



Case Comment on Matter of Sabari & Anr vs. The Inspector of Police & Ors.: Debunking the Concept of Consensual Relationship Among Adolescents

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ABSTRACT

Having a consensual relationship among adolescents is a common phenomena but on the contrary having a sexual relationship with consent with the same partner is considered as a taboo. Teenagers or late adolescents (16-19 years) behave or have different needs than an earlier generation as every generation is affected by the social, political and economic conditions of that generation. The present generation has easy access to the internet and is active in social media sites because of which they are much more aware of sex than the past generation. During the adolescent stage, there is a hormonal change and also bio-psycho-social development because of which they have the urge to have sex. Adolescents are considered to be much more matured as compared to the previous generation yet when it comes to having consensual relationship they are have no say. The paper tries to bring about the problems which are faced by adolescents and how in case of consensual relationship only one sex is punished whereas the act is done by both the parties. The paper also discusses the progressive judgement given by the Hon'ble Madras High Court wherein it recognizes the problem present in the criminal law statutes when it comes to consensual relationship among adolescents.

Keywords: Adolescents, Consensual, Criminal Law , Relationship, Sex.

INTRODUCTION

When a child grows into an adolescent it is important to protect them and give them proper care. While protecting them one also needs to give them some freedom so that their personality is developed. The society is changing and so is people. Today people are much more aware than previous generations. The criminal law seeing the crime rates among women wants to protect them but should the protection be to that extent that their voice is being shushed, they are not given rights to decide for themselves and when it comes to voluntary sexual relationship only the male partner is being punished harshly. Professor Michelle Oberman is one of the few regular contributors to the foundational discussion on the validity and construction of the criminal law in regulating sexual activity of minors. Oberman focuses on the substantive criminal law as the key to reform: "The underlying problem of socializing girls for subordination in their sexual encounters, as well as in general, is fundamental and deadly serious It is therefore central to the feminist task to determine how we should understand, honor, and protect girls' incipient sexuality. Statutory rape laws are central to this task, but in order to use them, girls and women must first reclaim these laws".[1] He stresses that these laws need to be used to provide girls a safe environment in which to explore their sexuality. The paper discuss the judgement given by the High Court of Judicature at Madras Case No being Criminal Appeal No.490 of 2018,

Sabari & Anr vs. The Inspector of Police & Ors which was delivered on 26.04.2019. In this case the court recognized the problem faced by the adolescent in regard to consensual relationship. The paper would further analyze various definitions including the definition of child, adolescent, consent, etc and would further analyse the criminal law statues regarding the same. The paper further proposes that the age of statutory rape should be lowered from 18 years to 16 years and evidence should be weighed carefully when there is a consensual relationship, one sex should not be punished blindly when it was done with consent by both the sexes.

FACTUAL SUMMARY OF THE CASE

The case before the High Court of Madras[2] is a criminal appeal under section 374 (2) of the Criminal Procedure Code (Cr.P.C) to set aside the order of conviction and sentence passed by the Sessions (Fast Track Mahila) Judge/Children Court, Namakkal in Special C.C.No.55 of 2018, dated 20.06.2018. The prayer of the Appellant is to allow the appeal and acquit the Accused/Appellant.

The Accused/Appellant was convicted under section 363 of the Indian Penal Code (IPC) and section 5 (I) read with section 6 of The Protection of Children from Sexual Offences Act, 2012 (POCSO) and was sentenced to undergo five years of rigorous imprisonment along with a fine of rupees two thousand and in default the punishment would be increased, by the Sessions Fast Track Court. The case against the Appellant was filed by the Grandfather of the victim girl. According to the Prosecution, the Victim girl was a minor and was staying with her grandparents at Singalandapuram when the incident took place. The victim girl was around 17 years of age. The Victim girl (**from now onwards referred to as the “ girl”**) had asked about her transfer certificate from her grandparents on 28.06.2014 and on the same day at 08:00 pm she went out to buy shampoo but never returned.

The Prosecution contended that the girl had a relationship with her classmate, i.e Accused/Appellant and on 26.06.2018 the Appellant had kidnapped her and took her to Erode tied 'thali' on her neck in Marumariammal Kovil on 30.06.2014 and thereafter took her to Bangalore and stayed with her where he committed aggravated sexual assault on her. The parents of the Accused were also charged for committing the offense of kidnapping.

