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Law's drawing line: Legal discourse of consent in child sexual abuse cases in Japan

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Abstract

This article examines Japan's age of consent law by delving into court judgements, focusing on unravelling the nuances of how the sexual autonomy of children is interpreted. The study reveals a contradictory stance of the court towards child victim's maturity and capacity, indicating that the legal discourse around a child's autonomy is easily manipulated and framed. It further exposes the susceptibility of children's sexual autonomy to the structural moral values associated with patriarchal gender relations and age. By shaping the contours of consent, *law draws a line*—delineating punishable acts from consensual sexual activity. While the legal reforms aimed at stricter regulations surrounding child sexual abuse, including raising the age of consent, are narrowing the space for recognizing adolescents' sexual autonomy, this article contends that reforming age consent laws must strike a delicate balance between preventing potential harms and avoiding undue interference with adolescents' sexual autonomy.

KEYWORDS

adolescents' sexuality, age of consent law, child sexual abuse, sexual autonomy

INTRODUCTION

'If I, as an around-50-year-old, were to have sex with a 14-year-old, I would get arrested even if there was consent. This is absurd' (The Sankei News, 2021).

When Japanese MP Honda made this controversial comment during a meeting held by his party, criticism swirled on social media. Under the current Penal Code in Japan, the age of consent is set at 13—this means that anyone aged over 13 is considered capable of consenting to have sex. The aforementioned meeting was held to discuss proposals to revise the Penal Code regarding sex crimes, including the issue of raising the age of consent from 13 to 16. A petition requesting to raise the age of consent from 13 to 16 collected 40 000 signatures, reflecting the growing sentiment that young people are vulnerable and indeed of protection (Johnston, 2021). The series of meetings culminated in the rise of the age of consent law to 16, in 2023.

This rise reflects a global trend towards stricter regulations surrounding child sexual abuse. Child sexual abuse is considered a despicable crime today and has been drawing increasing attention among the public, activists and lawmakers across the globe. The UN Committee on the Rights of the Child (2003) requires the state parties to set a clear minimum age for sexual consent, reflecting the evolving capacity, age and maturity of the child, but without indicating which age. The question of what the age of consent should be is a topic of heated debate among scholars and activists. While evidence from developmental psychology and medical research supports the push for raising the age of consent (see, e.g. Hillberg et al., 2011; Hornor, 2010), regulating a child's sexuality requires in-depth engagement with multiple scholarly fields such as childhood, regulation of sexuality, morality and law and the law against sexual violence.

The literature has demonstrated that the age of consent has fluctuated significantly throughout history, reflecting shifts in societal morality and values (Bullough, 2014). Scholarly discourse on this topic also varies. Some advocate for a protective approach, considering that age of consent laws are necessary as a safeguard to prevent the sexual exploitation of adolescents (Oberman, 1994). From this perspective, protective measures actually foster girls' autonomy, as deeply ingrained gender roles and power imbalances complicate the dynamics of sexual consent. Others challenge the current 'protectionist' or 'controlling' approach and argue for an alternative approach that focuses on recognizing and widening the sexual autonomy of adolescents (Fischel, 2016; Levine, 2002). Another critical view sees the age of consent as a way the state controls sex by deploying gender (Schaffner, 2004) or as a form of broad and underdefined law that invites discriminative selective enforcement (Godsoe, 2017). While many jurisdictions are raising the age of consent and criminalizing consensual adolescent sexual behaviour, some scholars argue against this trend by warning about over-criminalization (Baurmann, 2014; Godsoe, 2017). Rind (2014) also challenges this trend by differentiating 'child sexual abuse' and 'adolescent-adult sexual relationship', normalizing the latter. Godsoe (2017) advocates for the complete decriminalization of peer sex below the age of consent.

While studies predominantly focus on Western countries, research on the age of consent in other regions remains limited. A number of works study the age of consent law in the UK (Dauda, 2010a; Evans, 1993; Graham, 2018; Thomson, 2004; Waites, 2001), in the US (Bernat, 2011; Oberman, 2000; Robertson, 2002; Sutherland, 2002), in Canada (Dauda, 2010a, 2010b; Miller et al., 2010; Slane, 2011) and in Australia (Fattore, 2019; Gleeson et al., 2019; Gleeson & Lumby, 2019; Simic, 2019). In addition, extensive research has been conducted on the age of consent laws in Europe. Graupner (2000) provides an overview of the age of consent in

European countries and beyond, and Zhu and van der Aa (2017b) find an upward trend in the age of consent between 2004 and 2016 across 11 European countries. Furthermore, socio-historical analysis of paedophiles and regulations of child sexual abuse in France (Verdrager, 2013), in the Netherlands (Gooren, 2016; Hekma, 2004; Schuijjer, 1991), and in Norway (Ericsson, 2004) contribute to this body of research. Comparatively, studies outside the Western context are scarce, yet some offer valuable insights into the age of consent dynamics in regions such as China (Zhu, 2018; Zhu & van der Aa, 2017a) and Uganda (Parikh, 2012).

In contrast, there exist only a handful of studies on the Japanese age of consent. Moreover, the majority is written in Japanese (Fuji, 1997; Harukawa, 2012; Hirano, 1998; Matsui, 2007; Saegusa, 2017a, 2017b; Sugiyama, 2002; Yamamoto, 2000), primarily focusing on the controversial municipal regulation ('inko-jorei', details in the next section of this paper). Miyadai's sociological study on 'enjo-kōsai', a type of transactional relationship in which older men give money and/or luxury gifts to young women for sexual favours, is also of significance here; his work engages with the idea of adolescents' sexual autonomy and the societal reaction and condition regarding their sexual autonomy (Miyadai, 1998, 2000).

