

FAMILY LAW IN INDIA

GROWING
WITH

MODERNITY



FACULTY OF LAW



Dr. M.G.R
EDUCATIONAL AND RESEARCH INSTITUTE
(Deemed to be University with Graded Autonomy Status)





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Editor-in-Chief

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INDIAN LAWS ON MARRIAGE AND GENDER INEQUALITY - AN ANALYSIS

Mr. Mohamed Ali. S*

Mrs. Tancy Sebastian•

ABSTRACT

Marriage is highly valued in Indian culture, besides religious reasons, there are several other factors that have a significant effect on society's acceptance of a marriage. The authors of this paper have analyzed marriage-related issues faced by the adolescents in the application of provisions of the Prohibition of Child Marriage Act and the POCSO Act. When a couple is adolescents and considering getting married, their parents' and society's interests have a significant impact on their decision. Young adulthood is an important phase when individuals make significant choices in life. Despite the fact that education and technology have improved their knowledge, society still frowns on them finding their life partner of their own. Numerous cases have demonstrated that the age and acceptance of the contracting parties are least important when it comes to marriages between different castes or families with lesser socioeconomic position than the other.

According to the Prohibition Child Marriage Act and other legislations, children are considered to be those who are younger than 18 years old. Under the norms of personal law, the ages of the parties are frequently the least important factors. As per the social change over the years legislatures have increased and fixed a minimum age for men and women for contracting into marriage relationships. Even though provisions in the legislation prohibiting child marriages are prescribed with severe punishment in a view to warning the society, due to unsuccessful implementation still those marriages between an adolescent and an adult are regularly taking place. The society acts as a silent spectator in such marriages which are done by their own parents and are taken lightly. Whereas if the marriage took place on their own will, in such scenarios generally boys are mostly affected and poised with law provisions which end up in severe punishment under POCSO Act. In another aspect, the government is considering raising the marriage age for girls to match that of boys. Finally, the authors are emphasizing that law

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must be applied uniformly without gender bias and also recognizing the real consent of the people contracting into the marriage without undue influence of the family and society.

Keywords: POCSO Act, Child Marriage, Uniform Civil code, Consensual sex

INTRODUCTION

India is generally known for its rich multicultural, multi-ethnic and multi-religious population. Marriage is celebrated as an important phenomenon in Indian culture. In the religion's point of view marriage is a sacrosanct union which is lifelong commitments. Procreation of children is seen as a religious mandate.¹ Rather than a union of two individuals, marriages are viewed as a union of two families and two communities. It is a big industry that creates lots of business for people estimated around 40–50 billion USD in size and continues to grow rapidly at a rate of 25-30% annually.²

Indian society is predominantly patriarchal in nature and procreation of children is considered the primary motive of a marriage.³ In Hinduism, marriage is a vital step on the path to liberation from the recurrent cycle of life and death. A woman to support her husband in his quest for moksha. It is only in the Gandharva form that a female is involved in selecting a marital partner. It is apparent that religious values oppress women and subject them to cultural, social and religious norms. In other words, arranged marriages sublimate romantic love and freedom of choice.

GENDER BIAS UNDER VARIOUS LEGISLATIONS

Article 15 of the Indian Constitution gives the State the authority to establish special laws for the advancement and empowerment of women and children, yet some laws are misused for what they were intended to do. For instance, Protection of Women from Domestic Violence Act, 2005 (DV Act) suffers from inherent flaws. It was misused widely as a weapon to teach a lesson to her husband or in-laws by filing frivolous and false cases observed by various High

¹ Dr.Paras Diwan, *Family Law*, (Allahabad Law Agency, 12th edition., 2021) p. 24

²<https://www.cnbcv18.com/retail/the-recession-proof-big-fast-indian-wedding-just-got-more-corporatised-1012991.htm> (last visited on Oct 28, 2022)

³<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3705690/#:~:text=For%20Hindus%2C%20marriage%20is%20a.legislation%20attempt%20to%20protect%20marriage> (last visited on Oct 29, 2022)

Courts.⁴ The Court has further added that Section 498A IPC has experienced a similar tendency of misuse. As a result, the Supreme Court labeled this type of abuse "legal terrorism."⁵ As noted by the Honorable SC and HC, laws like the Domestic Violence Act and the Dowry Prohibition Act are being exploited.⁶ So the Court has opined that law must be used in a neutral and unprejudiced way to protect the genuine victims of domestic violence irrespective of their gender. The Writ petition filed by the daughter-in-law is to dispose of the representation made to the District Educational Officer within a stipulated time, aiming to stop her father-in-law's promotion who was about to be promoted as Headmaster, on the basis he was facing a criminal case on the DV Act. But the Court didn't entertain her plea and dismissed her petition with cost. Even though demanding dowry is opposed by public policy and punishable by the law but practiced as customary.

