

DECODING THE CONUNDRUM IN INDIAN LEGAL FRAMEWORK GOVERNING AGE OF CONSENT AND AGE OF MARRIAGE

—*Gitanjali Ghosh** & *Shishir Tiwari***

***A**bstract— Age of consent and age of marriage have not only been equated in India but also used synonymously. However, the same is not true. Although the societal norms tend to advance the narrative that a marital relationship is imperative for indulging in a sexual relationship, the truth could not be farther than this. Although this debate has been raging on since forever, it has acquired a new dimension with the introduction of the proposed amendment to the existing child marriage law Prohibition of Child Marriage Act, 2006 whereby the minimum age of marriage is to be increased to 21. This will create a situation where the age of consent at 18 as contained in the Indian Penal Code, 1860 and Protection of Children from Sexual Offences Act, 2012 shall be considerably lower than the age of marriage. In the light of this background, this paper aims to address this conundrum relating to the age of consent and age of marriage in India and consequent issues in the light of existing personal and penal laws including proposed amendments. In order to do so, not only has an in-depth analysis of the existing Indian legislations been carried out, but relevant international instruments have also been used in addition to cases decided by Indian courts.*

Keywords: Age of Consent, Age of Marriage, Adolescent, Marital Rape Exemption.

* Ph.D. & Assistant Professor (Law), National Law University and Judicial Academy, Assam <gitanjalig90@nluassam.ac.in>.

** Assistant Professor (Law), Department of Law, North-Eastern Hill University, Shillong. <shishir@nehu.ac.in>.

I. INTRODUCTION

Age of consent and age of marriage, although sometimes used interchangeably are two distinct and separate concepts. Age of consent refers to the age at which people can legally consent to sexual intercourse. Age of marriage is the age where a person can legally contract a marriage. Why it is important to treat these two differently is because sexual intercourse has nothing to do with marriage. Unlike what is generally believed, particularly in our society, one does not have to undergo marriage to indulge in sexual intercourse. Hence, equating the two under law is not a necessity.

The age of consent was almost similar to the age of marriage of girls in India until now. However, once the proposed amendment to the Prohibition of Child Marriage Act, 2006 [hereinafter PCMA, 2006] goes through, the situation will change as the statutory age of consent as contained in penal laws such as the Indian Penal Code, 1860 [hereinafter IPC, 1860] and the Protection of Children from Sexual Offences Act, 2012 [hereinafter POCSO, 2012] currently stands at 18 while the proposed amendment to the child marriage law raises minimum age of marriage to 21.

Apart from this, there are several issues concerning this chasm between the age of consent and age of marriage including the fact that they need not be the same. However, before delving into the intricacies of this debate, it is essential to first understand the laws pertaining minimum age of marriage and age of consent in India.

II. AGE OF CONSENT FOR WOMEN UNDER INDIAN PENAL LAWS

When the IPC was enacted in 1860 i.e., the original version as drafted by Lord Thomas Babington McCaulay, the age of consent was 10 years. As far as the age for the marital rape exception was concerned, i.e., the age of a wife when her husband can legally have sexual intercourse her was also fixed at 10 years. Why the study on the changes in age of consent is important is because social reformers fighting against the menace of child marriage strived for increase in the age of consent as that would mean increase in the minimum age of marriage. Given the nature of the Indian society, marriage was what legalized sexual intercourse as sexual intercourse by an unmarried person was not only looked down upon but was also a taboo. Since the social reformers strongly advocated their cause with the then British Government, the British Government yielded by increasing the age of consent as well as the age of marriage. It is to be noted that the Hindu nationalists vociferously opposed any

attempts to bring changes in their personal laws governing marriage, property, and inheritance.¹

In 1890, when a child bride aged only 11 was forced by her much older husband to consummate their marriage, she died.² This led to an awakening in the collective conscious and the movement of the social reformers bore fruit as the Age of Consent Bill drafted by the social reformers was enacted as Act X of 1891 that led to the amendment of Section 375, IPC, 1860 thereby increasing the age of consent from 10 to 12. However, since it was a non-cognizable offence, it did not lead to a lot of complaints. Section 561 added to the Code of Criminal Procedure, 1882 titled “Special provisions with respect to offence of rape by husband” stated the same.