This article has the following two aims: (1) to provide a detailed description and analysis of the Japanese age of consent law and (2) to generate a theoretical framework that is of practical importance in the age of consent reforms. To this end, I investigate what constitutes adolescents' 'consent' and 'dissent' to sexual activities in law. I demonstrate how the legal process typically identifies certain types of adolescents' sexual relationships as 'sexual abuse', on the basis that the adolescent lacked the capacity to sexual consent because of the immaturity assumed of them. Following this Introduction, [Legal Provisions](#) introduces a set of Japanese legislation that regulates sexual acts with a minor. [Data and Methodology](#) details the data and methodology, followed by [Findings and Analysis](#) which highlights findings and analysis. [Discussion and Theoretical Insights](#) generates theoretical insights, followed by the concluding [Concluding Remarks](#).

LEGAL PROVISIONS

There are several Japanese laws that regulate sexual acts with a minor under the age of 18: (1) Penal Code, (2) Child Welfare Act, (3) Act on Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography and the Protection of Children (hereafter 'Child Prostitution and Pornography Act') and (4) municipal 'obscenity statutes' ('inko-jorei'). As mentioned above, the age in the Penal Code has been raised in 2023, but this article addresses the legal provisions and cases based on the previous age. Depending on the circumstances of the case, prosecutors may strategically choose to apply one or more of these laws. One prosecutor explained

For sexual acts concerning a minor between 13 and 18, the question is whether the act was committed by using assault or intimidation. If we can't prove that, Rape (Penal Code A177) charge cannot be applied. The option is to try for a Quasi Rape (Penal Code A178) charge, which requires evidence that the act was committed while the victim was unconscious or unable to resist. This can be difficult to prove, as it may require evidence of past physical abuse or fear of the defendant. After that, we turn to the Child Welfare Act, then to the obscenity statutes. In the worst-case scenario, the case has to be dismissed or acquitted (Interview with a prosecutor, 5 November 2020).

The following sub-sections will provide more details on each of these laws.

Penal code

In the Japanese Penal Code, the age of consent is 13. The statutory rape law is violated when (1) a person *forcibly* commits an indecent act/sexual intercourse through *assault* or *intimidation* (Article 176 on Forcible Indecency and Article 177 on Rape) or (2) when an individual has sexual contact with a person under age 13 (regardless of whether ‘assault’ or ‘intimidation’ is recognized). Article 178 (Quasi Forcible Indecency: Quasi Rape) criminalizes an indecent act/sexual intercourse without assault or intimidation, but by *taking advantage of a loss of consciousness or inability to resist*, or by *causing a loss of consciousness or inability to resist*.

In 2017, some of these articles were amended—for the first time after 1907 (Kitagawa, 2018). One major change is the expansion in the scope of the punishable acts under the rape law. In addition to the act of vaginal penetration by male genitalia, anal and oral sexual intercourse became heavily punishable (Ibid). Another change is the establishment of a new crime against guardians who have sexually abused children under the age of 18 by taking advantage of their psychological control over the children (Article 179) (Umeda, 2017). Under the new law, therefore, the use of threats and/or violence is no longer required as an element of forced sexual acts by a guardian (Ibid).

Child Welfare Act

The Child Welfare Act defines a ‘child’ as a person under the age of 18 (Article 4), and Article 34 prohibits any acts that could cause harm to a child’s mental or physical well-being, including ‘obscene acts’. This law applies to those who have a de facto influence over the child, including parents and teachers (Shijo, 2019: 3).

Child Prostitution and Pornography Act

The Child Prostitution and Pornography Act also defines a ‘child’ as a person under 18 years of age. The law prohibits ‘child prostitution’, which is defined as sexual intercourse or any conduct similar to sexual intercourse (e.g. touching genital organs) of a child, or having a child touch one’s own genital organs, in exchange for giving or promising remuneration. Article 3 prohibits ‘child pornography’, which refers to any photographs or electronic recordings that depict the sexual image of a child.

Municipal ‘obscenity statutes’ (淫行条例: Inko-jorei)

Municipal ‘obscenity statutes’ are included in Youth Healthy Development Ordinances (YHDO, 青少年健全育成条例: *seishonen-kenzenikusei-jorei*). The obscenity statutes raise the de facto age of consent to 18, by regulating ‘an indecent act or engage in sexual intercourse upon youth through intimidation, deception, or bafflement solely for the purpose of satisfying one’s sexual desire’ (The YHDO of Osaka, Article 39; author’s translation). The statutes focus on regulating

sexual abuse of minors by adults but they could also apply to sexual activities between consenting youth (e.g. between those aged 19 and 17).

While YHDO varies between prefectures, its main goal is to restrict adult entertainment, including sex shops and sex-on-premises venues that might prove ‘harmful’ to the ‘healthy development of youth’ (McLelland, 2011). The obscenity statutes have faced criticism for their broad interpretation of terms such as ‘intimidation, deception or bafflement’, which could lead to unnecessary punishments for consensual sexual acts (Saegusa, 2017b). Critics argue that these statutes violate the principle of legality and harm, and impose adults’ values on a child’s sexual autonomy (Ibid: 181). According to him, these laws in fact serve to protect societal morals regarding what ‘healthy development of youth’ should be (Ibid: 179).

Furthermore, some have suggested that the obscenity statutes are outdated and reflect a narrow-minded view of sexual morality, as they treat sexual acts without a view to marriage as ‘obscene’ (Fuji, 1997). Miyadai argues that these statutes are a response to societal frustrations over failed ‘fantasies’ about family, school and children (Miyadai, 2000).

