of SLP (Crl.) No. 2163 of 2025 (India) (decided July 23, 2026), *reported in* 2026 LiveLaw (SC) 720.
2. *Court on Its Own Motion (Lajja Devi) v. State*, 2012 (6) AD (Delhi) 465 (Del. HC 2012) (India).
3. *Debarati Bhunia Chakraborty v. Suman Sankar Bhunia*, 2026 INSC 1043 (India).
4. *Dharmander Singh v. State (Govt. of NCT of Delhi)*, 2020 SCC OnLine Del 1267 (India).
5. *In Re: Right to Privacy of Adolescents*, 2025 INSC 778 (India).
6. *Ishwar Chand Sharma v. State of Uttar Pradesh*, 2026 INSC 587 (India).
7. *N. Chandramohan v. State*, 2019 SCC OnLine Mad 3666 (India).
8. *R v. E*, 2026 INSC 1049 (India).
9. *Sabari v. Inspector of Police*, 2019 (3) MLJ (Crl) 110 (Mad. HC 2019) (India).
10. *Sakshi v. Union of India*, (2004) 5 SCC 518 (India).
11. *Sheetal Vasant Thakur v. Chirag Arora*, 2026 INSC 638 (India).
12. *State of Uttar Pradesh v. Anurudh*, 2026 INSC 47 (India).
13. *Suhara v. Muhammed Jaleel*, 2019 (2) KHC 596 (Ker. HC 2019) (India).
14. *Vijayalakshmi v. State*, 2021 SCC OnLine Mad 317 (India).
15. *XXX v. State (Govt. of NCT of Delhi)*, CRL.M.C. 624/2026 (Del. HC Mar. 13, 2026) (India).
16. *XXXX v. State of Kerala*, Bail Appl. No. 1193 of 2023 (Ker. HC Mar. 7, 2023) (India).

C. Reports and Official Documents

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

2. Ministry of Women & Child Dev., Written Reply in Lok Sabha on the Age of Consent under the POCSO Act (Feb. 6, 2026).
3. Nat'l Crime Records Bureau, Ministry of Home Affairs, Crime in India 2023 (2025).

D. Studies and Reports of Research Organisations

1. Justice, Access & Lowering Delays in India (JALDI) Initiative, Vidhi Ctr. for Legal Pol'y, *A Decade of POCSO: Developments, Challenges and Insights from Judicial Data* (2022).
2. Ramakrishnan, Shruthi & Swagata Raha, *"Romantic" Cases under the POCSO Act: An Analysis of Judgments of Special Courts in Assam, Maharashtra and West Bengal* (Enfold Proactive Health Trust 2022).