The girl was missing for six months and when she was found the complaint was made after 30 days of delay. On the other hand, the Appellants contended that the girl and the main two witnesses turned hostile and there was no conclusive proof to show that the Appellant had committed the crime of either kidnapping or aggravated penetrative sexual assault.

The Madras High court also sou moto took the matter to look into the problems related to POCSO and the reason for the increase in sexual crimes against women and children.

RELEVANT LEGISLATION REFERRED IN THIS CASE

Serial No.	Statute	Provisions
1.	The Indian Penal Code, 1860	S.363
2.	The Protection of Children from Sexual Offences Act, 2012	S.2(d), 5(1), 6, 29, 43, 44
3.	Indian Evidence Act, 1872	S.60
4.	Juvenile Justice (Care and Protection) Act, 2015	S.2(11)

VITAL ISSUES OF THE CASE

1. Whether dispensing judgment in the absence of any conclusive proof and based on hearsay evidence is justifiable?
2. Whether consensual relationship among the adolescent is legitimate?

ARGUMENTS

I. ARGUMENTS IN FAVOR OF SABARI @ SABARINATHAN

It was contended that an uncalled presumption under section 29 of the POCSO Act was taken in favor of the Defence/Appellant where none of the 24 witnesses of the Prosecution had personal knowledge of Respondent/Appellant kidnapping the victim or committing penetrative sexual assault on her. The main witness that is the victim girl herself and PW.14 and PW.15 (i.e, the house owner where the victim girl stayed) had turned hostile. Upon that no material object had been seized to prove the guilt of the Appellant.

Since the owner of the house where the Victim girl stayed had turned hostile that the entire story of kidnapping could not be established. There was no sperm found in the girl's body and the doctor merely testified that there is a **likelihood** of sexual intercourse. It was also contended that the trial court completely ignored the fact that the ground for the girl leaving the house was that her parents were forcing marriage and the girl herself denied any allegation of kidnapping or having a relationship with the Appellant.

The appellant contended that the trial court completely ignored the reason for delay by 30 days before filing the case and the fact that the girl testified that she was forced to sign on a blank paper. Lastly, it was contended that the Prosecution could not make a case beyond reasonable doubt and the trial court was wrong to convict the Appellant just based on hearsay evidence.

II. ARGUMENTS IN FAVOR OF

1. THE INSPECTOR OF POLICE, BELUKURICHI POLICE STATION,
2. THE DIRECTOR-GENERAL OF POLICE, NO.1, DR.RADHAKRISHNAN SALAI, MYLAPORE,
3. THE STATE COMMISSION FOR PROTECTION OF CHILD RIGHTS, REP.BY ITS CHAIRPERSON, NO.183/1, EVR PERIYAR SALAI, POONAMALLEE HIGH ROAD, KILPAUK,
4. THE COMMISSIONER OF SOCIAL DEFENCE, DEPARTMENT OF SOCIAL DEFENCE, OLD NO.153, NEW NO.300, PURASAWALKAM HIGH ROAD, KELLYS, CHENNAI AND
5. THE SECRETARY, DEPARTMENT OF SOCIAL WELFARE AND NOON MEAL PROGRAMME, FORT ST.GEORGE, CHENNAI)

The prosecution had clearly stated in their arguments that the accused/ appellant had committed offense u/s 363 of the Indian Penal Code by kidnapping the victim girl by providing testaments of 24 witnesses. It was contended that the doctor testified the girl's hymen was ruptured and the boy was not impotent. The girl was minor and was staying with the Appellant which proves that penetrative sexual assault was committed on her.

Further, it was contended that once offense under section 3 of POCSO is proved then automatically u/s 29 of the said Act the burden of the proving the contrary shifts to the defense. The appellant/accused failed to provide any evidence against the contentions of the prosecution thus the High Court's interference is not needed as Trial Court rightly dispensed the verdict.

CRITICAL ANALYSIS

To fully appreciate the significance of the judgment given in this particular case it is important to clarify certain terms and issues.