DATA AND METHODOLOGY

To understand the application and interpretation of these laws, I collected cases in which these laws have been used. On the ‘Courts in Japan’ (n.d.) website, I searched for cases using keywords ‘juvenile’ (青少年) or ‘child’ (児童) and ‘obscenity’ (淫行) or ‘intercourse’ (性交), and found 36 relevant cases (Cases 1–36). I also collected information on eight highly relevant cases from the blog of a lawyer who specializes in sexual crimes against minors (Cases A–H) (Okumura, n.d.). Additionally, in 2020, I attended at least 10 hearings of relevant cases at the District Court and High Court of Osaka and interviewed lawyers and prosecutors. I used these observations and interviews as supplementary sources to interpret or confirm the findings derived from court decisions. These supplementary sources also offered insights into the latest legal practices, since the reform in 2017 (see above) extended the range of offences prosecutable under the Penal Code.

The tables below provide the basic information about the cases, classified depending on (1) type of court (district, high or supreme court), (2) type of laws (Penal Code, Child Welfare Act, Act on Child Prostitution and Pornography and YHDO) and (3) year of decision (Figure 1).

The victims were all girls, and their ages ranged from seven to 19 (six of those under 9, 37 between 9 and 16 and 11 between 17 and 19). The defendants were all men, and in some cases, their age or relationship to the victims was identified (three of those in their 20s, three of those in their 30s, two biological fathers of the victims, two stepfathers of the victims and six teachers of the victims).

Out of 44 cases, five were acquitted, resulting in a conviction rate of 89%, which is remarkably low considering the high conviction rate in the Japanese criminal justice system. This is probably because most of the cases available from the two websites are considered important or groundbreaking. About two-thirds of the cases were appeals, and some did not include the sentencing because the case was passed back to the lower court for re-examination. In the remaining cases, 12 imposed imprisonment of fewer than 5 years mostly without parole, and the other three cases imposed imprisonment of 7, 18 and 30 years respectively.

To analyse the cases, I closely read the judgements and conducted interviews. The analysis focused on how the judiciary and legal actors involved discussed, framed and interpreted adolescents’ ‘consent’ and ‘dissent’ to sexual activities, as well as how conviction, acquittal and

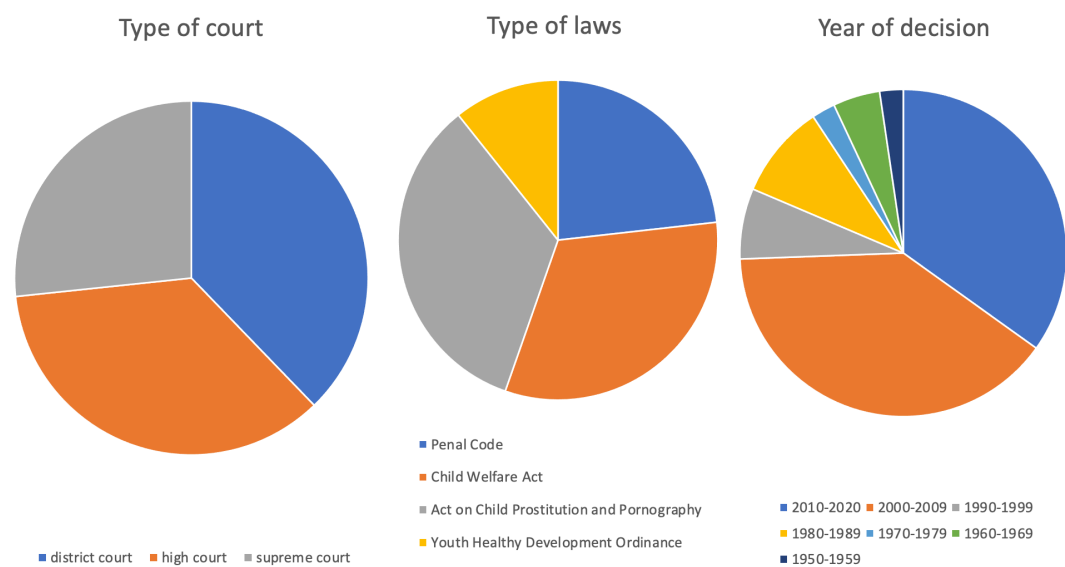


FIGURE 1 Overview of legal cases by court, type of laws and year of decision. This figure provides a breakdown of legal cases based on the type of court, laws involved and the year of decision. The data include a total of 44 cases spanning various courts and legislative acts. [Colour figure can be viewed at [wileyonlinelibrary.com](https://onlinelibrary.wiley.com/doi/10.1111/cbs.12877)]

punishment were determined and justified. The analysis was qualitative and inductive, using codes that emerged from the data, namely: (1) transactional relationship, (2) power differentials, (3) ‘sincere romantic relationship’, (4) child’s sexual autonomy and (5) exploiting immaturity and lack of experience. The findings presented below are structured based on these five themes, and the analysis of the findings follows the presentation of the themes.

FINDINGS AND ANALYSIS

Transactional relationship

In some cases, the defendant and the victim met through social networking services, both looking for ‘enjo-kōsai’. In Case 6, the 16-years-old victim posted on a dating website: ‘I am a 17-years-old high school student [she faked her age by one year]. I am looking for somebody who would be willing to do ‘en’ (meaning ‘enjo-kōsai’) for 30000 yen’. The defendant responded to the post and had sexual intercourse with her, but he did not pay her. Consequently, she felt deceived and reported him to the authorities. He was found guilty of violating the Act on Child Prostitution and Pornography Act, but his punishment was relatively lenient, consisting of 2 years in prison with 5 years of parole.

In Case C, the victim was 12 years old and met the defendant through SNS. He offered her a ticket worth 13000 in exchange for sexual intercourse. Although the judgement states that ‘the defendant did not use violent force or intimidation’, he was found guilty of Penal Code A177 (Rape) as the victim was under 13. Despite this, he was sentenced to only 3 years in prison with 5 years of parole.