However, a very disturbing trend became evident in the subsequent amendments to the IPC, 1860 apropos age of consent under Section 375, IPC and age mentioned in marital rape exception to Section 375, IPC, on the one hand, and age of marriage under the Child Marriage Restraint Act, 1929 [hereinafter CMRA, 1929], on the other hand. Although all the ages continued to increase, the age mentioned in marital rape exception to Section 375, IPC was always lower than the age of consent and the age of marriage.

Ultimately, in 1978, the minimum age of marriage was increased to 18 for girls but the age of consent stood at 16. Even worse, the age for the marital rape exception was 15.

The macabre Nirbhaya incident of that chilly night of December 2012 in Delhi shook the conscience of the nation leading to widespread protests which, inter alia, demanded enactment of stringent laws with strict punishments to deal with such horrific offences being committed against women. In pursuance of the same, the Justice Verma Committee was set up by the Central Government, many of whose recommendations were incorporated into the IPC, 1860 through the Criminal Law (Amendment) Act, 2013.

Section 375 was overhauled, and the age of consent was raised to 18. However, the age in the marital rape exemption stood at 15 without any changes. It took the Supreme Court through its decision on October 11, 2017, in the *Independent Thought* case³ to raise it to 18 as well thereby righting decades old wrong of treating women unequally depending on their marital status.

¹ Charles H. Heimsath, “The Origin and Enactment of the Indian Age of Consent Bill, 1891”, 21(4) *The Journal of Asian Studies*, 491 (1962).

² Marcus B. Fuller, *The Wrongs of Indian Womanhood* 18 (1900).

³ *Independent Thought v. Union of India*, (2017) 10 SCC 800.

Year	Age of consent for females under Section 375, IPC	Age mentioned for females in marital rape exception to Section 375, IPC	Minimum age of marriage for females under the Child Marriage Restraint Act, 1929	Minimum age of marriage for females under the Prohibition of Child Marriage Act, 2006
1860	10	10	Act not in existence	Act not in existence
1891	12	12		
1925	14	13		
1929	14	13		
1940	16	15	14	
1978	16	15	15	
2013	18	15	18	
2017	18	18	Act repealed in 2006	18
				18

The discussion on age of consent will be half baked without deliberating upon the relevance of POCSO in this regard. Section 2(1)(d) of POCSO defines “child as any person below the age of eighteen years.” The sexual offences under the Act range from penetrative to non-penetrative to non-touch-based offences. One thing that is common throughout all the offences be it penetrative sexual assault, aggravated penetrative sexual assault, sexual assault, aggravated sexual assault or sexual harassment is any exception to criminality bases on consensual sexual relationship.

Apropos the current state of Indian laws pertaining age of age of consent, any kind of sexual relationship with a person, either female or male, under the age of 18 is criminalized. In other words, the evolving capacities of adolescents to indulge in consensual sexual relations has been absolutely negated.

The original Bill as introduced in the Rajya Sabha in 2011 in clauses 3 and 7 that dealt with the offences of penetrative sexual assault and sexual assault had an exception clause based on consent for persons between the ages of 16 and 18. This was also in line with what was suggested by the NCPCR in their draft bill titled Protection of Children from Sexual Offences Bill, 2010. It provided as follows:

“Provided that where such penetrative sexual assault is committed against a child between sixteen to eighteen years of age, it shall be considered whether the consent for such an act has been obtained against the will of the child or the consent has been obtained by use of violence, force, threat to use

force, intoxicants, drugs, impersonation, fraud, deceit, coercion, undue influence, threats, when the child is sleeping or unconscious or where the child does not have the capacity to understand the nature of the act or to resist it.”

However, when the Bill was referred to the Parliamentary Standing Committee on Human Resource Development, they recommended deletion of the consent based exception clause. They observed as follows:

“The Committee is of the view that once the age of child has been specified as 18 years, the element of consent should be treated as irrelevant upto this age. Therefore, the provisos to clauses 3 and 7 of the Bill should be deleted to protect the rights of child and for the sake of protecting children against abuse.”⁴

Thus, the POCSO came to have a standard age of consent which currently stands at 18. What is worth noting at this juncture is that until POCSO, the statutes were completely silent about the age of consent for men. There was absolutely no discussion surrounding the same.