I. WHETHER CONSENSUAL RELATIONSHIP AMONG THE ADOLESCENT IS LEGITIMATE?

Before answering this question certain terms needs to be clarified--

a. CHILD

According to UNCRC, it defines a child as "every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.[3] This definition gives the signatory or member countries of the Convention to fix a particular age limit according to their social, political and economic development, in determining who is a child. In India, the Juvenile Justice (Care and Protection) Act 2015 recognizes any person under the age of 18 years as a child.[4] It is believed that children are not capable of understanding the consequences of their action that is why there is a need to treat them differently. Under various laws protection to children is given. According to section 82 of IPC, any offense done by a child below the age of 7 years is not an offense whereas on the contrary according to section 83 of IPC it recognizes that a child above the age of 7 years and below 12 years has enough maturity to understand the consequences of his/her act but is not liable for any punishment.

b. ADOLESCENT

The time of growing from childhood to achieving adulthood is known as adolescence. The significance of this period is that not only there is physical growth but also mental growth which affects the behavior and thinking of the person. According to the Factories Act, 1948 and Mines Act, 1952 adolescent has been defined as the one who has attained the age of 15 years but has not attained the age of 18 years. Adolescence is the term derived from the Latin word "adolescere" which means to grow up. It is very evident that during this period of Adolescence children undergo several biological and psychological developments. Period of adolescence can be broadly divided into three category i.e. 10-13 years (early), 14-16 years (middle) and 17-19 years (late).[5] Due to reserved culture, it is clear that sexuality is still a myth for the adolescent, thus affecting their perception. Even in society, the development of the adolescent gets influenced by several social and environmental factors. The attitude of the parents towards sexuality, parenting style, peer relationship, cultural influences are important social factors that facilitate sexual learning and decides the sexual attitude of the adolescent. Media also influences the sexuality of the adolescent. Through media, every person in the country is aware of the concept of sexuality. The age group between 16-17 years old are well aware of the consequences of their action as they are in their late adolescence period. During this age, the body is approximate to young adults and there is the development of secondary sexual characteristics. Piaget had stated that "psychologically, adolescence is the age when the individual becomes integrated into the society of adults, the age when the child no longer feels that he is below the level of his elders but equal, at least in rights"[6]. Adolescents get well verse about their rights and obligations. They also become conscious of societal approval. A new set of values, morals, and norms emerge and they seem to be confused. They establish new relationships with others and establish a different level of compatibility with the new peer group. The Adolescents after the transition from child start admiring certain traits in peers of the opposite sex. Boys are admired by girls for traits like frankness, protectiveness, pleasing personality, neatness and a good sense of humor. Girls admire boys for qualities like pleasant appearance, intelligence, friendly mannerism, and kindness. Generally, girls are attracted to boys who are older than them. Adolescents being at the threshold of the adulthood approach legal maturity and always aim in swaying the stereotype of the teenager and achieving his/her own identity as an adult for which it indulges into activities such as smoking, drinking, even sexual intimation which they think are the elements which will create their image they want or desire.

c. CONSENT

In India “age of consent” is a huge controversy and debatable. It's quite astonishing to see that though the age of majority has been fixed as 18 years in several statutes, still many are there which consider different ages to define maturity. In the Prohibition of Child Marriage Act, 2006 where man has an age bar of 21 years and woman has 18 years whereas in Indian Evidence Act, 1973 the Minor witness credibility and admissibility depend on its age which is 16 years under the law. It is quite saddening that Indian Penal Code in a way encouraged child marriage, as under Hindu Marriage Act, 1955 even if the girl is under 15 she can solemnize the marriage, till date if the wife is 15 years or not yet touched the age bar of 18 years and has sexual intercourse without her consent then it won't be recognized as rape. Lord Macaulay while drafting the Indian Penal Code, 1860 has mostly derived its laws from England, where the age of consent was pegged to 10 years. Then with the societal change, the age of consent got increased up to 12 years in 1891 and again in 1925, it got increased to 14 years. Finally, the massive change came in criminal law where the age of consent got increased to 16 years in 1940. Then there was introduction of Criminal Law Amendment Act, 2013 where the age of consent got increased to 18 years to safeguards the interest of the girls who got indulged into sexual activity not out of their will and are below the prescribed statutory minimum age limit irrespective of the girls' consent will amount to rape. But this piece of legislation needs to be revisited as the adolescent are also involved in the sexual activities, thus automatically such rigorous punishment will create a negative impact on the mind of the children/ adolescents.[7] Presently the UK had reduced the age limit to 16 years which completely indicates that time has come when Indian legislation needs to realize the societal change. Medically, all body system does not reach the specific age of adulthood and it differs from person to person. Mostly it is evident that Brain's wiring matures at 16 years which is crucial for decision making, understanding the consequences of the action and risk factors. There is no specific age that defines a transformation from adolescence to adulthood. While introducing the Anti-rape Bill, they focused on the reduction of age of consent as well where the Ruling party vehemently opposes it by stating that they wanted to preserve the culture and tradition of our nation and also reiterated that India, for the time being, is still not ready for lowering the age of consent and for adopting the Western Culture. According to the case of *Jiten Bouri vs State of West Bengal* [8], the Calcutta High Court, while permitting a minor girl to join her husband, declared that “*Although the girl is minor she has reached the age of discretion to understand her own welfare and take her own decisions which is a paramount consideration for the grant of her custody. It may so happen that she might not have touched the threshold of marriageable age as per the provisions of the Hindu Marriage Act but marriage in contravention of age can neither be void nor voidable...The girl has insisted that she wants to join her husband and does not wish to return to her father's place.*” Thus, in this case, as well it has to be taken into consideration that the girl did not want to file a case against the boy and also in court turned hostile, whether she was having an affair with the accused or not that does not matter of question in this issue but the matter which we need to focus is upon her firm decision to stay away from her parents. She is well aware of the consequences and risks she is holding while making such a decision. Thus, the age of consent is a very important key to the lock social archaic morality which needs to be wiped off.