These cases demonstrate that, even in cases involving minors, the punishment for '*enjo-kōsai*' is often less severe than in other cases. Even though the victim was under 13 in Case C, it was made clear in the judgement that the defendant did not use force or intimidation, and the sentencing was with parole. This suggests that even in the case of a 12-year-old child, the degree of agency exhibited by her in initiating the act was considered a factor in the sentencing decision.

Power differentials

Ten of the cases reviewed revealed instances where the defendants held positions of authority over the victims, such as fathers (biological or stepfathers) and teachers. The court decisions explicitly referenced these power differentials between the perpetrators and the victims. For instance, Case 9 reads

She explained, "I thought that the teacher would get cross if I refuse to use the vibrator [into her genitals]" [...] The defendant caused the victim to commit an obscene act with a vibrator, by using his authoritative position as a junior high school teacher.

Case 20 stands out as the most severe, resulting in a 30-year prison sentence. The defendant in this case was an elementary school teacher who committed sexual intercourse and indecent acts against ten victims under the age of 13. The judgement reads

The defendant is as old as the victim's father, and physically much bigger than the victims, who are physically and psychologically immature. [...] Through manipulative remarks and behaviors, the defendant extorted strong influence on the victims so that they could no longer resist or argue back. [...] The victims faced repercussions if they refused the defendants' sexual demands, such as exclusion from classes and club activities or being ignored in the classroom. It is evident that the victims were then psychologically forced into a situation in which they had to accept his sexual demands.

In Case 27, the defendant was accused of raping his 15-year-old stepdaughter. The judgement draws attention to the victim's psychological state and the power dynamics at play, quoting her personal experience:

Since I was 10 years old, the defendant exposed his penis, and touched my breasts, hips, and genitals. I loathed it but could not resist as I thought he would use violence if he gets angry. [...] When I was 11 years old, he hit me when I rejected his advances, and because of that, I stopped resisting because I was afraid of being hit again. [...] I could not share this with anybody, as the defendant told me that my confession would cause my mother's divorce, consequently our family would fall apart and be unable to survive.

In this case, the defendant has been found to have violated the Child Welfare Act, but not the Penal Code. This probably means that it was the prosecutors' intentional and strategic decision, and that they predicted proving victims' 'inability to resist' (Penal Code Article 178) would be challenging. Had this been tried after the 2017 amendment, the defendant would

have been charged with the new offence stated in Article 179, which pertains specifically to guardians who sexually abuse children. This was confirmed by several hearings I attended in 2017. In one of the cases, a 42-year-old defendant was convicted of forcible indecency (Penal Code) for engaging in sexual acts with one of his underage employees. While the defense lawyer asserted that he ‘misunderstood’ that the victim’s consent or willingness to engage romantically and sexually, and that the victim did not show any sign of resistance, he was found guilty. The court determined that his authority and power as her employer constituted coercion, thus rendering the act ‘forcible’.

Case A presents an ambiguous scenario. The victim, a 17-year-old girl, confessed her romantic feelings towards her high-school teacher, who reciprocated and engaged in a sexual relationship with her. The judgement reads

The defendant had a wife and a child, therefore he was in no position to reciprocate her feelings. Furthermore, as her teacher, he had a duty to foster the healthy development of his students. However, he exploited her lack of judgement and immaturity instead of protecting her.

In this case, the defendant was found guilty of violating the Child Welfare Act and received a 2.5-year prison sentence. Although the judgement emphasized the defendant’s position, it does not mention that he used his ‘position’ to influence the victim’s psychological state (such as in Case 27). Given that the victim was 17years old and clearly expressed her romantic feelings, it could be argued that she may have consented to the sexual act (depending on the definition of consent). Nevertheless, the law determined that her consent was not valid as the defendant took advantage of the lack of her capacity for ‘sensible judgement’. Judges concluded that the victim’s desire for an affair with the defendant could not be considered a ‘sensible judgement’, even if the girl ‘wanted’ it.

‘Sincere romantic relationship’

The analysis of the judgements shows that they rarely recognize that an underage child and an older person were involved in a ‘sincere romantic relationship’. One of the exceptions can be found in Case G, involving a 17-year-old girl and her 38-year-old colleague, who worked as a guard at her part-time job. The judgement reads

The defendant started to speak with the victim during breaks, and she sought his advice on various personal matters such as her family situation, career, and education. [...] One day, after his shift, she waited for him to join her for dinner, presented him with a letter and cookies. The letter expressed her gratitude for his guidance and contained phrases such as “I am in love with you.” [...] They maintained contact, and during a visit to an internet café, the defendant made advances towards her in a private room. Upon leaving the café, she said, “I do not want us to be friends-with-benefits”, leading the defendant to propose an actual romantic relationship, which she agreed to. [...] After the relationship began, she introduced him as her boyfriend to her sister and friends.

Under the law, this scenario falls within the realm of a 'sincere romantic relationship'. In contrast, Case H demonstrates that the intention of marriage does not necessarily constitute a 'sincere romantic relationship', even though a 1985 decision suggests that sexual activities within a relationship 'with a view to marriage' are exempt from being clarified as 'obscene acts'. The judgements of Case I states

The lawyer argues that their sexual acts should not be deemed as 'obscene', as their relationship was a 'sincere romantic relationship' with the defendant having marriage intentions and the victim expressing her intention to marry him as well. [...] However, the defendant initiated their meeting and on the first meeting, he took her to a hotel where they engaged in sexual intercourse, repeating the same pattern several times (taking her to a hotel by car for sexual intercourse and then driving her back). Additionally, during the same period, he engaged in similar contact with another 17-year-old girl and had sexual intercourse with her. When the victim's mother discovered their relationship and reported it to the police, the defendant stopped responding to the victim's messages. Taking all these factors into account, it is not evident that they were in a sincere romantic relationship, therefore, their sexual acts should be deemed as 'obscene acts'. The lawyer's argument that the child expressed her intention to marry the defendant in her messages cannot be accepted, as her intention likely stemmed from her lack of judgement and immaturity.