III. AGE OF MARRIAGE UNDER INDIAN LAWS

The main marriage related statutes in India are the Indian Christian Marriage Act, 1872, the Parsi Marriage and Divorce Act, 1936, the Special Marriage Act, 1954, the Hindu Marriage Act, 1955 and the Foreign Marriage Act, 1969 whereunder the conditions of marriage are laid down, *inter alia*, the minimum of age of marriage as well. For ease of reference and understanding, the same has been laid down in the following table:

Legislation	Relevant Provision	Minimum Age of Marriage	
		Female	Male
Hindu Marriage Act, 1955	S. 5(iii)	18	21
Special Marriage Act, 1954	S. 4(c)	18	21
Indian Christian Marriage Act, 1872	S. 60(1)	18	21
Parsi Marriage and Divorce Act, 1936	S. 3(1)(c)	18	21
Prohibition of Child Marriage Act, 2006	S. 3(1) r/w S. 2(a) and S. 2(b)	18	21

⁴ Department-Related Parliamentary Standing Committee on Human Resource Development, Two Hundred Fortieth Report on the Protection of Children from Sexual Offences Bill, 2011 (2011) 6.8.

Legislation	Relevant Provision	Minimum Age of Marriage	
		Female	Male
Foreign Marriage Act, 1969	S. 4(c)	18	21

Coming to laws restraining or prohibiting child marriages in India, that child marriage is a social evil that requires to be curbed was realized long back. After years of efforts, the then British Government enacted the CMRA in 1929, popularly known as the Sharda Act.⁵ The law was amended twice, in 1940 and 1978 respectively, to increase the minimum age of marriage for both females and males. However, there was no real impact as child marriages were rampant. In yet another attempt to curb the menace of child marriage, the PCMA was enacted in 2006, effectively repealing the previous legislation and introducing more stringent provisions to deal with child marriage. Currently, the Prohibition of Child Marriage (Amendment) Bill, 2021 has been tabled in the Parliament to yet again increase the minimum age of marriage for females. At this juncture, it is imperative to have a detailed look at these legislative developments.

The CMRA, 1929 was enacted to “restrain the solemnization of child marriage”, and not to “prohibit the solemnization of child marriage”. Initially, the minimum age of marriage for females was fixed at 14 years while that for males stood at 18 years. When the law was amended in 1978, the minimum age of marriage for females was increased from 14 to 18 and that for males was increased from 18 to 21. It is to be noted as far as the age of majority was concerned, it was 18 in accordance with the Majority Act, 1875.

The Act also had gender biased provisions in the form of Sections 3 and 4 which penalized males, who had attained the age of majority but not the age of marriage as well as males who had attained both the ages, when they married minor females. The other offences were related to solemnization of child marriages and punishment for parents and guardians of child whose marriage takes place.⁶ The Courts were also empowered to issue injunctions against child marriages arranged or about to be solemnized.⁷

The biggest loophole of the Act was the fact that although it criminalized the solemnization of child marriages, it was silent on the validity of such marriages. In other words, since child marriages were not considered as void, they continued to be valid.

Another major shortcoming of the Act was the fixing of a limitation period for the filing of cases under this Act. The Act provided for a limitation period

⁵ Asha Bajpai, *Child Rights in India* 220 (2003).

⁶ Child Marriage Restraint Act, 1929, No. 19, Acts of Parliament, 1929 (India) §§ 5 and 6.

⁷ *See id.* § 12.

of one year from the date of commission of alleged offence for the Courts to take cognizance.

Also, the punishments prescribed were not deterrent enough given the fact that the Act continued to exist until the first decade of this century. The maximum prescribed punishment was simple imprisonment for 3 months and imposition of fine upto one thousand rupees.⁸

Although the CMRA, 1929 had been put in place to combat the menace of child marriage, yet it had several inadequacies which render it quite ineffective. Therefore, a need for a stricter and stringent law to deal with child marriages reverberated with recommendations being given by statutory bodies *viz.* National Commission for Women and National Human Rights Commission, *inter alia*. This ultimately led to the enactment of the PCMA, 2006.

Although the PCMA, 2006 did not make any changes in the minimum age of marriage when compared with the CMRA, 1929, it did introduce several much-needed changes in the law. To begin with, unlike the 1929 law, it provided for the prohibition of child marriages.