Offenses against Children

A few decades ago, it was very common to see children let out freely to roam around and play since everyone around them would look out for and protect those children, even the parents were not overly concerned about their children's safety. The neighbors will care for their neighbor's kids as if they were their own. Later, as the population grew, so did human needs, and many technical advancements were produced to make daily life easier. In the end, this paved the way for the development of several enterprises and industries to produce those technological inventions. Cities with smaller land masses saw a surge in population as a result of people moving towards the industries. The kids were thus forced to play within a modest four walls enclosure.

Changes in lifestyle made gadgets nearer and people away. Growth in technologies like the internet gave a sophisticated lifestyle and knowledge source. People are busy in their routine work making money, children were dumped to read a lot and play a little, and privacy of each

⁴<https://www.timesnownews.com/mirror-now/in-focus/498-a-anti-dowry-law-cant-be-used-as-weapon-to-settle-scores-teach-lesson-chhattisgarh-hc-article-92946997> (last visited on Oct 27, 2022)

⁵<https://timesofindia.indiatimes.com/city/delhi/misuse-of-dowry-provisions-is-legal-terrorism-court/articleshow/7615680.cms> (last visited on Oct 28, 2022)

⁶<https://www.thehindu.com/news/cities/Madurai/domestic-violence-act-prone-to-misuse-says-high-court/article7331523.ece> (last visited Oct 29, 2022)

individual grew but equally instigated ugly thoughts in the devil's mind of the human which was already hidden in him. The hungry devil mind was seeking an opportunity to feed prey for its ugly thoughts, unfortunately toddlers and children have become easy prey to those culprits. One of the reasons why such criminals choose children as their target is to escape from the clutches of law. These culprits look like the general public and do not want to spoil their reputation which is also a reason for the rise in sexual attacks on children.

As the number of incidents of sexual attacks on children has escalated to curb and eradicate such a social sin from society, the society government enacted the Protection of Children from Sexual Offences Act which came into force in the year 2012.⁷ On the other hand marriages to children were also been increasing even though government has taken initiation a century back itself enacted law for the purpose of penalizing Child marriage⁸ but few recent incidents⁹ like the one at Chidambaram¹⁰ of in Tamil Nādu where girl children of ages 13 - 15 years were contracted into marriage by their parents and in an another incident the Punjab and Haryana High Court has held that a Muslim girl above 15 years of age is competent to enter into a contract of marriage with a person of her choice, these prove the existence of child marriage is unavoidable and still exist due to different belief and faith of different personal laws. Girl attaining puberty¹¹ is considered as basic criteria to be engaged to an marriage this was prevailed during the Vedic period in Hinduism and it is the same custom which is still being accepted among Muslims. A girl who has attained the age of puberty could marry without consent of her parents and has the right to reside with her husband even when she was less than 18 years of age as per Mohammedan Law, the Delhi High Court has said. The Court further opined that this is not a case of exploitation but a case where the petitioners were in love and got married according to the Muslim law.¹²

⁷ Protection of Children from Sexual Offences Act, 2012, Statement of Objects and Reasons provided which relies on the data collected by the National Crime Records Bureau and the 'Study on Child Abuse: India 2007' conducted by the Ministry of Women and Child Department.

⁸ Child Marriage Restraint Act, 1929

⁹ <https://www.thehindu.com/news/national/other-states/muslim-girl-aged-above-15-competent-for-marriage-punjab-and-haryana-high-court/article65545597.ece> (last visited Oct 27, 2022)

¹⁰ <https://indianexpress.com/article/cities/chennai/child-marriage-two-priests-attached-to-chidambaram-temple-in-tamil-nadu-arrested-8213370/> (last visited Oct 27, 2022)

¹¹ Mulla, *Hindu Law* (LexisNexis, 23rd edition) p. 952, 972

¹² <https://www.thehindu.com/news/cities/Delhi/minor-muslim-girl-can-marry-without-consent-on-attaining-puberty/article65802269.ece> (last visited on Oct 28, 2022)