The lawyer I interviewed affirmed that it is uncommon for a relationship between an under-age girl and an older adult man to be regarded as a 'sincere romantic relationship'. The court typically rules out cases where they engage in sexual act on their first meeting or where the defendant engages in similar acts with other girls, as not meeting the criteria for a 'sincere romantic relationship' by the court (Interview with a lawyer, 18 November 2020).

Another criterion for determining whether a relationship qualifies as a 'sincere romantic relationship' is the age gap between the parties. In Case D, the defendant was accused of violating the obscenity statute but was acquitted by the court. The judgement states

The victim stated that in May, she did not have a boyfriend, so she was willing to engage in sexual intercourse with the defendant. However, at the time of the incident in November, she was in love with somebody else and did not wish to have sexual intercourse with the defendant. [...] Considering their previous sexual encounter without her refusal, it can be reasonably assumed that the defendant had a strong expectation that she would agree to have sexual contact with him in November. [...] Considering their age gap and prior interaction, it cannot be concluded that he committed the sexual act 'by unjust means that take advantage of their physical and psychological immaturity'. Furthermore, considering their age gap (the defendant is a 23-year-old fresh graduate and the victim is a 17-year-old high school student), it is not unreasonable to expect their interaction to develop into a romantic relationship.

This case highlights that despite the absence of close-in-age exemptions in Japanese age of consent laws, the judicial practice takes into account the age gap.

Child's sexual autonomy

Several cases addressed the issue of child's sexual autonomy, but not in any consistent manner. Case B states

The lawyer argues that Penal Code A177 (Rape) is not applicable in this case because each victim fully understood the meaning of sexual intercourse and agreed to have sexual intercourse with the defendant under their full sexual autonomy [...]. However, the law states that any sexual activity with a girl under 13 is considered rape, regardless of consent. This approach reflects the recognition that young girls lack the maturity and capacity to make informed decisions regarding their sexual autonomy.

In Case 12, the judgement focused on a 16-year-old victim who expressed a strong desire to become a *geisha*. Despite her enthusiasm, the defendant, who operated a geisha inn, was found guilty under the Child Welfare Act. The decision states

The defendant loaned 100000 yen to the victim, expecting that the victim would then volunteer to be a geisha in his company and engage in sexual acts with the customers. [...] Even if the victim was enthusiastic to become a geisha, she would not be able even to enter the inn unless the defendant actively took measures. Therefore, even if the victim's act of becoming a geisha and having sexual intercourse with the customer was not against her will, it shall be assumed that he caused the victim to commit obscene acts.

Similarly, in Case 10, a 17-year-old girl misrepresented her age by 1 year and voluntarily participated in a pornographic film. Although she provided a college ID that falsely indicated she was 18, the defendant was convicted under the Child Welfare Act for failing to adequately verify her age.

These cases demonstrate that the Child Welfare Act is generally applied to address ambiguous situations. However, this act applies only to individuals under the age of 18, and the burden of proof increases significantly for cases involving individuals slightly older. For instance, in Case G, a golf instructor was accused of violating Penal Code A178 but was ultimately acquitted due to the absence of coercion. The victim was his 18-year-old student. The court emphasized that sexual autonomy is violated when one person exploits their superior position to engage in non-consensual intercourse. However, to establish guilt under A178, it must be shown that the victim's psychological state prevented them from resisting due to factors like intense fear, surprise, or shock.

Similarly, in Case D, the court acquitted the defendant despite recognizing that the 19-year-old victim had non-consensual intercourse with her biological father. The Nagoya District Court contended that she could have resisted if she wanted. The judgement reads

[T] he victim herself stated that when she previously refused to have intercourse with him, he only sometimes used violent forces, and even when he used it, it was not as remorseless as the force used in the intercourse in question. She also stated that he mostly stopped using violence since her graduation from elementary school. Considering this, it is not evident that she was unable to refuse sexual intercourse out of fear of his intense violence. [...] Considering that she had a monthly income of

80 000 yen from her part-time job and that she considered living by herself to escape from his sexual abuse, it is hard to accept that she was unable to resist her guardian's will in their daily life. Although the defendant kept her under his control psychologically by taking advantage of his position as her biological father and through continuous sexual abuses, it is hard to accept in this case that he had full control over her personality and that she was under the dominant relationship with him in which she had no choice than to submit to and obey him.

These cases highlight the significant challenges in proving the 'inability to resist', as the courts expect teenage girls in relationships characterized by power differentials to exercise full autonomy and resist unwanted sexual advances forcefully. These rulings, along with similar acquittals, sparked the nationwide grassroots movement known as the Flower Demo in 2019, which protested these court decisions. Subsequently, the high court overturned the district court's decision in 2020, deeming their interpretation of the conditions for resistance overly strict (The Japan Times, 2020).

During the hearings I attended, I observed that the defense lawyers attempted to lessen their clients' penalties by highlighting the victim's apparent proactiveness or seeming 'consent', often inferred from a lack of any sign of resistance. This is just one among several strategies commonly employed, including pleading for leniency based on factors such as the defendant undergoing therapy, agreeing to supervision during parole by family members or medical professionals, expressing remorse for their actions, or reaching out-of-court settlements with the victims' families. In one case, for instance, the defendant was convicted of forcible rape for engaging in sexual acts with two underage victims (11 and 12 years old). The defense maintained that the victims willingly followed the defendant and that the sexual acts occurred without force, with the defendant believing that the act was consensual. However, the court dismissed this argument, citing the legal incapacity of the underage victims to consent.