Since women find it very difficult to walk out of child marriages in the face of a bleak future full of insecurities, particularly economic, the Act introduced several enabling provisions that would take away such insecurities thereby emboldening women to seek annulment of their child marriage. The Act places obligation on the husband and in the event of his minority, on his parents or guardians to pay maintenance to the wife as well as provide for her residence until she gets remarried.⁹

A huge doubt looms on the minds of women regarding the legitimacy of their children who have been begotten or conceived of their child marriage considering that the action of seeking annulment of such marriage is a declaration of its illegality. The Act takes away this insecurity as well by declaring that such children shall be legitimate for all purposes irrespective of the subsistence of the marriage or its annulment.¹⁰

While the offences are almost similar to those criminalized under the 1929 Act, as far as the penalties are concerned, there is an evident and deterrent increase as the maximum prescribed punishment is rigorous imprisonment for 2 years and imposition of fine up to one lakh rupees.¹¹ Further, the offences have also been made cognizable and non-bailable.¹²

⁸ *See id.*, §§ 3, 4, 5 and 6.

⁹ Prohibition of Child Marriage Act, 2006, No. 6, Acts of Parliament, 2007 (India) § 4.

¹⁰ *See id.*, § 6.

¹¹ *See id.*, §§ 9, 10 and 11.

¹² *See id.*, § 15.

This Act deals with a much important facet of the law which was left completely untouched by the 1929 Act i.e., the validity of child marriages. Unfortunately, a golden opportunity to declare child marriages *void ab initio* was foregone. Instead, child marriages in general have been declared as voidable at the option of the child bride or groom.¹³ There is, however, a cache here. The child has a maximum time limit of two years from the date of attaining majority to file a petition for annulment of their child marriage.¹⁴ It is to be noted at this juncture, that there are exceptional situations when the child marriage shall be traced as null and void. They are as follows:

- 1) where the minor child has been taken or enticed out of the keeping of their lawful guardian¹⁵
- 2) where the minor child has been compelled by force or induced by deceitful means to go from any place¹⁶
- 3) where the minor child is sold for marriage and made to go through it¹⁷
- 4) where the minor child is sold or trafficked or used for immoral purposes after marriage¹⁸
- 5) where the minor child's marriage is solemnized in violation of injunction issued by court¹⁹

To ensure implementation of the Act, a separate category of public servant viz. Child Marriage Prohibition Officer has been provided for.²⁰

The Prohibition of Child Marriage (Amendment) Bill, 2021 has been introduced in the lower house of the Indian Parliament, *inter alia*, to raise the age of marriage of females from 18 to 21 thereby bringing it at par with males.

What the Prohibition of Child Marriage (Amendment) Bill, 2021 purports to do is increase the minimum age of marriage to 21 and more importantly, do away the gender bias existing for nine decades in terms of the minimum age of marriage being different for women and men by bringing uniformity.

Unlike the PCMA, 2006 which defines “child” as “a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age”,²¹ the Prohibition of Child Marriage (Amendment) Bill,

¹³ See *id.* § 3(1).

¹⁴ See *id.* § 3(3).

¹⁵ See *id.* § 12(a).

¹⁶ See *id.* § 12(b).

¹⁷ See *id.* § 12(c).

¹⁸ See *id.*

¹⁹ See *id.* §§ 13 and 14.

²⁰ See *id.* §§ 16 and 17.

²¹ See *id.* § 2(a).

2021 defines “child” as “a male or female who has not completed twenty-one years of age.”²²

The Bill also purports to make changes in the existing personal laws on marriage *viz.* the Indian Christian Marriage Act, 1872, the Parsi Marriage and Divorce Act, 1936, the Special Marriage Act, 1954, the Hindu Marriage Act, 1955 and the Foreign Marriage Act, 1969 by equating the minimum age of marriage for women and men by increasing the marriageable age of women to 21 thereby bringing it at par with men.

Although the intent behind raising the age of marriage for women is laudable, the problem remains the same as far as the validity of such child marriages is concerned. Until that is addressed, little can be achieved by increasing the minimum age of marriage. The National Family Health Survey data²³ discussed hereafter is testimony to the grim reality of child marriages in India despite the existence of laws to curb the same.

