



International Journal of Research Publication and Reviews

Journal homepage: www.ijrpr.com ISSN 2582-7421

Juvenile Involvement in Sexual Assault Cases Under the POCSO Act

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ABSTRACT

This paper analyzes the growing trend of minors actively engaging in cases of sexual violence as described in the Protection of Children from Sexual Offences (POCSO) Act of 2012. Abuse is intended to be safeguarded against using the POCSO Act enacted in 2012, however, there seems to be a lacuna, or gap within the scope of shielding ones under 18 from abuse as there is no distinction made for the sexually active individuals who are both minors. As a result, there has been unrestrained surge of youths, particularly those aged 16 to 18, who are almost always charged under punitively harsh provisions, even where there exists consensual relationships. As stated in the NCRB 2022 report, juveniles accounted for roughly 13.3 percent of total POCSO cases and 75% of the cited cases emerged out of consensual relationships of peers.

This paper discusses the inconsistencies with the Juvenile Justice Act of 2015, which considers those aged 16-18 as adults for violent offenses which creates contradictory judicial streams. It goes on to discuss how courts increasingly recognize the lack of intent to exploit and the reform, as opposed to punishment, paradigm that these cases embody.

Additionally, the paper highlights issues such as neglect regarding consent, lack of sex education, and discrimination. It equally suggests changes in legal matters, judicial compassion, integrated education on sex, and rehabilitation caring. Legal frameworks also need to be more empathetic, attending to the needs of victims without undermining the rehabilitation process of young offenders.

Keywords: *POCSO Act, Juvenile Justice, Child Sexual Abuse, Legal Reform, Rehabilitation*

INTRODUCTION

The POCSO Act was enacted on 14th November, 2012. Its primary objective is to curb the sexual exploitation and sexual assault of children and child pornography. The Act defines different forms of Child Sexual Abuse (CSA), while also considering age, gender, and physical disabilities to make the POCSO experience more judicially transparent by ensuring a child-centric approach.

Through the Criminal Law Amendment Act of 2013, the existing criminal laws were changed and more effective procedures for the investigation and prosecution of sexual offences in Domestic Special Courts were implemented, alongside major protections for children against sexual crimes within the legal system.

The Government of India implemented the Protection of Children from Sexual Offences POCSO Act 2012 in the framework of Indian law in order to protect children from sexual assault, sexual exploitation, and child pornography activities. The Act seeks both protecting the child and creating a child-friendly atmosphere throughout the judicial processes of reporting, evidence collection, investigation, and trial through the use of Special Courts designed for that purpose.

The law allows the prosecution of offenders who commit crimes such as penetrative sexual assault as adult offenders, provided they are between 16-18 years at the time of prosecution and have been assessed to be tried under the adult system by the Juvenile Justice Board.

This law seems to be expanding disproportionately with regard to extraordinary circumstances, which is concerning relative to the deviation from the child-sensitive restorative philosophy core to juvenile justice.

Judicial case laws in these matters have deviated from each other. There are claims that some of the judges, especially those dealing with adolescents involved in romantic relationships, are more sympathetic than others.

According to surveys carried out by Child Rights and You (CRY) along with the National Commission for Protection of Child Rights (NCPCR), less than 30% of the adolescents in India receive some form of organized sex education intend to structured sexual relations. In cases where sex education is offered by schools, it is frequently inadequate resulting in misconceptions surrounding consent, personal and bodily boundaries, and autonomy. Adolescents engage in dubious activities without the understanding that societal norms will expose them which triggers a myriad of consequences.

In the context of this paper, the focus will attempt to understand the particular issues involved with juvenile offenders under the POCSO Act.

The evaluation will focus on current policies, relevant statistics and case law as well as the sociological and psychological factors that pertain to the behavior of juvenile delinquents.

Understanding the POCSO Act

This Act ensures safeguarding of children from sexual assault, sexual harassment and pornography offences while taking care of the welfare and interests of the children. The Protection of Children from Sexual Offences Act (POCSO) was passed in 2012 with the intent of addressing sexual offences against children and minors in a more comprehensive way. The POCSO Act defines the punishable offences and assists in victim support systems and improved offender detection systems. Under POCSO, a “child” is defined as any person who is below of eighteen (18) years of age. The child being a male or female is irrelevant. Equally, the offender can be a male or female. POCSO therefore evolves into a gender neutral legislation because the child victim of sexual offences may be a girl or a boy.

In addition, the POCSO Act has a broad definition of ‘child sexually abuse’ and it includes: (i) *penetrative sexual assault*, (ii) *aggravated penetrative sexual assault*, (iii) *sexual assault*³, (iv) *aggravated sexual assault*⁴, (v) *harassment*, (vi) *use of a minor in pornographic portrayal and trafficking of children for sexual purposes*.

These crimes are regarded “aggravated” when the above a person in authority or who holds a position deemed to be a position of trust towards the abused child, or the abused child has a particular form of mental disability.

Under the Act, punishment is severe because the accused must establish that they did not commit the offense. The Act prescribes punishment proportional to the offense committed against an individual, up to a maximum of lifetime rigorous imprisonment and a monetary fine.

In addition, it contains further restrictions for difficult to persecute crimes against children, with a ranging sentence of 20 years to death. The Indian Penal Code also covers sexual crimes but this special law covers both sexes while IPC attends to one.

