



Commentary

Changing paradigm of criminalizing adolescent sexuality in India

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Adolescence (between 10 and 19 years) is a crucial phase of life where the transition from childhood to adulthood occurs with significant biological and psycho-social developments (Kar et al., 2015; World Health Organization, 2022). Their sexuality attains new dimensions with increasing sexual desires, curiosity, and experimentation with the opposite gender due to the surge in hormones, especially after puberty. Further, present-day adolescents have easier and instant online access to vast content than their previous generations. Not surprisingly, the influence of cinemas and social media contributed to increasingly prevalent romantic relationships during adolescence which may result in unwanted pregnancies, physical, psychological,

and social complications and legal consequences. Also, the ignorance of existing stringent legislation seems to be one of the most common reasons for indulging in such relationships.

Protection of Children from Sexual Offences Act, 2012 (POCSO Act) in India was enacted with the main objectives of protecting children from certain offenses such as sexual assault, sexual harassment, and child pornography and ensuring child-friendly procedures for trial in special courts (Ministry of Women and Child Development, 2012). Although the objectives are clear that children should be prevented from sexual offenses, the provisions may do more harm than good in a country like India, where illiteracy is still at large among the majority of the rural population. It invariably aims to punish the offenders though they are adolescents when involved in consensual sexual intercourse with or without marriage. Adolescent boys are often punished rigorously under the POCSO Act on par with criminals who prey on children. However, sexual intercourse by the former mainly results from romantic

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relationships and is often due to the ignorance of existing stringent legislation. The rigid interpretation of section 3 of the POCSO Act considers consensual, participatory sexual intercourse among adolescents as penetrative sexual assault, punished with a minimum of 10 years to life imprisonment. Hence, the future of both the adolescents is devastated in such circumstances though such relationships and sexual intercourse were innocuous.

Further, section 19 of the POCSO Act mandates the doctors to report to the police if sexual intercourse below 18 years of age is suspected, regardless of marital status, consent, willingness, and voluntariness of sexual intercourse (Ministry of Women and Child Development, 2012). This deprives the adolescents' rights to privacy and confidentiality in treatment. Further, this discourages adolescents from seeking sexual and reproductive health care services such as contraception, antenatal care, medical termination of pregnancy (MTP), and treatment for sexually transmitted infections which provokes counterproductive physical, psychological, and social consequences. Furthermore, this triggers the arrest of the partner or husband of the adolescent and imprisonment, which may culminate in disruption of the family and loss of support to the adolescent mother and the child.

In USA and Canada, the physician has the discretion to decide whether or not to inform the sexual intercourse of an adolescent to legal authorities following a thorough examination of the findings and the facts. The age for sexual intercourse has been set at 14 years, and sexual intercourse below 12 years is strictly a punishable offense. If the physicians elicit any form of the abusive component in the clinical presentation or history after a detailed examination, the same will be informed to the legal authorities (Mykitiuk and Turnham, 2004). However, if the sexual intercourse is voluntary and consensual, and the opposite gender is not grossly older than the adolescent,

they may choose to abstain from informing the same. Whereas, in India, the POCSO Act indicates no such differentiation and is silent in this regard.

In light of this, various High Courts in India have been found exercising their power under 482 Cr.P.C (Criminal Procedure Code) to rescue such adolescents under trial and voice their concerns to amend the POCSO Act. Most importantly, the Hon'ble Madras High Court stressed a need to distinguish between sexual acts in an adolescent more than 16 years and sexual assault by criminals on children less than 16 years (Sabari & Anr vs. The Inspector of Police & Ors., Criminal Appeal No.490 of 2018., 2019). Further, considering the ground realities, Madras high court also recommended that the age of the girl child can be redefined to 16 years from 18 years under the POCSO Act, and consideration could be given only when the offender is less than five years older than that of the victim girl in such cases (Vijayalakshmi v. State, 2021 SCC On Line Mad 317, 2021).

Further, one should remember that the parents of the eloped girl often misuse the POCSO Act. The Hon'ble Madras High Court clarified that 'penetration' as expressed under section 3, refers to the unilateral coercive act of the offender on the victim. The consensual sexual intercourse between the two parties would not be a penetrative sexual assault (Ranjit Rajbanshi v. State of W.B., 2021 SCC OnLine Cal 2470, 2021). It is also observed that punishing adolescents of the same age as victims, within the course of the marriage, for voluntary, consensual sexual intercourse does not serve the purpose of the POCSO Act and leads to the breakdown of families (Shri Teiborlang Kurkalang & Anr vs State Of Meghalaya & Anr., 2022, Vijayalakshmi v. State, 2021 SCC OnLine Mad 317, 2021).

However, one should not forget that these pragmatic judgments may send the wrong message to parents that there will be no

punishment for children and their parents in case of child marriage. This may increase the cases of adolescent marriages and resultant pregnancies with myriad complications. To complicate matters further, the Prohibition of Child Marriage (Amendment) Bill, 2021, was introduced in the Lok Sabha to increase the age of marriage for females from 18 to 21 years (Ministry of Women and Child Development, 2021).

In summary, the adolescents' sexuality is increasingly recognized by India's criminal justice system, which is glaring from various judgments of the Hon'ble High Courts. A comprehensive understanding of the sensitive and complex issues associated with AS (adolescents sexuality) goes a long way in criminal jurisprudence. Further, comprehensive sex education with special emphasis on adolescent sexuality and the physical, mental, and social consequences of sexual intercourse during adolescence, with or without marriage, is the need of the hour. Aggressive sensitization of the POCSO Act and other relevant legislations through social and mass media is crucial in deterring offenses against children and adolescents.

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References

Kar, S., Choudhury, A. and Singh, A. (2015). Understanding Normal Development of

Adolescent Sexuality: A Bumpy Ride. *Journal of Human Reproductive Sciences*, 8(2), 70-74. DOI: 10.4103/0974-1208.158594.

Ministry of Women and Child Development. (2021). The Prohibition Of Child Marriage (Amendment) Bill, 2021. Available at: [https://prsindia.org/files/bills_acts/bills_parliament/2021/The Prohibition Of Child Marriage \(Amendment\) Bill, 2021.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2021/The Prohibition Of Child Marriage (Amendment) Bill, 2021.pdf).

Ministry of Women and Child Development. (2012). The Protection of Children from Sexual Offences Act. India.

Mykitiuk, R. and Turnham, S. (2004). Legal Dimensions of Adolescent Sexuality. *Journal of Obstetrics and Gynaecology Canada*, 26(11), 991-999. DOI: 10.1016/S1701-2163(16)30421-2.

Ranjit Rajbanshi v. State of W.B., 2021 SCC OnLine Cal 2470. (2021a). Available at: <https://indiankanoon.org/doc/3832717/>.

Sabari & Anr vs. The Inspector of Police &Ors., Criminal Appeal No.490 of 2018. (2019). Available at: <https://indiankanoon.org/doc/197077895/>.

Shri Teiborlang Kurkalang & Anr vs State Of Meghalaya &Anr. (2022). Available at: <https://indiankanoon.org/doc/14517077/>.

Vijayalakshmi v. State, 2021 SCC OnLine Mad 317. (2021b). Available at: <https://indiankanoon.org/doc/35224205/>.

World Health Organization. (2022). Adolescent Health. Available at: https://www.who.int/health-topics/adolescent-health#tab=tab_1 (Accessed: 11 September 2022).