	NFHS 1 (1992-93)	NFHS 2 (1998-99)	NFHS 3 (2005-06)	NFHS 4 (2015-16)	NFHS 5 (2019-21)
Women aged 20-24 years who were married before age of 18 years (%)	54.2	50.0	47.4	26.8	23.3
Men aged 25-29 years who were married before age of 21 years (%)	NA	NA	32.3	20.3	17.7
Women aged 15-19 years who were already mothers or pregnant at the time of the survey(%)	NA	NA	16.0	7.9	6.8

IV. ISSUES PERTAINING LEGAL PROVISIONS GOVERNING AGE OF CONSENT AND AGE OF MARRIAGE IN INDIA

The first issue is the inherent conflict between the provisions of POCSO, 2012 and PCMA, 2006. When one closely looks at the provisions of the PCMA, 2006, it is evident that child marriages are voidable. In other words, child marriages continue to be valid until annulled by a court of law on the basis of a petition made by the child party to the marriage. On the other hand,

²² *See id.* § 3.

²³ International Institute for Population Studies, National Family Health Survey-5 (2019-2021), <http://rchiips.org/nfhs/NFHS-5_FCTS/India.pdf>, International Institute for Population Studies, National Family Health Survey-4 (2015-2016), <<http://rchiips.org/nfhs/pdf/NFHS4/India.pdf>>, International Institute for Population Studies, National Family Health Survey-3 (2005-2006), <<http://rchiips.org/nfhs/pdf/India.pdf>>, International Institute for Population Studies, National Family Health Survey-2 (1998-1999), <<http://rchiips.org/nfhs/data/india/keyfind.pdf>>, International Institute for Population Studies, National Family Health Survey-1 (1992-93), <<http://rchiips.org/nfhs/data/india1/iafctsum.pdf>>. (Accessed on 11 January 2022).

POCSO criminalizes all sexual intercourse under 18. Additionally, the marital rape exception in the IPC has also been done away with by the Supreme Court. The conflict between these laws has opened a Pandora's box as people are legally married but unable to have legal sexual intercourse, a natural corollary of marriage as recognized by sociologists.

The second issue concerns the gap between the age of criminal responsibility and the age of consent. While the Juvenile Justice (Care and Protection of Children) Act, 2015 [hereinafter JJ Act, 2015] has been put in place to deal with children in conflict with law i.e. persons who are below the age of 18 and are alleged to have committed a crime or proven to have committed a crime, the concept of *dolus incapax* is enshrined in Sections 82 and 83 of the IPC, 1860. Apropos children under the age of 7, they are deemed to be bereft of culpability and for those between the ages of 7 and 12, their culpability depends on whether "they have attained sufficient maturity of understanding to judge of the nature and consequences of their conduct on that occasion."

Thus, when the two laws are put together, it seems that for children aged 12 and above, they are deemed capable of shouldering criminal responsibility. Further, the JJ Act, 2015 has created a category of children aged between 16 and 18 years who are alleged to have committed a heinous offence. In such cases, the Juvenile Justice Board conducts a preliminary assessment regarding the child's mental and physical capacity to commit such offence, his ability to comprehend its consequences and the circumstances wherein the offence was allegedly committed.²⁴ If the Board after such preliminary assessment orders that the said child needs to be tried as an adult, the trial may be transferred to the Children's Court.²⁵

The point of discussing the age of criminal responsibility is to impress upon the chasm between the age of criminal responsibility and age of consent. If one is considered capable of being mature enough to possess criminal intent, what stops the law from considering the same person mature enough to consent to sexual relations.

Coming to the third issue, it pertains to exercise of right of abortion by unmarried as well as married pregnant women. The Medical Termination of Pregnancy Act, 1971 permits abortion only in five situations by a registered medical practitioner where the pregnancy is under twenty weeks on the opinion of one registered medical practitioner and where the pregnancy is between twenty and twenty-four weeks on the opinion of two registered medical practitioners.²⁶ Further, when the pregnant woman is under 18 years, her guardi-

²⁴ Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2007 (India) § 15(1).

²⁵ See *id.*, § 18(3).