The Protection of Children from Sexual Offences Act, 2012 (POCSO Act), was enacted to protect children from offences of sexual assault, sexual harassment and pornography and to provide a child-friendly system for the trial of these offences. The Act provides for seven specific sexual offenses against children and stipulates child-friendly legal procedures that must be adhered to during investigation and trial. The Act does not recognize sexual autonomy of children in any form. Children can also be held liable for committing sexual offenses under the Act. As a result, sexual interactions or intimacies among or with children below the age of 18 years constitute an offense. This note examines the implications of the POCSO Act on child marriages in general and ‘love’ marriages in particular.

Various Acts defining the age of child which are dealing with the issues against children have been prescribed in different enactments. A person not completed the age of sixteen years is recognised as a child in the Immoral Traffic (Prevention) Act, 1956 and the person between the age of 16 and 18 are defined as minor.¹³ The Code Criminal Procedure also defines juvenile as a person below the age of 16 years.¹⁴ Factories Act, 1948 recognise persons below the age of 15 years as child and persons of age between 15 and not completed 18 years are identified as adolescent.¹⁵ Whereas section 2(ii) of Child labour (Prohibition and Regulations) Act, 1986 and the Right of Children to Free and Compulsory Education Act, 2009 are considers person below the age of 14 years as child. But POCSO Act, 2012, Prohibition of Child Marriage Act, 2006 and Juvenile Justice (Care and Protection of Children), 2015 are recognising person below the age of 18 years as child.

Because of religious thoughts once a girl is born she has to be given out to her mate who is born for her, and since it is believed to be marriage, unions are eternal and last longer for all 7 rebirths. For these reasons Child marriages are very common in Indian society. Before the Child Marriage Restraint Act, 1929 otherwise known as Sarada Act Marriages of children below the age of 6 to 14 years were normally happens. In the Prohibition of Child Marriage Act, 2006 where man has an age bar of 21 years and woman has 18 years. 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

¹³ Immoral Traffic (Prevention) Act, 1956, s.2(aa)(cb)

¹⁴ Criminal Procedure Code, 1973, s.27

¹⁵ The Factories Act, 1948, s.2(b)&(c)

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 societal change, the age of consent got increased 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 was 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 safeguard 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 adolescents are also involved in the sexual activities, thus automatically such rigorous punishment will create a negative impact on the minds of the children/ adolescents.

Gender Bias under Child Marriage Prohibition Act 2006

The PCM Act, 2006 seeks to prohibit solemnization of marriage of children below 18 years, and the person contracting such marriage will be prosecuted under section 9 of the said Act. Rarely few cases booked of boys below the age of 21 years contacted by a woman older than him. The Act prescribes penalties for the solemnization, promotion, and allowing of child marriages. A male above 18 years of age can be punished under the Act for contracting a marriage with a girl under 18 years. The Act is, however, silent on sexual relations in a child marriage. It extends legitimacy to children born of child marriages thus indirectly acknowledging sexual intercourse within a child marriage.

Under the Indian Penal Code, 1860 (IPC), sexual intercourse by a man with his wife above 15 years of age, is an exception to rape. The Criminal Law Amendment Act, 2013 raised the age of consent to 18 years but did not disturb this exception. As a result, sexual intercourse with a wife above 15 years of age and below 18 years of age will not amount to rape under the IPC. However, in a case raised by the NGO *Independent Thought vs Union of India*¹⁶ Supreme Court has declared that the exception 2 given under Section 375 of the IPC it is not rape if a man engages in sexual activity with his wife who is older than 15 but younger than 18 years old with or without her knowledge or consent as unconstitutional and should be struck down or

¹⁶ (2017) 10 SCC 800

should be read down to be equal to that of such defined as Child under the POCSO and PCM Act, 2006. But at the same time 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.....", though we can consider it to be equally applicable as elucidated under section 8 of IPC¹⁷ to male child but it can be seen that rape done only to females are recognized.

The POCSO Act may be misused

In the case of *Sabari @ Sabarinathan v. The Inspector of Police & others*¹⁸, an adolescent boy, who does not have any connection with the issue has been wrongly convicted for the prosecution case. The case was decided on the basis of presumption of favor of the prosecution under section 29¹⁹ of the POCSO Act. In the appeal Hon'ble High Court contempt, the trial Court and pointed out that the trial Court has dealt the case with a predetermined mindset to convict the appellant/accused, regardless of lack of evidence in favor of the prosecution²⁰. The victim girl not only denied kidnap by the accused person but also claimed that she was in her friend's home during the time. Regardless of the victim girls' deposition against the prosecution's claim the trial court convicted the accused.

