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Consent In Romeo -Juliet Cases

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Abstract - The Protection of Children from Sexual Offences Act, 2012, marked a remarkable step in the laws relating to children in recent times. Adolescence or teenage years is a transitional phase, where a child grows through a lot of physical, mental, emotional, and hormonal changes. It is a period of self-discovery, understanding their gender identity, and also considered the age of curiosity, which pushes them to experience romantic relationships. The POCSO Act made no distinction between consensual relationships, like those in Romeo-Juliet cases, and instances where the victim experienced actual abuse or violence. Age determinations under POCSO cases are striking the delicate balance between consensual sexual relationships and sexual abuse. Strict adherence to the age as per law sometimes leads to injustice towards the alleged accused. . Acquittals do not mean that the case is fake; it only means that the prosecution has not established its case beyond a reasonable doubt. The Supreme Court has laid down a standardized method for determining a victim's age; however, this approach must be applied with caution in Romeo-Juliet cases. Treating such cases in the same manner may undermine the true intent of the law and could result in unfair treatment of the accused.

Keywords – Teenage love; Romio-Juliet Cases; Age determination; sensitivity in judgment; POCSO Act

POCSO & Teenage Love

The Protection of Children from Sexual Offences Act, 2012, marked a remarkable step in the laws relating to children in recent times. The gender-neutral laws cover all children irrespective of any exception. The kind of society we live in is continuously progressing, and its dynamics keep on changing. The Act made it clear that any person who is under the age of 18 years is considered to be a child under the POCSO Act. Perhaps childhood and adolescence are protected, but the complexities of teenage love and relationships are overlooked.

Adolescence or teenage years is a transitional phase, where a child grows through a lot of physical, mental, emotional, and hormonal changes. They are attracted to the other gender, which is a normal part of growing up. It is a period of self-discovery, understanding their gender identity, and also considered the age of curiosity, which pushes them to experience romantic relationships. Many adolescents may struggle to understand their boundaries, which can make them vulnerable. Some find their true love, which is slightly

rare in this age, whereas some fall into the trap of sexual abuse. To safeguard the children who fell into the trap of sexual abuse, pornography, and sexual violence, the POCSO Act was enacted.

Understanding teenage love needs sensitivity. It is not any relationship that can be understood through the lens of law only. It is a situation where emotions, hormonal imbalances, attraction, and, most importantly, the transition from adolescence to adulthood are taking place. Romeo-Juliet (as it is coined), cases are of such nature where the victim is in a romantic relationship with the accused. It includes situations where the victim and accused in love eloped together out of fear of disapproval of their relation being accepted by their parents and society. Looking at these cases strictly through the lens of law would only provide injustice to the young couple. These cases need a deeper understanding of child psychology, and their hormonal changes need to be factored in while deciding such cases.

The POCSO Act made no distinction between consensual relationships, like those in Romeo-Juliet cases, and instances where the victim experienced actual abuse or violence. It is the Judge who needs to make that distinction and be liberal about granting bail or relief to the accused, as the concept of consent in such cases has no relevance. The problem is, the POCSO Act, which is a special law dealt by the Special Fast Track Courts, and these courts are courts of law, which are bound by the strict interpretation of law as per the statute.

In one scenario, a couple in love elope, go through a marriage ceremony, and later engage in sexual relations. The victim's parents file an FIR, and during the trial, the victim is sent to a children's home. Although the victim repeatedly states that the relationship was consensual, her being a minor makes her consent legally invalid. The accused is sentenced to jail but only for the time already served during the trial, considering mitigating factors. Once the victim becomes an adult, the couple lives together as a married pair. In contrast, another scenario involves the accused, under societal pressure, coercion, or lack of alternatives, agreeing to marry the victim after committing an act of rape. In the first scenario, the couple's actions suggest a long-term relationship. In contrast, the second scenario shows no indication that the courts thoroughly examined whether the victim genuinely consented to the marriage or under what circumstances agreed to marry. Such situations require a detailed inquiry into the complexities of consent. Judges are expected to move beyond a rigid interpretation of the law and approach these cases with greater sensitivity and logical reasoning. In the first scenario, the couple got married despite their age difference. Given that they are now living a happy married life, any judge would find it difficult to justify punishing them. While their family members may have their grievances, those alone are not sufficient grounds to penalize the couple.

It is neither sympathy nor leniency that guides a judge, but rather the sensitivity and responsibility with which they carry out their duties. There may be situations where the victim is a minor who is pregnant or has given birth—how can a judge, in good conscience, punish the accused and abandon the victim, especially when her parents do not support the relationship? The reality is that the judge has no discretion under this law. It mandates a minimum sentence of 10 years' imprisonment, with no range of punishment provided. These are complex and distressing situations that cannot be fully anticipated or outlined in the law. Each case is unique and must be evaluated on its own merits, with decisions made accordingly.

