



The Ties That Bind: Juvenile Delinquency and Adolescent Relationships

Sampada Gautam¹

Research Scholar
University of Kota

Under the Supervision of
Dr. Mahendra Singh Meena²

Assistant professor
Government Law College
Kota (Rajasthan).

INTRODUCTION

India has been on the children protection agenda for legislative enactments. The Juvenile Justice (Care and Protection of Children) Act, 2015¹, and the Protection of Children from Sexual Offences Act, 2012, are two of the many landmark enactments. These laws recognize that the rights of children involved in conflict with the law, as well as those who are victims of sexual offenses, need strong legal frameworks for protection, care, and rehabilitation. The JJ Act, 2015, emphasizes a child-friendly approach to adjudication and the disposal of matters affecting children, prescriptively envisioning their rehabilitation through various child welfare strategies but is filled with gaps in the legislation.

The POCSO Act, 2012², specifically deals with serious crimes relating to the sexual abuse and exploitation of children. It entails adequate punishment and establishes special courts to ensure expedient conclusions in those cases. There were compelling reasons for introducing such laws; however, their implementation has received criticism on numerous counts, which have rendered their intended goals ineffective. Some of these criticisms include age of consent, the approach taken at an administrative level, inadequate training of law enforcement and judicial authorities, and infrastructural shortcomings.

These issues do not merely cast doubt on the workability of the laws but also impact the very life and justice of children. The investigation presented here will analyse the specific areas in which the JJ Act, 2015, and the POCSO Act, 2012, have failed. It aims to highlight the urgency of recognizing that there should be right implementation of the law. The experience and knowledge acquired from this analysis will contribute to making recommendations that will reinforce policies aimed at ensuring effective law enforcement regarding child protection, thereby creating a safer world for children in India.

JUVENILE DELINQUENCY AND ITS IMPACTS

1. Impact of the Juvenile Justice (Care and Protection of Children) Act, 2015

The JJ Act, 2015 marked a major shift in the approach towards Child care in India. Perhaps the most contentious provisions of the JJA, 2015 is the transfer of juveniles aged 16-18 years alleged to have committed heinous offenses to adult criminal courts. This provision was enacted during the public agitation against the 2012 Delhi gang rape case³, whose one of the perpetrators was only a minor. Judgements given

¹ Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, India Code (2015).

² Protection of Children from Sexual Offences Act, No. 32 of 2012, India Code (2012).

³ Mukesh and Ors. vs. State for NCT of Delhi and Ors. MANU/SC/0575/2017

when deciding other cases like the *Salil Bali v. Union of India*⁴ and *Subramanian Swamy v. Raju*⁵ where directly contradicting opinion to the new provision In JJ Act 2015, The Act also violated the UN Convention of Rights of the Child.

The impact of JJA, 2015 has been mixed. On One side, the Act tries to safeguard juvenile rights and treat them with care and rehabilitation instead of punishment, also tries to introduce a principle that comes from conventions under international laws such as the United Nations Convention on the rights of the child, in which a child-friendly approach must be applied for juveniles who commit crime. On the other side strips 16–18-year-olds of the protection given in JJ Act.

2. The Problem in Defining Heinous crimes for Juveniles

Definition of Heinous Offence⁶: A heinous offence is one in which, at a minimum, a term exceeding seven years must be imposed according to law – Bharatiya Nyaya Sanhita or any other law in force. The concept of heinous offences relates to those homicides for which the prescribed punishment is beyond seven years. In addition, there are 46 specific offences under which juveniles between the ages of 16 and 18 may be tried as adults. Persons under 18 years may be tried as adults for violations of the Protection of Children from Sexual Offences Act, the Narcotic Drugs and Psychotropic Substances Act, the Maharashtra Control of Organized Crime Act, and the Prevention of Terrorism Act.

Under this new framework, anyone convicted of a crime that has a prescribed minimum term must receive that minimum term as a sentence. This runs counter to the fair trial principle formulated in the Convention on the Rights of a Child, as it limits the judge's discretion to divert from institutionalization.

The Juvenile Justice Act's Clause 15 enjoins a competent board to make sufficient inquiries to determine whether the child smartly and adequately perceived the nature of the act at the time of commission and its contextual aspects in a period of 3 months.⁷ Ultimately, it may not be possible to measure accurately the mental capacity of an individual youth, and the fact that it could be so done impinges upon the principles of science. Such an evaluation is subject to error and uncertainty, along with the bias inherent in choosing which minors would be tried in an adult court. This directly violates Articles 14 and 21 of the Constitution of India.