Defense to prove the contrary - as provided in the Scheme of POCSO Act

The High Court opined in its judgment that the boy was wrongly implicated and there was no direct evidence having seen the accused and victim girl together. The failure to prove the contention beyond reasonable doubt particularly the delay in filing the FIR, report of the Doctor which did not prove penetrative sexual intercourse by the accused and the hostility of other witnesses to prove stay of duo at rented house were against the prosecution. Therefore the Appellate Court pointed out that the trial court which drew presumption in favour of the prosecution shall ensure such presumption must be sound, reasonable and concrete and cannot be a baseless premise which is lagging of legal backing and basis.

¹⁷ Gender - The pronoun "he" and its derivatives are used for any person, whether male or female.

¹⁸ 2019 (3) MLJ CrI 110

¹⁹ Which reads as follows **Presumption as to certain offences:** Where a person is prosecuted under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offense, as the case may be unless the contrary is proved.

²⁰ *supra* n.19 (Para 6)

In a similar nature of case the Hon'ble Madras HC while setting aside the order passed by the Dharmapuri Sessions (Mahila) Court and acquitted the government school teacher on clean chit after he spent 3 years in jail of the total conviction of 5 years rigorous imprisonment, the Hon'ble justice has opined that trial courts should be cautious while dealing cases under POCSO Act because of its 'draconian nature' because the punishment are very grave. When the offence against the children must be viewed seriously, the Court should also see the natural justice of the offender for proving his innocence.²¹

In the *Sabarinathan* case *supra*²² Commission for the Protection of Child Rights made several significant observations in its report submitted to the Court, such as how community intrusion in protecting the offender family in child marriages is related with honour killing in some cases if the boy and girl are from the same group no complaint is brought against them, but if they are from different communities, a case is launched against the boy, resulting in communal strife²³. It is also highlighted that only the boy is penalized which is contrary to natural justice. For these reasons, the commission recommended the Court to handle teenage elopement cases separately in order to prioritize actual child rape cases and furthermore to rule that marriages involving two adolescent children are not to be dealt under POCSO.

After independence, Indian criminology is founded on the reformatory philosophy of punishment, which involves transforming the delinquent into a disciplined member of society. However, in the aftermath of the brutal attack on the Delhi Nirbhaya case²⁴, in which one of the accused was a juvenile at the time of the incident, an amendment was made to the Juvenile Justice Act in 2015, based on the recommendation of the Juvenile Justice Board²⁵ age of 16 but under the age of 18 will be treated as an adult offender if they are accused of committing a heinous crime. This has clarified that in cases where an adult commits a crime against a minor,

²¹<https://timesofindia.indiatimes.com/city/chennai/pocso-draconian-law-courts-must-be-cautious-says-madras-hc/articleshow/89377466.cms>, (last visited on Oct 29, 2022)

²² *supra* n.21

²³<https://www.thehindu.com/news/national/tamil-nadu/gokulraj-murder-case-caste-outfit-founder-yuvaraj-awarded-triple-life-term/article65205306.ece> (last visited on Oct 31, 2022)

²⁴ *Mukesh v. State for NCT of Delhi [Nirbhaya case]* (2017) 6 SCC 1; (2017) 2 SCC (Cri) 673

²⁵ Juvenile Justice (Care and Protection of Children) Act, 2015, s.18 r/w14, 15

severe punishments should be imposed; additionally, in cases of gang rape, if the juvenile is one of the perpetrators, the case must be conducted under the recent amendment that he must be treated as an adult in the designated court. It shows that the mens rea of the person involved that has to be ascertained for proper punishment.

As pointed out by the report²⁶ that the **majority of cases involved are relationships between adolescent** girls below 18 years eloping with boys. Such a relationship cannot be construed as unnatural, it would be the result of mutual innocence and biological attraction. Even though the age of the girl is below 18 years, she was capable of giving consent for a relationship, being mentally matured, unfortunately, the provisions of the POCSO Act get attracted when it transcends beyond platonic limits. In the case *Jiten Bouri vs State of West Bengal*²⁷, 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 or voidable...The girl has insisted that she wants to join her husband and does not wish to return to her father's place.” Where a minor is capable of understanding even if he is of 16 years adolescence a legal transaction made with them is considered to be valid which the observation made in the case of *K.Balakrishnan v/s K.Kamalam*²⁸.