²⁶ Medical Termination of Pregnancy Act, 1971, No. 34, Acts of Parliament, 1971(India) § 3(2).

an's written consent is required in addition to her own consent.²⁷ Since the age of consent for women is 18, many girls, married or unmarried, who do not want their partners or spouses to be sent behind bars may choose to not get an unwanted pregnancy or even worse, an unsafe pregnancy terminated. This eventuality arises due to the mandatory reporting provisions incorporated in POCSO²⁸ pursuant to which it is obligatory on health professionals to report cases of sexual relationship where both or any of the parties under the age of 18.

It is worth noting General Comment No. 20 to the Convention on the Rights of the Child [hereinafter CRC] here. It advocates "introduction of a legal presumption that adolescents are competent to seek and have access to preventive or time-sensitive sexual and reproductive health commodities and services." It emphasizes that "all adolescents have the right to have access to confidential medical counselling and advice without the consent of a parent or guardian, irrespective of age, if they so wish."²⁹ Further, General Comment No. 13 provides that "reporting mechanisms must be coupled with, and should present themselves as help-oriented services offering public health and social support, rather than as triggering responses which are primarily punitive."³⁰

In *Skhemborlang Suting case*,³¹ a husband took his pregnant wife to the hospital for check up where the hospital authorities on confirming that the wife was aged about 17 years informed the police. The husband was charged for aggravated penetrative sexual assault. The High Court was petitioned to set aside and quash the criminal proceedings against the accused husband pending in the Special Court. The wife stated that they were a married couple in love and she was co-habiting with her husband voluntarily and consensually. While allowing the petition the Meghalaya High Court observed that the rigors of the POCSO Act should not be applied to break a happy family with the possible consequences of the husband languishing in jail leaving behind his wife and baby with no means of support, physical or financial.

In another case,³² the Allahabad High Court was hearing a bail petition of the accused charged for rape, kidnapped, penetrative sexual assault, *inter alia* pursuant to a case filed by the victim girl's father. It was found that the couple had eloped, married, were staying together for two years and also had a 4 month old baby. Further, the victim stated that she was staying with her

²⁷ See *id.*, § 3(4).

²⁸ Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012 (India) §§ 19 and 21.

²⁹ Committee on the Rights of the Child, General Comment No. 20 on the implementation of the rights of the child during adolescence, 39, CRC/C/GC/20 (December 6, 2016).

³⁰ Committee on the Rights of the Child, General Comment No. 13 on the right of the child to freedom from all forms of violence, 49, CRC/C/GC/13 (April 18, 2011).

³¹ *Skhemborlang Suting v. State of Meghalaya*, 2022 SCC OnLine Megh 66.

³² *Atul Mishra v. State of U.P.*, 2022 SCC OnLine All 420.

husband consensually and wanted to live with him and not go back to her parents. However, as she was a minor whose consent had no value, she and her baby were sent to a Government Children’s Home while her husband was imprisoned and hence, this bail petition. While allowing bail, the Court observed that teenagers and young adults being charged under POCSO was a matter of concern as the Act did not intend to cover adolescents involved in dense romantic affair. The Court opined that a “bio-social approach” needs to be adopted which conceptualizes the biological and social needs of two mutually attracted teenagers whose decision could be termed as impulsive and immature but certainly not sinful and tainted.

The fourth issue concerns the absolute disregard for evolving capacities of adolescents as recognized in the CRC in existing Indian laws. Indian Courts have been faced with numerous cases where teenagers in love who have eloped and married have been slapped with charges under IPC and POCSO as the girl was short of 18 years and her parents filed a case against the boy for kidnapping, rape and other sexual offences. Two cases are worth noting here. In Sabari case,³³ there were several prosecution witnesses who testified against the accused boy but when it came to the victim girl she did not support the case of the prosecution and said nothing to implicate him. The Court observed that it was unfortunate that in cases wherein the victim girl is below 18 years, even though she was mentally mature and capable of giving consent for relationship, the provisions of the POCSO Act get attracted thereby creating an eventuality of the accused boy being sentenced to years behind bars. The Court held that provisions should be incorporated in POCSO to distinguish cases of teenage relationship where the girl is above 16 years of age from cases of sexual assault. Accordingly, the Court also suggested the inclusion of an age proximity clause of 5 years between the boy and girl in cases of consensual relationship.