It further destroys the principle of presumed innocence, which forms the basis of both juvenile and criminal justice systems, in that the juvenile justice board would have to take such a decision before any evidence is presented. In a shocking departure from pursuing the best interests of youth, the juvenile justice board now assumes the additional and difficult responsibility to determine which of the young offenders should be passed on to the adult criminal justice system. The system is admittedly based on a false assumption that juveniles equally shoulder the blame with adults.

POCSO ACT AND CONSENSUAL SEXUAL RELATIONSHIPS

1. When it is between Minors

Consensual sexual relationships between minors present a significant challenge to the POCSO Act. The law criminalizes all sexual activity involving minors, regardless of whether it is consensual.⁸ This blanket approach fails to recognize the reality of adolescent relationships, where mutual attraction and exploration

⁴ *Salil Bali v. Union of India*. MANU/SC/0718/2013

⁵ *Subramanian Swamy v. Raju*. MANU/SC/0248/2014

⁶ Abhinav Benjamin & Ananth Kamath M, *A Critical Analysis on Juvenile Justice System*, ALSI (2024), <https://www.alsi.edu.in/images/a-critical-analysis-on-juvenile-justice.output.pdf>.

⁷ *Law Commission Report on Age of Consent: Missed Opportunity to De-criminalise Sex Between Minors*, DOWN TO EARTH (Nov. 13, 2023), <https://www.downtoearth.org.in/health/law-commission-report-on-age-of-consent-missed-opportunity-to-de-criminalise-sex-between-minors-92494>.

⁸ Prem Vinod Parwani, *Revisiting Consent Under POCSO: From a 'Fixed-Age' Rule to a 'Competence Based' Standard*, 16 NUJS L. Rev. 2 (2023).



are natural aspects of development.⁹

According to the NCRB data of 2022¹⁰ we can see that the rape crimes done by Juveniles is 1239 of which 7 boys and 0 girls in below 12 age group, 247 boys and 1 girl in the 12-16 age group, 981 boys and 3 girls in the 16-18 age group.

When we look at the above data we infer many things:

The rape crimes in India are mostly reported against boys as compared to girls, we can derive from this the fact that most rape crimes done by girls are not filed and the inherent bias that a girls will not commit rape and that only a boy is capable of raping. The Ministry of women and child development in a 2007 study¹¹ said that a higher percentage of boys than girls reported having experienced sexual abuse overall but none of the boys have reported cases for sexual abuse.

The second thing we can understand from this data is that there is very less rapes done by children aged below 16 and Children commit 3.86 times more crimes when they reach the 17,18-age group¹².

The question that appears is, what significant change is happening in the mind of a child when he reaches age 17&18 and can this be related to the fact that romantic relationships between teenagers are being criminalized under the act and cases are being filed based on it.

It is well known fact that children between the ages of 16-18 are attaining where age of puberty and this is the time where they tend to explore their sexuality and go into romantic relationships¹³. Statistics of the National Family and Health Survey¹⁴ reflects the ground reality “The National family health survey-4 (2015-16) records 11% of girls had their first sexual intercourse before the age of 15, and 39% before the age of 18. In the same survey, 6.3% of women who got married at the age of 18 years or above have reported having their first sexual intercourse before 15 years”.

It can also be said that Criminalising of cases of “romantic relationship” within the age group of sixteen years to eighteen years¹⁵, perpetuates gender discrimination in its application as the male adult/male child is being treated as an accused/child in conflict with the law, though the sexual activity is consensual in nature and the offence is gender-neutral¹⁶.

There are a lot of examples where there is consensual sexual activity and marriage between 2 minors but because of the coercion of the family members the Girl is forced to give statements against the boy. By completely eliminating the consent element the male is in serious legal trouble and had to bear serious punishments.

Such gender discrimination is reflected in the Mumbai cases also as none of the “accused” were female in

⁹ *Rape Charges on a Juvenile Perpetrator: Legal Implications and Consequences*, iPLEADERS BLOG (Nov. 12, 2023), <https://blog.ipleaders.in/rape-charges-perpetrator-juvenile/>.

¹⁰ *National Crime Records Bureau, Crime in India 2022*, Ministry of Home Affairs, 2022, <https://ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1701607577CrimeinIndia2022Book1.pdf>.