Exploiting immaturity and lack of experience

As demonstrated in the preceding section, judicial decisions effectively nullify any sign of autonomy or proactiveness displayed by minor victims. These cases (Cases 4, 13, 20, 28, 29, A, B and H) consistently highlight the defendant exploitation of the victims' immaturity. For instance, Case 4 states

The defendant capitalized on the 16-year-old victim's limited judgement and immaturity, as well as her desire for a mobile phone and cash, to engage in sexual intercourse with her in exchange for these items. Furthermore, he persistently contacted her, exerting a detrimental influence on the young victim's future.

In some cases, the victims are extremely young (6–11 years old), and the judgements explicitly note their lack of knowledge and understanding of sexual acts, in addition to their immaturity. For instance, Case 7 states

The defendant committed indecent acts against the victim, exploiting her immaturity and limited comprehension of intimate relationships and sexual acts.

Regarding the sexual autonomy of a child under 13, the seminal 1985 decision clarifies that such young children cannot provide valid consent to sexual acts due to their lacks understanding. The judgement elaborates:

It is evident that some girls over the age of 13 do not possess a sufficient and accurate understanding of the meaning of sexual acts due to their physical and psychological immaturity, and disequilibrium between physical and psychological development. It is difficult to accept that these girls' consent or proactive desire for sexual acts resulted from their own free and voluntary judgment.

In summary, legal practice does not engage with interpreting the behaviours, wishes or desires of underage individuals. There is no discussion of consent because they are categorically deemed as lacking agency and capacity based solely on their biological age.

DISCUSSION AND THEORETICAL INSIGHTS

Contradiction of autonomy within legal framework

The analysis suggests that the legal framework is largely and increasingly restrictive in recognizing the autonomy of children when it comes to sexual acts. Children under the age of 13 are categorically denied any acknowledgement of autonomy, while those aged between 13 and 17 are only cautiously granted limited autonomy. Paradoxically, within the same legal system, children are expected to be assertive, independent and autonomous in legal proceedings. A prosecutor explained

In trials, the credibility of the victims' testimony often become questioned. Legal practitioners believe that the victims' memories of the incident become distorted during the judicial process, which they refer to as 'polluted memories'. [...] Media coverage tends to sensationalize cases where defendants are acquitted based on these inconsistencies, leading the public to form the impression that 'children lie' (Interview with a prosecutor, 5 November 2020).

During the hearings, I observed that questioning the credibility of a child victim is indeed one of the strategies employed by defense lawyers. Court decisions further demonstrate that a child victim's statement becomes particularly vulnerable when it lacks consistency, clarity and precision. This vulnerability undermines their credibility as witnesses, introducing 'reasonable doubt' regarding the defendant's guilt. For instance, in Case 26, the defendant was acquitted because the girl's description of the defendant's genitalia was inaccurate. Conversely, in Case 9, the victim's testimony was deemed credible because 'she was assertive during cross-examination by the defense'. This raises the question: how can the courts expect child victims to display maturity, assertiveness, and rationality while simultaneously emphasizing their 'immaturity' to establish the absence of consent in sexual acts?

This contradiction is further illustrated in another case, where the court assessed the capacity of a 10-year-old victim to request the indictment of the perpetrator (Before the 2017 amendment, the law required a victim to request the indictment of an accused perpetrator (Umeda, 2017)). The Case 36 reads

For a crime prosecutable on a complaint, the complainant must have the ability to file an effective complaint, as long as they understand that they were harmed by the act in question and express their intention to demand punishment for the perpetrator to the judicial institution. [...] Despite being a 10-year-and-11-month-old elementary student at the time of the prosecutor's examination, the victim's academic record, as reported by her school and confirmed during the prosecutor's interview with her teacher, indicated an above-average level of understanding and judgment for her age. [...] Therefore, it can be presumed that she possessed the necessary comprehension to understand the meaning of her statement, request for punishment, and the consequences thereof. Consequently, her complaint should not be dismissed.

Can a child truly understand the implications of making a complaint about a sexually abusive act without understanding the meaning of sexual acts themselves? The apparent inconsistency in the judicial interpretation of a child victim's maturity and capacity suggests that the behaviour of adolescents is predominantly subjected to adult perspectives, framing and moral judgements. Godsoe (2017) further suggests that this discretionary practice of criminalizing adolescents' sex is largely influenced by racialized and gendered norms. In essence, the selective prosecution and discretionary application of 'maturity' creates a room for discriminative criminalization of sexual acts that diverge from prevailing gender, race and sexuality norms.

Social and legal construction of consent

The contradictory stance of the court towards child victim's maturity and capacity reveals that the legal discourse around a child's autonomy is easily manipulated and framed. The findings further expose the susceptibility of children's autonomy, particularly in the realm of sexual autonomy, to moral scrutiny. Within the legal process, children are typically cast as victims, their victimization justified through assumptions of immaturity, innocence and ignorance assumed of adolescents (Holstein & Miller, 1990: 109). In distinguishing punishable sexual acts from others, a clear distinction is made between passive 'victims' and proactive, capable sexual actors. These cases indicate that the regulation of adolescents' sexual behaviour perpetuates and constructs patriarchal gender relations, sexual identities and the perception of modern childhood. Policing the sexual acts of adolescent girls stems from the belief that such acts threaten the perceived purity associated with girls, thereby reinforcing patriarchal structures. The assumption is that these girls could not have possibly *wanted* the sexual relationship. Consequently, society negates their proactiveness and autonomy in sexual relations, instead categorizing them as 'victims' who passively endure the sexual acts inflicted upon them.