There are about 26 countries where the age of consent is 15 years including Greenland, Iceland, Aruba, Croatia, North Korea, and Poland. In 76 other nations across the world, the age of consent is 16 years. Some of these countries include the United States, the United Kingdom, Canada, Russia, Taiwan, South Africa, Nepal, Mongolia, and Lesotho. The legal age of consent in most of the countries is 16 years or above, as individuals of this age are considered to be mature and capable of making informed decisions. Some of the countries where the age of consent is below 16 years have other local laws to protect children aged less than 16 years from sexual exploitation.[9]

d. *CONSENSUAL RELATIONSHIP*

It is quite clear and evident from the word itself that “Consensual Relationship” basically means to have a relationship, either in past or present, which has been intimate, sexual, or romantic in nature for which both the partners have consented.

Half of all 17 years old reported that they have engaged in sexual intercourse, adults need to acknowledge that teenagers today are participating in the autonomous acts of sexual experimentation.[10]

However, in contrast to the high rates of teens admitting to having sexual relationships, and even higher number of the adult population, more than 70%, have stated that adolescents having sex is “always wrong”[11] and probably this is the reason that the age of consent is still 18 years.

e. *DIFFERENCE BETWEEN RAPE AND SEX*

To have consensual sex cannot be compared with a heinous offense called rape. Consensual sex is a normal biological process and rape is an unwanted cruel thing done on a person. Sex is always seen from a negative perspective when it is a process by which human beings are still existing. Therefore, sex and rape cannot be equated and to give punishment for consensual sex the same as that of rape would not only be unfair but would limit the minds of adolescent where they would not be able to open up about their sexual life and this would further only lead to complications.

When two adolescent is into physical relationship with the consent of each other there has been the full realization of choice between resistance and assent[12] of the adolescents fulfilling the relationship. The consent of minors is no consent[13] but the consent of the adolescent on the brink of attaining majority is recognition of the right to autonomy over body[14] with adequate comprehension of consequences as they can think more critically and pragmatically. Not respecting the adolescents' choice would be unjust. The time has come where the law must recognize consensual sexual exploration among adolescents. Sexuality is an integral part of the personality of every human being[15] constructed through the interaction between the individual and social structures ensuring individual, interpersonal and societal well being.[16] The adolescent's right to privacy and confidentiality[17] must be protected and respected by every person by all means and through all stages of a judicial process involving the child. Right of autonomy over body[18] allows whether or not to perform certain acts or subject themselves to certain experiences.[19] This will ensure the successful realization of Art. 19 (freedom of speech and expression, here it means to express one's sexuality) and Art. 21. The word "life" is interpreted as "the right to life includes the right to live with human dignity and all that goes along with it"[20], which includes mixing and commingling with fellow human beings. Further right to life includes the right to carry on such functions and activities adequate to give expression to the human self. Freedom of life and liberty includes freedom of choice in the basic decision of one's life respecting marriage, divorce, contraception, and procreation.