¹¹ Ministry of Women and Child Development, Government of India, Study on Child Abuse: India 2007, in collaboration with Save the Children, (2007), <https://resourcecentre.savethechildren.net/document/study-child-abuse-india-2007/>.

¹² *NCRB Data and POCSO: Criminalising Teen Sexuality May Be True*, *The News Minute* (Nov. 17, 2023), <https://www.thenewsminute.com/delve/pocso-criminalising-teen-sexuality-ncrb-data-suggests-may-be-true-111281>.

¹³ B. B. Pande, “Bad” Juveniles and the “Worst” Juvenile Justice Law? *The Second Challenge to Juvenile Justice Law in Darga Ram v. State of Rajasthan*, 57 *J. Indian L. Inst.* 27 (2015), <https://www.jstor.org/stable/44782489>.

¹⁴ *Demographic and Health Survey, India: National Family Health Survey (NFHS-4) 2015-16*, Ministry of Health and Family Welfare, 2017, <https://dhsprogram.com/pubs/pdf/fr339/fr339.pdf>.

¹⁵ *Age of Consent Under the POCSO Act*, SCC ONLINE BLOG (Mar. 12, 2023), <https://www.scconline.com/blog/post/2023/03/12/age-of-consent-under-the-pocso-act/>.

¹⁶ V. Kumari, *The Juvenile Justice Act 2015—Critical Understanding*, 58 *J. Indian L. Inst.* 83 (2016), <https://www.jstor.org/stable/45163062>.

cases of romantic relationship¹⁷. Only the male in the romantic relationship is being penalised and charged with aggravated sexual assault even if both the accused and victim is between 16-18 age group, this is very problematic as there is gender discrimination and cases are only registered against the boy.

Perusal of judgments of cases disposed of under the POCSO Act by the Mumbai Sessions Court at Greater Mumbai and Dindoshi registered in court in 2019 of NCRB Website showed that the cases involving a minor as victim and accused, in most of these cases the cases were filed or informed by family members but the accused was acquitted because the victim didn't support the case. Enfold Proactive health trust in their report also supported the premise that 80.2% of the cases were reported by the Parents and relatives¹⁸.

These instances prove that the family members of the girl are resorting to police complaint against boy so that their relationship ends and for this POCSO cases are being registered without considering the fact that there can be a consent between the parties and they can be in an intimate relationship.

2. When it is between a Major and a Minor

The relationships between a major (an adult) and a minor are more complex. Such an imbalance in power inherent in these relationships render manipulation and exploitation¹⁹. The POCSO Act intends to prevent such potential abuses by criminalizing any form of sexual activity between an adult and a minor - any such act or behaviour, be it consensual or not.

Such features of the POCSO Act make it difficult for courts to validate a minor's consent in legal terms. The Madras High Court observed that many POCSO cases involve 16-18-year-olds²⁰, advising that such relationships should not be deemed unnatural. The Kerala High Court highlighted the difficulty in categorizing relationships between adolescents and older teens²¹.

The Supreme Court, while upholding the POCSO Act's objectives, granted interim protection to a young adult in a case involving a relationship with a girl under 18²². Similarly, the Kerala High Court ruled a relationship between a 17-year-old and a 20-year-old consensual, not an offence under the POCSO Act²³. The Bombay High Court also recognized consensual adolescent relationships, noting no undue advantage was taken by the accused.²⁴

Adapting POCSO to the current status quo is very much required. Laws need to change over time with changes in society so that they can remain effective. For instance, changing the Act in terms of maturity with respect to certain ages enjoying autonomy in sexual preferences would avoid the criminalization of consensual adolescent relationships.

LEGISLATIONS AROUND THE WORLD AND THEIR IMPACTS

There are juvenile delinquency rules enacted around the world and can serve our purpose of comparing and perfecting laws in our country.

According to French law, only Special Juvenile Courts have the authority to try anyone under the age of 18. Additionally, there are distinct juvenile courts for significant offenses committed by minors (16–18 years old)

¹⁷ Oishika Banerji, *Navigating Adolescent Romance vis-à-vis POCSO Act*, MANUPATRA ACADEMY (Apr. 2025),

https://manupatracademy.com/LegalPost/Navigating_Adolescent_Romance_POCSO_Act.