When law constructs legality based on notions of childhood reflecting societal values of the time and place, it does so by conferring meaning to the concept of 'consent'. This underscores the malleable and shifting nature of 'sexual consent' within legal practice: The Me Too movement and the recent rape law reforms in different jurisdictions clearly demonstrated that the meaning of 'sexual consent' is subject to contestation and interpretation, and legal practices reflect the shifting meaning of 'sexual consent' (Dowds, 2022; Horii & Bouland, 2023). This is indicative of the general nature of law as mirroring society: laws and their interpretations evolve over time, mirroring shifts in social movements and prevailing societal values regarding crime, punishment,

(child) sexual abuse and consent. For instance, as demonstrated by the analysis, acts now recognized as forcible rape or forcible indecency did not meet the legal definition before the revision of Japan's Penal Code in 2017, therefore they were classified as violation of the Child Welfare Act or obscenity statutes. Vice versa, norms concerning sexual abuse and consent transform over time, with law and judicial decisions playing crucial roles in delineating the boundary between a crime and a consensual sexual act. This process mirrors the law's creation of the binary of victim/offender binary, which is in fact more subjective and problematic than factual or statutory given (Godsoe, 2017: 214). Just as legal process identifies and constructs 'victims' by drawing this binary, the meaning of 'consent' emerges through the process of drawing this line within legal frameworks.

Framework for evaluating age of consent law

These theoretical insights raise more questions, warrant further explorations, and offer a theoretical framework for assessing age of consent law practices and reforms. Central to this framework is the critical evaluation of whether the laws' interference with adolescents' sexual autonomy outweighs the harms they aim to prevent or remedy. Here, two things shall be deconstructed: what constitutes harm and what defines sexual autonomy.

What harm do age of consent laws aim to prevent? This question was discussed during an interview with a lawyer. He contends that, while punishment is justified when it protects individuals' interests, the specific interest being protected is not always clear in Japan's age of consent laws (Interview with a lawyer, 18 November 2020). This article's analysis highlights that judges often base punishment for certain sexual acts on societal moral norms. For instance, the seminal 1985 judgement from Japan reads

Societal values regarding sexuality and sexual acts constantly change over time. [...] Sexual acts treating youth as mere tools for the satisfaction of one's sexual desire transgress the principle of youth protection and development. Such acts are hardly acceptable under today's normal social conventions, therefore, the punishment for the acts should be accepted.

Can the transgression of societal moral norms justifiably serve as the basis for imposing punishment? The debate surrounding the use of laws to prohibit or mandate behaviour based on society's collective moral value remains ongoing (see, e.g. Brink, 2012; Husak, 2017), but Stuart Mill's harm principle views that regulations criminalizing 'harmless immorality' without a self-identified victim are paternalistic and overly restrictive on individual liberty (Brink, 2012: 504). In cases involving seemingly 'consensual' sexual acts with adolescents, the identification of harm is not as straightforward as the conventional wisdom may suggest.

The logic of imposing punishment based on the transgression of societal moral norms becomes even more problematic when considering the fact that these 'societal conventions' constantly change and are not influenced by laws themselves. Laws, purportedly reflecting moral values, actively influence and shape perceptions and behaviours, contributing to evolution of 'social conventions'. It is clearly problematic when the law's punishment is justified by factors under significant influence of the law itself. Therefore, conceptualizing law as 'drawing lines' and studying its effects necessitates a critical exploration of the harm the age of consent laws aim to prevent or remedy.

Again, the evaluation of age of consent laws should involve weighing the protected interest (i.e. the harms it aims to address) against the restrictions they may impose on individual freedom—of those who may be prosecuted under the law and of the children who may be categorized as victims. I argue that the age of consent laws, particularly amid the recent trend of raising the age, focuses solely on protecting negative freedom (freedom from sexual violence). By centring on this protective function, the law overlooks another aspect of freedom—positive freedom (freedom to sexuality). The legal discourse hardly recognizes this positive freedom concerning adolescent/child sexuality and is increasingly restrictive in that regard. The high threshold of age of consent laws, coupled with severe punishment and arbitrary implementation, limit positive freedom and result in being used to regulate and control adolescents' sexuality.

The law does serve as a safeguard of adolescents' sexual autonomy. As the attainability of adolescents' positive freedom is contingent upon the availability of information and knowledge regarding their sexual autonomy as well as the social structures they live in, laws may need to prioritize safeguarding adolescents' negative freedom when their positive freedom is unattainable due to insufficient reproductive health education or the persistence of patriarchal societal norms. In the case of Japan, the real obstacle appears to be rooted in the presence of 'control-oriented' reproductive health education (Yamamoto, 2000: 61), impeding the development of adolescents' independent selves. This theoretical framework for assessing the age of consent law practices and reforms, which requires evaluating harm and both positive and negative freedom, indicates that setting the age of consent is a highly context-dependent practice and needs careful consideration of the specific context.

CONCLUDING REMARKS

This study provides theoretical insights into the role of law in shaping morality and the meaning of 'sexual consent'. The legal process typically categorizes certain sexual relationships involving adolescents as 'sexual abuse', grounded in the assumption that these adolescents lacked the capacity to provide consent due to their presumed immaturity. The law draws a line between punishable acts and other forms of relationships, based on technical legal factors (e.g. legal strategies, availability and credibility of testimony), as well as professional discretion and societal morality, all while conferring meaning to the concept of 'consent'. This process distinguishes between sexual abuse and romance, responsible adults and incapable children and autonomy from oppression.

Conceptualizing law as 'drawing lines' compels us to consider the effects of this process, one of which involves reconstructing and shifting norms and conceptions. In the context of age of consent law, the lines it draws contribute to constructing the meaning of concepts such as 'harm', 'consent' and 'children' and 'adolescents' 'sexual autonomy,' possibly imposing mainstream morality on specific individuals and behaviours. As demonstrated in this article, regulating adolescents' behaviours necessitates a delicate balance between the protective and emancipatory functions of the law: age of consent law must protect and safeguard, at the same time to facilitate the autonomy of young persons. Recognizing that setting the age of consent impacts both negative and positive freedom of adolescents, law and policy-making in this area should carefully consider the balance between the two. It requires an assessment of whether the laws' interference with adolescents' sexual autonomy outweighs the harms they prevent or remedy. Following the recent revision of the age in the Japanese Penal Code, it remains crucial to closely observe how the new provision will be used and implemented, and how it impacts young people's sexual 'freedom.'