II. THE INTERCONNECTION BETWEEN THE JUVENILE JUSTICE ACT, POCSO AND IPC?

The JJ Act[21] choosing the cut off age of 18 years for defining children but providing for selective transfer of children of 16-18 age group alleged to have committed a heinous offense to the adult criminal court to be tried as an adult is in direct contravention of the UN CRC[22]. Art. 14 did not permit class legislation but it did permit reasonable classification applying the nexus test with the object of the test.[23] From the preamble of the Act it is evident that the object is not to subject children to any punishment but only to provide for their care, protection, development, treatment and social reintegration.[24] But on the contrary through the provision children are being subjected to the conviction for an offense which is rigorous in nature which is unconstitutional and unwarranted for an offense which is committed by both, i.e consensual sex between two adolescents yet one sex is punished and not the other. Penal policy should be based on a detailed analysis of all the sections of the society and its impact on future cases and not on penal populism because it may have a devastating effect and also attacks the basic philosophy behind the implementation of the JJ Act.[25]

POCSO is gender-neutral Act and if two minors are engaged in consensual sexual activity, both need care and protection and children in conflict with the law but still, the boy is held liable which is in contravention of Art.14.[26] While convicting a person under Sec. 3 [27] the marginal note of a section is broken down to understand the nature of the offense incoherence to that of the intention of the legislature.[28] There is an ambiguity to the extent of whether assault[29] is an intrinsic component of such offense in hand as when there is consent then there is no assault per se and hence penetrative sexual assault would not apply.[30]

No offense of rape should be made out if the girl is of 16 years of age when there is a consensual relationship without coercion.[31] Foreign courts have established the age of consent to be low in recognition of the same.[32] The law Commission acknowledges and recommends age for consensual intercourse, consent to be 16 years for all young girls, regardless of marriage.[33]

If a person who is below the age of consent (18 years), is proved, the question of consent becomes irrelevant and sexual intercourse with her amounts to rape irrespective of her consent. But a sentence of 20 years imprisonment or a life sentence to the minor boy, in the absence of any judicial discretion (after the criminal law amendment 2013)[34] appears to be unreasonable and too harsh. In the case *State of U.P. v. Sanjay Kumar* [35], the court proclaimed that a sentencing policy in any criminal justice system must consider two aspects-the gravity of the crime and the background of the individual. Endorsing the "theory of proportionality" [36]for the determining of the sentence - a doctrine that has been proclaimed by the Beijing Rules,[37] the court further stated that ignoring the needs of the victim and his community and their right to avenge the loss suffered due to the offense would amount to the encroachment of the 'human dignity' that is guaranteed by Art.21.

III. CAN HEARSAY EVIDENCE BE THE BASIS OF CONVICTION?

According to S.60 of the Indian Evidence Act, 1872, Hearsay evidence is not admissible. This Section is aimed to ensure that whatever is offered as evidence shall itself sustain the character of evidence. It must be immediate. It may not involve an intermediate agency or delivered through a medium, second hand or to use the technical expression "hearsay". Hearsay evidence is admissible only with the principle of *res gestae*[38] (which means those facts which are related to the main issue in the case). But, in this particular case, the main issue could not be established beyond any reasonable doubt. Hence, hearsay evidence in no way could be a basis of conviction. The Sessions court failed to understand the essence of hearsay evidence and granted conviction that could ruin a person's life.

IV. IMPLEMENTATION OF SECTION 43 AND 44 OF POCSO

Sections 43 and 44 of POCSO provide for wide publicity to its provisions to spread awareness among the people about the scope, importance, object and the ramification on its implementation. The court asked the authorities to submit a report to show their groundwork on awareness of POCSO [2]. It was submitted the Tamil Nadu Police Department has conducted 523 POCSO Training courses as the imparted periodic training on the matters relating to the implementation of the provisions of the Act towards the 20 Deputy Superintendents of Police, 2232 Inspectors of Police and 15475 Sub - Inspectors of Police and other Police personals all over Tamil Nadu in the years of 2016, 2017 and 2018 and many such other information which would superficially show that the Government and other organizations had diligently done their work. But according to a news report, the number of cases filed under POCSO in the West Zone police districts in Tamil Nadu jumped by 39% in the year of 2019. The police registered 425 cases under POCSO Act in 2019, while the corresponding number in 2018 was 305.[39] These figures make one wonder whether these programs under section 43 and 44 do actually help or programs are just conducted for the sake to show on paper.