Age Determination and Relevance of Consent

The definition of a "child" varies across different laws. For instance, under the Majority Act of 1875, the age of majority is 18 years, which is also the minimum age for voting. The Right to Education Act, 2009, defines a child as someone between the ages of 6 and 14. Similarly, the Child Labor (Prohibition and Regulation)

Amendment Act, 2016, categorizes a child as anyone under 14, while adolescence covers those aged 14 to 18. Meanwhile, both the POCSO Act and the Juvenile Justice (Care and Protection of Children) Act, 2015, define a child as an individual below the age of 18. It seems contradictory that an 18-year-old is considered mature enough to vote but not to understand love or relationships. To what extent is it reasonable that a person who is 17 years and 364 days old is considered a minor and their consent is deemed irrelevant, yet just one day later, upon turning eighteen, they are suddenly regarded as fully capable of giving valid consent? Age determinations under POCSO cases are striking the delicate balance between consensual sexual relationships and sexual abuse. Strict adherence to the age as per law sometimes leads to injustice towards the alleged accused. The primary aim of the POCSO Act is to protect children from sexual abuse and violence, not to criminalize consensual relationships between young people who care for each other and envision a future together.

In such contexts, the concept of "consent" becomes crucial. While the Indian Contract Act declares any contract with a minor void ab initio, love is not a contract—it involves no transaction or exchange of property. Consent, in this sense, is a mutual agreement to engage in an activity. Under the POCSO Act, consent specifically refers to the willingness to participate in sexual activity. It must be a proper 'yes', not just an absence of 'No'.

Determination of age under POCSO Act cases is clarified by the Hon'ble Supreme Court in **Jarnail Singh v. State of Haryana**¹ that in every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted – (i) the matriculation or equivalent certificates, (ii) the date of birth certificate from the school, (iii) the birth certificate given by a corporation or a municipal authority or a panchayat and lastly, only in the absence of either (i), (ii) or (iii), the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. Even though Rule 12 of Juvenile Justice Rules, 2007 is strictly applicable only to determine the age of a child in conflict with law but the statutory provision should be the basis for determining age, even of a child who is a victim of crime. There is hardly any difference insofar as the issue of minority is concerned, between a child in conflict with the law and a child who is a victim of crime. Therefore, it would be just and proper to apply Rule 12 of the 2007 Rules to determine the age of the prosecutrix. Although the Juvenile Justice Rules, 2016 have been introduced and are now in effect, Rule 12 of the Juvenile Justice Rules, 2007 remains relevant in the process of age determination, and, as affirmed in the Jarnail Singh case, applies equally to determining the victim's age under the POCSO Act.

Likewise, in **Eera through Manjula Krippendorf v. State (Govt. of NCT of Delhi) and Ors**², the definition of "child" in Section 2(1)(d) is strictly based on biological age. The Court emphasized that the term "age" as used in the Act pertains to chronological or biological years and does not extend to "mental age." Consequently, individuals who are biologically 18 years or older, even if they possess a mental age below 18, do not fall within the definition of a "child" under the POCSO Act. This judgment clearly shows the sensitivity and also gives a much wider interpretation to the definition of 'child', encompassing the child as a victim under the POCSO Act and also a child in conflict with law under the JJBA Act.

In **Gyanendra singh @ Raja Singh v. State of U.P.**³, the Supreme Court clarified that when a person is convicted for an offence under both the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act") and the rape provisions of the IPC, Section 42 of the POCSO Act mandates the imposition of the higher

¹ AIR 2013 SC 3467

² (2017)15 SCC 133

³ 2025 INSC 335

degree of punishment prescribed either under the POCSO Act or Indian Penal Code (“IPC”). The court further stated that no plea for a lesser punishment under the POCSO Act can be entertained if the IPC prescribes a higher punishment for certain offences by arguing that Section 42A, as a special law, overrides the IPC, which is considered a general law.

Sensitive Justice beyond Statutes

The Supreme Court or High Court, upon receiving an appeal in any POCSO case, often adopts the widest possible interpretation of the law to ensure a fair and just balance between the rights of the victim and the accused. As courts of justice, they may depart from the strict language of the statute, applying their judicial mind to interpret each case in a manner that upholds the spirit of the law. The discretion and liberty available to higher courts are not available to the trial courts. In other words, the trial court, or court of first instance, under the POCSO Act, is obligated to strictly follow the letter of the law. This can often lead to a miscarriage of justice. By the time the appeal is heard and decided by the appellate court, the harm has already been done—either the accused has spent a considerable time in jail, or the victim (accompanied by the child in many instances) faces severe social consequences, including rejection by her own family and blame from her in-laws, who hold her responsible for their son’s imprisonment.