THE JUVENILE JUSTICE SYSTEM IN INDIA

To meet the aims of the United Nations Convention on the Rights of the Child, which India ratified on December 11th, 1992, the Juvenile Justice Act has been enacted. This law outlines the procedural safeguards for children who break the law.

This Act addresses the increasing concern regarding the incidence of crime by minors, particularly those aged between 16 to 18 years, and those in conflict with the law. The Juvenile Justice (Care and Protection of Children) Act, 2015 became effective on January 15, 2016. It replaces the Juvenile Justice (Care and Protection of Children) Act, 2000. India’s system of juvenile justice is restorative and pedagogical, not punitive. It stems from the idea that children can see reason and be rehabilitated because of their age and level of maturity. The juvenile justice system of India attempts to ensure that the requirements of justice do not override the welfare of the child concerned. If a child is adjudicated as a juvenile delinquent, the Juvenile justice board undertakes various measures towards the minor’s rehabilitation and they are as follows:

- i. The child is told and made to assume responsibility for the act he has committed and subsequently he can go home. The particular court segments the necessary punishment as per the law after giving adequate guidance and consideration to the offense committed by the child.
- ii. The juvenile justice boards also on some occasions do pass orders for children to do social work of practical social work grade so that this work may help in developing some good social attitudes in the defendant child.
- iii. The defendant child is kept busy as much as possible in group counseling and group work to help the child appreciate the need for cooperation and collaborative skills in the community.
- iv. In the event the child has committed a serious offense, the child may then be placed in a reform school.

Who is a Juvenile?

According to the law of India, a ‘juvenile’ can be defined as, any individual below the age of 18. In Indian Laws, any child who below the age of 7 years cannot be convicted under any law for any crime. Before 2015, the distinction between children in conflict with the law and children in need of care and protection was very vague, as both were termed as juveniles. Under the amendment of the Juvenile Justice (Care and Protection of Children) Act, 2015 the terms, ‘children in conflict with the law’ and ‘children in need of care and protection’, are distinction clearly.

THE INTERSECTION OF POCSO AND JUVENILE JUSTICE ACTS

JUVENILE AND POCSO OFFENDER

When a juvenile is suspected of a sexual crime, the POCSO Act applies immediately. Nevertheless, as the suspect is a minor, they are dealt with under the Juvenile Justice System and not the ordinary criminal system. The Juvenile Justice Board (JJB) first carries out an inquiry and may instruct a

preliminary assessment if he/she is within the age bracket of 16-18 years. He/she can be tried as an adult for some of the most serious offenses like rape, if the preliminary assessment deems them able to appreciate the nature and implications of their actions. Generally, concerning a juvenile as a defendant of a POCSO offence, the imbalance tends to be redressed on rehabilitation rather than sanction. The emphasis is put on the juvenile's rehabilitation and well-being as opposed to punishing them, attempting to resolve the factors that may have led to the crime.

- Some of them may undergo counseling, psychological therapy, school classes, and even lodge in a juvenile detention center. The young offender is supported to stop criminal behaviour and start a new life as a responsible citizen.
- In any case, one way of dealing with it is by considering the nature of the offense committed together with the age of the offender. In some instances, especially with serious crimes or habitual offenders, juveniles may be prosecuted as adults and suffer more severe consequences.
- Generally, the strategy dealing with POCSO offences regarding minors is to ensure net-widening accountability at minimum depth while retaining consideration of the youthful age and potential for rehabilitation.

This creates a complex legal dilemma wherein the Juvenile Justice Act focuses on the juvenile's ability to transform, while the POCSO statute inflicts harsh penalties and demands immediate action. Additionally, the application of POCSO often leads to the criminalization of young people, which inflicts profound psychological and societal harm when both the victim and perpetrator are minors, particularly in cases of consensual teenage relationships.

CONCLUSION

The clash between the Protection of Children from Sexual Offences (POCSO) Act of 2012 and the Juvenile Justice (Care and Protection of Children) Act of 2015 reveals a striking gap in the framework of child law that requires immediate attention.

While the Juvenile Justice Act focuses on the rehabilitation and reintegration of juveniles, POCSO enforces strict legal measures aimed at preventing sexual abuse against minors.

Issues arise especially in the context of consensual "teen dating" scenarios where both parties are minors, one being the perpetrator while the other the victim. A more nuanced understanding is needed whereby courts recognize that not every instance of adolescent association needs to be treated as a criminal encounter. That said, the absence of a "close-in-age" provision within POCSO often leads to the extreme censure of ordinary adolescent conduct which can severely compound the socio-psychological dynamics for the adolescents involved.

Corrective measures are, therefore, an absolute imperative. There must be direct measures on the campaign such as advocacy for policies, legislations educative programs for law enforcers, and adjustments needed within the legislation itself. The juvenile justice board needs to approach the emergent situations with depth and compassion. By incorporating both laws into one framework, the system will be able to ensure safety and still uphold the spirit of rehabilitation.

REFERENCES

1. The Protection of Children from Sexual Offences Act, 2012
2. The Juvenile Justice (Care and Protection of Children) Act, 2015
3. Relevant case laws and judicial pronouncements
4. Reports by the National Commission for Protection of Child Rights (NCPCR)
5. academic journals on juvenile justice and child psychology.
6. https://nhrc.nic.in/sites/default/files/10_protection%20of%20children%20-%20sexual%20offences.pdf