V. WHETHER PARLIAMENT AND STATE LEGISLATURE HAVE STATUTORY AUTHORITY TO FRAME LAWS THAT DICTATE SEXUAL PREFERENCES FOR CITIZENS AND IMPOSES ARCHAIC SOCIAL MORALITY?

In today's era, Parliament and State Legislature cannot make laws which dictate sexual preferences especially for an adolescent who are completely capable of knowing the consequences of their actions. If a crime has been committed, both of the individuals involved should be punished, thus promulgating such law which is discriminatory by helping one sect and not the other is directing imposing social archaic morality which indicates to be violative of Part III of the Constitution. Parliament and State Legislature can introduce any new laws or amendments under Art. 246(2) i.e the List III entries 1 and 20A but that should pass through the test of arbitrariness and reasonable classification and whether such laws damage or destroy that part of fundamental rights which form part of the basic structure. It is impermissible to legislate in a manner as would violate the basic structure of the Constitution. It has been authoritatively held that an amendment to the provisions of the Constitution, even though the amendment had been carried out, by following the procedure contemplated under "Part XI" of the Constitution, the same would apply to any other legislation as well, even though the legislation had been enacted by following the prescribed procedure.[40] Often it is seen that question arises with respect to the balance between the fundamental rights and directive principles of state policy, which is an integral part of the basic elements of the Constitution which definitely cannot be altered thus in this matter the directive principle we can take into consideration of Art. 47 where public health will come into existence and in the case of *State Of Kerela v. Keshavananada Bharti* [41] it was cited clearly stated that some of the fundamental rights form part of the basic structure. Thus, bringing a law concerning sexual assault or rape under POCSO Act or Indian Penal Code which is discriminatory and cannot maintain balance or harmony is subject to judicial review and automatically violates the basic structure.

Subsequently, it can be considered that if a minor girl but adolescent has consensually got intimated with a boy, then such consent should be considered as valid cause both of them are teenager and had the same level of maturity, thus in that case not only boys, mental health get effected but also of the girls due to the trials if they had a romantic relationship. Laws should be such which is for the welfare of the people.

Parliament and the State legislature can promulgate laws but it should always before introducing any law see the surroundings and if and butts of the laws, so laws should be such that equals should be treated equally and unequal to treated equally. Due to excessive cases getting filed of elopement it is often been observed that the real minor victim who is subjected to the offense under POCSO, justice for them is delayed due to voluminous filing of the elopement matters, thus unreasonably got less prioritized. The society preferred getting a girl married at an early age of her puberty but never cared about giving her a proper sexual education including sexual health. It is evident through many such instances that not only in matters of sexual activity but in several other matters the consent of the girl child is blatantly not considered as consent, depriving women of their right to choose by proper application of mind. But today almost at the end of the 2nd decade of the 21st century, the social, political and economic factors developing a girl child have changed. Today an adolescent girl child is much more informed about any activity she does and also bears a knowledge about the consequences of the act through a well developed educational system. Therefore, today the Government must think about reconsidering the archaic social morality concerning the needs and wants of the girl child and also keeping mind her rights.

There has been a significant shift towards equating arbitrary or unreasonableness as the yardstick by which administrative, as well as legislative actions, are to be judged. A basic and obvious test to be applied in cases where administrative action is attacked as arbitrary is to be seen whether there is any discernible principle emerging from the impugned action and if so, does it satisfy the test of reasonableness. Even in this particular judgment, it was well recognized that the consent age should be reduced to sixteen for girls in offense rape or sexual assault and also well stated that offender's age is not more than five years to that of the consensual victim girl so that the impressionable age of the victim girl cannot be taken advantage of by a person who is much older and crossed the age of presumable infatuation or innocence. [2] Thus not considering such consent of the girl who is matured enough to take her decisions prohibits her expression. Moreover as already stated above that somebody who is an

adolescent and can take up her decisions then it should not be the concern of the Legislatures with whom the girl is being with and what she is doing, thus, unnecessary and unwanted continuous interventions of the Parliament and State Legislatures with respect to sexual preferences is prejudicing the privacy of any individual.

THE OBITER DICTUM

The court recognized that the majority of the cases of POCSO are filed due to a relationship between adolescents where the boy has to undergo rigorous imprisonment.[2] The Accused in this particular case was set free on the lack of evidence.

The court observed that when the girl below 18 years is involved in a relationship with the teenage boy or little over the teenage, it is always a question mark as to how such relationship could be defined, though such relationship would be the result of mutual innocence and biological attraction," the court said in its ruling. "Such a relationship cannot be construed as an unnatural one or alien to between the relationship of opposite sexes."