While hearing such cases for the first time, it is essential to apply judicial wisdom, sensitivity, and a thoughtful mind. Often, due to differences in caste or religion, the victim may come under familial pressure and file a false case under the POCSO Act, even when the relationship was consensual and based on love. In such instances, the accused is frequently denied bail and sent to jail without consideration for the true nature of the relationship. Given the structure of the Indian judicial system, where cases may take months or even years to be listed for hearing, the accused, often a young adult with a future ahead and possibly financial support for their family, remains incarcerated for a prolonged period. These situations demand a sensitive and balanced approach from the judiciary, one that ensures genuine offenders are punished, while those involved in consensual relationships are not wrongfully penalized. Such an approach would uphold the true intent of the POCSO Act.

It's important to note that only about 10-15% of cases are fake, and these are often filed by family members out of revenge. Acquittals do not mean that the case is fake; it only means that the prosecution has not established its case beyond a reasonable doubt. In many cases, victims are usually the informants, and they file cases under family pressure or where the accused has refused to marry the victim. These cases need to be carefully reviewed to determine whether the act between the couple was truly consensual and just didn't result in marriage, and whether such situations should be treated as sexual abuse. Some cases are filed under the law for 'promise to marry,' and if the victim is a minor, the POCSO Act applies. But what about cases where two people fall in love, have consensual sexual relations, and later break up for any reason? Should that be considered an offence under the POCSO Act? How should the court handle such situations—by strictly following the letter of the law, or by using judicial reasoning to assess the circumstances fairly? There can be no fixed set of circumstances that definitively define what constitutes a consensual love relationship versus what constitutes sexual abuse. Honest and real consent is a crucial factor in understanding the nature of the relationship and in delivering a fair and wise judgment. Moreover, consent must be given freely, without any form of compulsion or coercion.

Conclusion

The POCSO Act is a comprehensive piece of legislation and does not require extensive amendments. However, an exception could be made for "Romeo-Juliet" cases, with a distinct approach in evaluating consent in such situations. It is not feasible to assign a specific age to distinguish Romeo-Juliet cases, as hormonal changes and maturity vary from person to person, and the circumstances in which they have grown up. Assigning a fixed age could inadvertently include instances of genuine sexual abuse within the exception. Therefore, rather than setting a rigid age limit, it should be left to the discretion of the judge at first instance to apply judicial wisdom whether a case falls under the Romeo-Juliet exception or constitutes sexual abuse. It is to be noted that Trauma-informed judging is a process that enables judges to approach individuals appearing in court with greater sensitivity. It's important to recognize that not only victims but also the accused and witnesses can be affected by the stressful courtroom environment, which may impact their testimony. In any trial, all stakeholders involved play a vital role in helping the judge reach a fair and informed conclusion. Additionally, maintaining privacy and confidentiality is a crucial factor that must be taken into account. The Supreme Court has laid down a standardized method for determining a victim's age; however, this approach must be applied with caution in Romeo-Juliet cases. Treating such cases in the same manner may undermine the true intent of the law and could result in unfair treatment of the accused. Furthermore, it is strongly recommended that legal education—covering laws related to children—be included in school curricula, as ignorance of the law is not a valid excuse. Introducing basic legal education in schools will instill a respect for the law in young minds, encouraging them to grow into law-abiding, reasonable citizens.

References;

1. The Protection of Children from Sexual Offences Act, 2012
2. The Juvenile Justice (Care and Protection of Children) Act, 2015
3. Tannvi Tannvi & Sharmila Narayana, The Challenge of Gender Stereotyping in Indian Courts, Cogent Social Sciences, (2022), 8:1, 2116815, DOI: 10.1080/23311886.2022.2116815
4. Dr. Justice Shalini Phansalkar Joshi, Gender Justice: Need to Remove Subtle Nuances of Gender Inequality, XVI Nyaya Deep 58-69 (April 2015)
5. Amita Pitre and Lakshmi Lingam, Age of consent: challenges and contradictions of sexual violence laws in India, Sexual and Reproductive Health Matters , February 2021, Vol. 29, No. 2, South Asia regional issue on sexual and reproductive health and rights (February 2021), pp. 461-474 Published by: Taylor & Francis, Ltd.
6. Swagata Raha, Challenges related to Age- Determination of Victims under the POCSO Act, 2012, Chapter 6 from – Implementation of the POCSO Act, 2012 by Special Courts: Challenges and Issues published by (CCL), NLSIU along with TATA Trusts, (February 2018)
7. Dr. Chandresh Tailor et al. The Profile of Age in cases of Victims of Sexual Offence. J Indian Acad Forensic Med, 32(4), 303-307.
8. Shailesh Kumar, Child Sexual Abuse Cases in India and Judicial Officers' Perceptions and Experiences of POCSO-Related Special Training, 18 SOCIO-LEGAL REV. 264 (2022).