In Vijayalakshmi case,³⁴ the boy in his early twenties and the girl below 18 years were in a relationship. The girl insisted the boy to elope and marry due to parental pressure and the boy conceded to her demand. They eloped, married and consummated their marriage. The girl’s mother filed charges against him pursuant to which he was tried for kidnapping and aggravated penal sexual assault under IPC and POCSO. The instant case was filed by the complainant mother and the victim girl jointly whereby they sought the quashing of the pending proceedings against the accused boy. While relying on the Sabari case, the Madras High Court held that it is imperative for the Parliament to consider such cases involving adolescents and swiftly introduce necessary amendments, given how stringent POCSO is.

³³ *Sabari v. Inspector of Police*, 2019 SCC OnLine Mad 18850.

³⁴ *Vijayalakshmi v. State*, 2021 SCC OnLine Mad 317.

It is worth noting India's international commitments at this juncture. General Comment No. 4 to the CRC requires States to set a minimum age for sexual consent, marriage and the possibility of medical treatment without parental consent which should be equal for women and men and more importantly, reflective of the recognition of the status of persons under 18 years of age as rights holders, in accordance with their evolving capacity, age and maturity.³⁵ Taking this idea further, General Comment No. 20 emphasizes upon the evolving capacities of adolescents and stresses that States should define an acceptable legal minimum age for sexual consent, in pursuance of which they should "avoid criminalizing adolescents of similar ages for factually consensual and non-exploitative sexual activity".³⁶ General Comment No. 15 provides that "children should have access to confidential counselling and advice without parental or legal guardian consent, in accordance with their evolving capacities".³⁷

V. CONCLUSION

While the current provisions of the POCSO and PCMA have created a situation where a female under 18 can be in a valid marriage but not have legal sexual intercourse with her husband which can in a way be interested as being a deterrent to marriages of females under the age of 18. However, if the purported amendment to the PCMA comes through, it will create a situation where a female under 21 can be in a valid marriage and also be able to have legal sexual intercourse with her husband which will take away the existing semblance of deterrence. The NFHS data discussed in this paper clearly evidences the fact that increasing the age of marriage has little impact on lessening the number of child marriages. What is need of the hour is not increase in minimum age of marriage but declaring all child marriages as *void ab initio*. As long as child marriage remains voidable, it will continue irrespective of the increase in age of marriage. Apropos age of consent, it is mostly framed for ease of prosecuting cases involving sexual offences.³⁸ However, it is evident that an alarming number of romantically involved adolescent couples are being slapped with charges under the provisions of POCSO in the first decade of its existence which makes it imperative for the Parliament to make necessary changes. As discussed in the paper, our international commitment under the CRC is another reason why the Parliament needs to consider introducing

³⁵ Committee on the Rights of the Child, General Comment No. 4 on adolescent health and development in the context of the Convention on the Rights of the Child, 9, CRC/GC/2003/4 (July 1, 2003).

³⁶ Committee on the Rights of the Child, General Comment No. 20 on the implementation of the rights of the child during adolescence, 40, CRC/C/GC/20 (December 6, 2016).

³⁷ Committee on the Rights of the Child, General Comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health (Art. 24), IIIA, CRC/C/GC/15 (April 17, 2013).

³⁸ Janine Benedet, "The Age of Innocence: A Cautious Defense of Raising the Age of Consent in Canadian Sexual Assault Law", 13 New Crim. L. Rev. 665, 686-687 (2010).

such changes. A look at the ages of consent worldwide shows it standing at an average age of 16. Not just that, the age of consent also depends on the kind of sexual contact with the age being highest for sexual intercourse and lower for other forms of sexual contact.³⁹ If decreasing the age of consent is not considered, the Parliament could at the least introduce an age proximity clause⁴⁰ thereby giving much needed protection to consensual adolescent relationships.

³⁹ Kate Sutherland, "From Jailbird to Jailbait: Age of Consent Laws and the Construction of Teenage Sexualities", 9 *Wm. & Mary J. Women & L.* 313, 314 (2003).

⁴⁰ Mini Saxena, "Criminalizing Desire: A Critique of India's Statutory Age of Consent", 8 *SoAS L.J.* 40, 41 (2021).