¹⁸ Shruthi Ramakrishnan & Swagata Raha, "Romantic" Cases under the POCSO Act: An Analysis of Judgments of Special Courts in Assam, Maharashtra & West Bengal, *Girls Not Brides* (Dec. 11, 2022), <https://www.girlsnotbrides.org/learning-resources/child-marriage-research-action-network/crank-research-tracker/romantic-cases-under-the-pocso-act-an-analysis-of-judgments-of-special-courts-in-assam-maharashtra-amp-west-bengal/>.

¹⁹

²⁰ Sabari @ Sabarinathan @ Sabarivasan v. Inspector of Police, MANU/TN/3829/2019 (India).

²¹ Jayaprakash v. The Inspector of Police and Ors, MANU/TN/5226/2022 (India).

²² Maruthupandi v. State Represented by The Inspector of Police, MANU/SCOR/21203/2021 (India).

²³ Shambu Thilak v. State of Kerala and Ors, MANU/KE/0043/2017 (India).

²⁴ Sunil Mahadev Patil v. The State of Maharashtra, MANU/MH/3141/2015 (India).

that are not prosecuted in adult courts. However, there is no special court like in France because the new JJ Act permits minors between the ages of 16 and 18 who are accused of heinous crimes to be prosecuted and sentenced as adults. In Canada, sex is permitted between the ages of 14 and 15 with partners under the age of five, as well as between the ages of 12 and 13 with partners under the age of two. The United States of America claims that Special Juvenile Courts handle About 20 states permit juvenile offenders to be prosecuted and sentenced as adults, with the cutoff age for juvenile offenders being under 18.

But India has made a grave mistake by replicating a western model of justice. The act's suggested juvenile-to-adult jail transfer system has been in place in the US for more than 20 years. In order to determine whether waiver laws prevented or decreased violence among those who were transferred and among juveniles in general, the U.S. Center for Disease Control established an independent task force on community preventive services and published scientific evidence on the subject. Transfer policies have generally led to more juveniles being arrested for subsequent crimes, including violent crimes, than those who remain in the child justice system, according to the research of several scholars. The information that is currently available suggests that transfer policies have a greater negative impact than positive one when it comes to reducing violent or other criminal behaviour.

Germany has set their age of consent to 14 and also holds that just because a major (above the age of 18) has sexual relationship with a 14-year-old doesn't mean no consent except if there is an exploitative circumstance, the complaint of the younger person is also needed to register a case so family members are others cannot exploit these rules.

The legislations which happened in India will result in minors who get falsely accused when in a romantic relationship to end up in an adult jail and become hardened criminals by the time they complete their jail sentence. There is also scope for family members using this law as an opportunity to break their minor's relationship

India should look at how this legislation turned out in the US and should take a step back to look onto this matter and should make changes in the system by giving the juvenile a chance to be reformed and a special facility where he can come out as a better individual, the state should not make him go to an adult jail.

CONCLUSION

It is sad that the issues in the implementation of the JJ Act 2015 and POCSO Act 2012 arise, notwithstanding the noble objectives behind their enactments. There are numerous loopholes that exist in the legal procedures, administrative barriers, general lack of training for law enforcement and judicial authorities, and infrastructural feebleness. Such inadequacies would not only affect the effectiveness of the laws, but also their impact on child life and justice. They urgently need correcting in the form of constructive policy changes and reforms geared towards better implementation. A concentrated tactic directed at education, the juvenile treatment, and the understanding of juvenile behaviour as related to consensual adolescent relationships is vital for the effective implementation of child protection laws. Therefore, the resultant need for permanent reformation should be fulfilled in a soft yet firm manner and ensure the care and protection of every child in the system.

SUGGESTIONS

A 'child in conflict with law', though if he commits any heinous offence should not be tried as an adult because if we keep him with hardened criminals, then he may also turn into hard criminal in future rather, we would suggest to make special provisions in JJ Act so as empowering the Juvenile Justice Boards to pass severe punishments in rarest of the rarest cases followed by rehabilitation of child side by side. Special homes are already constituted under Act, for the 'child in conflict with law' where they can be kept for years, so there is no need at all sending the juveniles in prisons like hardened criminals. Some hard labour work shall be given to such 'child in conflict with law' during his stay in special home so that he could repent for



what he has done. Necessary steps shall also be taken for providing him education inside special home only. Moreover, the 'child in conflict with law' should be separated according to their age, nature of offence committed by them. A clause should be included if the age difference between the accused and the victim is up to 3 years (Romeo and Juliet law), considering the element of a romantic relationship between the accused and the victim. If the relationship between the suspect and the victim is found to be intimate, statute should allow the court to have discretion to impose a lesser sentence.