The court also said that the objectification of women in movies and pornographic content available online maybe some of the reasons for the growing incidences of sexual assaults on women and children. "The society must collectively introspect what is it that drives some men to unleash their libidinous rage on hapless children and women of all ages.

CONCLUSION

Teenagers or late adolescents (16-19 years) behave or have different needs than an earlier generation as every generation is affected by the social, political and economic conditions of that generation. The present generation has easy access to the internet and is active in social media sites because of which they are much more aware of sex than the past generation. During the adolescent stage, there is a hormonal change and also bio-pscho-social development because of which they have the urge to have sex. Sex is always seen in the negative light but it is a perfectly normal biological process. Every individual has different needs. Instead always hushing whenever the word 'sex' comes or never talking about won't solve any of the problems instead it will create more problems. It is not uncommon to see that teenagers especially in class 11, 12 or in college have serious relationships including sexual relationships. Movies and TV series such as the kissing booth, to all the boys I have loved before, 13 reasons why, the classic a movie walk to remember and many more, all shows that how adolescents are in relationships. People have watched these movies and are even aware of it but still chooses to ignore the subject of sex.

It is more disheartening to see the fallacy in criminal law when it comes to consensual sex among adolescents.

The sequence of such fallacy is as follows, in a nutshell, is as follows:

- According to the Juvenile Justice (JJ) Act, children are defined as below 18 years but for certain heinous offenses children above 16 years but below 18 years can be tried as an adult.
- The Protection of Children from Sexual Offences Act, 2012 (POCSO) has been enacted to address child sexual abuse. This law is gender-neutral.
- The 2018 amendment in criminal law has made the punishment of rape more stringent. If rape has been committed on a girl below 18 years then the imprisonment shall be for life or rigorous imprisonment for 20 years or fine or both. According to the Indian Penal Code (IPC) 1860, if there has been a rape irrespective of the consent then it is considered to be statutory rape. The definition of rape is defined in section 375 as " *A man is said to commit "rape" if he—penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her do so with him or any other person*" From the definition, it can be seen that here rape is gender bias. Rape done only to females are recognized.

All these measures may seem good seeing the rise in several cases of rape. Stringent punishment must be given to those who rape a child. But if we read all the provisions together and consider that if two adolescents are involved.

Let's take an example that a 17-year-old boy fell in love with a 16-year-old girl. They both met at a party. After that, they kept on texting each other. On 14th Feb they went to a party. They drank alcohol and got intimate. After that they had sex. This is a common scenario. Now and then we see this.

But suppose the girl's parents found out that their daughter had sex. Most parents would pretend to be shocked and file a complaint of rape against the boy. Both the girl and the boy are minor. If a case is filed under POCSO then according to it a boy could also be raped but due to the patriarchal mindset of the Indian society in most of the cases, it is always held that the boy had committed rape on the girl. If that is so then rape is a heinous offense for which the boy would be tried as an adult and hence subjected to stringent punishment which would ruin the life of the boy. There was consensus between both of them but still the sufferer would be the boy. If the boy would have been much older than the girl say for example difference of more than five years, in that case, it would not be wrong to presume that the boy might have coerced the girl into giving consent or manipulated her. But in a case where both the boy and the girl are of the same age then the scope of playing with mind does not arise. Both are in the same stage and their consent cannot be overlooked.

Another fallacy is that when JJ Act is that it makes a separate provision for heinous crime where the age is 16-18, which means that the Legislature and the court recognizes the fact that the late adolescents are capable to know the consequences of their actions and has a mind like an adult which is why they are treated as adult. But when it comes to consensual sex among late adolescents then the Legislature and the court suddenly declare them as a child and incapable of knowing the consequence of their actions.

In the present case i.e. *Sabari & Anr vs. The Inspector of Police & Ors.*, the Madras high court also recognized this fallacy and suggested the government to amend the laws.

The Parliament has made these laws to prevent casual sex which makes a person prone to sexually transmitted diseases. But just by giving punishments the real problem would never be solved. Instead of this, the government should enhance the sex education given in schools and colleges. It is high time for people to recognize that society has changed where adolescents are matured enough to be able to comprehend the consequences of their actions and consensual sex among teens is common and punishing just one gender or punishing at all will not help and this the great fallacy in law.

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