DATA AVAILABILITY STATEMENT

The data that support the findings of this study are available from the corresponding author upon reasonable request.

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APPENDIX

Case 1	Osaka Koto Saibansho [Osaka High Ct.] May 21 2002 Hei 14 (u) no.149
Case 2	Hiroshima Koto Saibansho [Hiroshima High Ct.] Jan 18 2005 Hei 16 (u) no.106
Case 3	Tokyo Chiho Saibansho [Tokyo Dist. Ct.] Oct 12 2001 Hei 13 (wa) no.215
Case 4	Saitama Chiho Saibansho [Saitama Dist. Ct.] June 19 2002 Hei 13 (wa) no. 1063
Case 5	Saitama Chiho Saibansho [Saitama Dist. Ct.] Jan 15 2002 Hei 13 (wa) no. 694
Case 6	Kobe Chiho Saibansho [Kobe Dist. Ct.] March 9 2004 Hei 15 (wa) no.426
Case 7	Tokyo Koto Saibansho [Tokyo High Ct.] May 19 2003 Hei 15 (u) no.103
Case 8	Tokyo Koto Saibansho [Tokyo High Ct.] Dec 28 2001 Hei 13 (u) no.2059
Case 9	Tokyo Koto Saibansho [Tokyo High Ct.] Oct 30 1996 Hei 8 (u) no.683
Case 10	Tokyo Koto Saibansho [Tokyo High Ct.] March 28 1990 Hei 1 (u) no.1297
Case 11	Tokyo Koto Saibansho [Tokyo High Ct.] Sept 22 1983 Sho 58 (u) no.882
Case 12	Tokyo Koto Saibansho [Tokyo High Ct.] Sept 29 1954 Sho 29 (u) no.144
Case 13	Osaka Koto Saibansho [Osaka High Ct.] Sept 18 2003 Hei 15 (u) no.1

APPENDIX (Continued)

Case 14	Osaka Koto Saibansho [Osaka High Ct.] Oct 20 1962 Showa 37 (u) no.694
Case 15	Nagoya Koto Saibansho [Nagoya High Ct.] Jan 28 1998 Hei 9 (u) no.312
Case 16	Wakayama Chiho Saibansho [Wakayama Dist. Ct.] June 28 2006 Hei 18 (u) no.126
Case 17	SaikoSaibansho [Sup. Ct.] Nov 4 2008 Hei 20 (a) no.865
Case 18	SaikoSaibansho [Sup. Ct.] July 7 2009 Hei 20 (a) no.1703
Case 19	SaikoSaibansho [Sup. Ct.] Oct 21 2009 Hei 19 (a) no.619
Case 20	Hiroshima Chiho Saibansho [Hiroshima Dist. Ct.] Sept 14 2009 Hei 20 (wa) no.385
Case 21	SaikoSaibansho [Sup. Ct.] Oct 26 1993 Hei 2 (1) no.434
Case 22	SaikoSaibansho [Sup. Ct.] Oct 23 1985 Showa 57 (a) no.621
Case 23	SaikoSaibansho [Sup. Ct.] Sept 19 1989 Showa 62 (a) no.1462
Case 24	SaikoSaibansho [Sup. Ct.] April 26 1962 Showa 35 (a) no.1671
Case 25	SaikoSaibansho [Sup. Ct.] Nov 28 1972 Showa 47 (a) no.1044
Case 26	Nagoya Chiho Saibansho [Nagoya Dist. Ct.] Dec 4 2009 Hei 20 (wa) no.2022
Case 27	Tokyo Koto Saibansho [Tokyo High Ct.] Aug 3 2010 Hei 22 (u) no.317
Case 28	Tokyo Koto Saibansho [Tokyo High Ct.] Nov 1 2012 Hei 24 (u) no.1344
Case 29	Kobe Chiho Saibansho [Kobe Dist. Ct.] Mar 18 2016 Hei 27 (wa) no.1051
Case 30	SaikoSaibansho [Sup. Ct.] June 21 2016 Hei 26 (a) no.1546
Case 31	Osaka Koto Saibansho [Osaka High Ct.] Oct 27 2016 Hei 28 (u) no.493
Case 32	Tokyo Koto Saibansho [Tokyo High Ct.] Jan 24 2017 Hei 28 (u) no.872
Case 33	SaikoSaibansho [Sup. Ct.] Nov 29 2017 Hei 28 (a) no.1731
Case 34	SaikoSaibansho [Sup. Ct.] Nov 12 2019 Hei 31 (1) no.506
Case 35	SaikoSaibansho [Sup. Ct.] Mar 10 2020 Hei 30 (a) no.1757
Case 36	Nagoya Koto Saibansho [Nagoya High Ct.] July 3 2012 Hei 24 (u) no.19
Case A	Shizuoka Chiho Saibansho [Shizuoka Dist. Ct.] Aug 28 2019
Case B	Fukuoka Chiho Saibansho [Fukuoka Dist. Ct.] Mar 17 2011
Case C	Nagoya Chiho Saibansho [Nagoya Dist. Ct.] Dec 5 2019
Case D	Seidai Chiho Saibansho [Sendai Dist. Ct.] Feb 8 2018
Case E	Nagoya Chiho Saibansho [Nagoya Dist. Ct.] Mar 29 2019
Case F	Kagoshima Chiho Saibansho [Kagoshima Dist. Ct.] Mar 27 2014 Hei 25 (wa) no.290
Case G	Nagoya Kani Saibansho [Nagoya Summary Ct.] May 23 2007
Case H	Osaka Koto Saibansho [Osaka High Ct.] Jan 29 2016

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