Since more cases of elopement are reported adduced by the State Children Commission Report, the Court given a suggestion in a profound consideration of the ground realities, the definition of 'Child' in the POCSO Act can be redefined as 16 years instead of 18. Also Court said that rigorous provisions of the POCSO Act can be excluded for consensual sex after the age of 16 for bodily contact or allied acts and such sexual assault, if it is so defined can be tried under more liberal provision, which can be introduced in the Act itself and in order to distinguish the cases of teen age relationship after 16 years, from the cases of sexual assault on children below 16 years. A more important aspect of the judgment is that it suggested concerned departments

²⁶ *supra* n.21

²⁷ [II (2003) DMC 774]

²⁸ (2004) 1 SCC581

to advise the government to bring an amendment to the effect that the age of the offender ought not to be more than five years or so than the consensual victim girl of 16 years or more. 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 presumably infatuation or innocence. There can be no second thought as to the seriousness of offenses under the POCSO Act and the object it seeks to achieve. However, it is also imperative for this Court to draw the thin line that demarcates the nature of acts that should not be made to fall within the scope of the Act, for such is the severity of the sentences provided under the Act, justifiably so, that if acted upon hastily or irresponsibly, it could lead to irreparable damage to the reputation and livelihood of youth whose actions would have been only innocuous. What came to be a law to protect and render justice to victims and survivors of child abuse, can, become a tool in the hands of certain sections of the society to abuse the process of law.

It is the Court's duty that an innocent shall not be wrongly punished and at the same time upholding the natural justice which shall meet the purpose of the Act and proper remedy also be delivered to the victims through the judgment. As rightly recognized by the Learned Single Judge in *Sabari's Case* (cited supra), incidences where teenagers and young adults fall victim to offences under the POCSO Act being slapped against them without understanding the implication of the severity of the enactment is an issue that brings much concern to the conscience of the Court. A reading of the Statement of Objects and Reasons of the POCSO Act would show that the Act was brought into force to protect children from offences of sexual assault, sexual harassment and pornography, pursuant to Article 15 of the Constitution of India and the Convention on the Rights of the Child. However, a large array of cases filed under the POCSO Act seems to be those arising on the basis of complaints registered by the families of adolescents and teenagers who are involved in romantic relationships with each other. The Court has mentioned that the scheme of the Act is not intended to punish cases of the nature where adolescents or teenagers involved in romantic relationships are concerned.

In *Vijayalakshmi & another v. State Rep. by The Inspector of Police & another*²⁹ The Hon'ble Judge relied on certain UN documents which prescribed Adolescence as 10-19 years age group and 'young adulthood' 10 - 24 years. During young adulthood human neurobiology would

²⁹ [2021 SCC Online Mad 317]

reach adult levels. At the same time the brain continues development, behavior also remodels in part. Profound and protracted physical, biological, and neurological changes linked to puberty occur throughout adolescence and early adulthood. That is pubertal hormones organize the adolescent brain and behavior.³⁰

In the *Vijayalakshmi case (supra)*, the convicted person (2nd respondent) who is also in his early twenties, has stated that because of the girl insisted him to take her away from her home and marry her, due to the pressure exerted by her parents, the police register FIRs for offences of kidnapping and various offences under the POCSO Act. Several criminal cases booked under the POCSO Act fall under this category. The provisions of the POCSO Act, will almost certainly constitute the boy's actions an infraction due to their stringency. Even the legislators have increased the sentence in the POCSO Act to a minimum of 20 years in jail by amending the Act in 2019.

An adolescent boy caught in a situation like this will surely have no defense if the criminal case is taken to its logical end. Punishing an adolescent boy who enters into a relationship with a minor girl by treating him as an offender was never the objective of the POCSO Act. An adolescent boy and girl who are in the grips of their hormones and biological changes and whose decision-making ability is yet to fully develop, should essentially receive the support and guidance of their parents and the society at large. These incidents should never be perceived from an adult's point of view and such an understanding will in fact lead to lack of empathy. An adolescent boy who is sent to prison in a case of this nature will be persecuted throughout his life. Referring to the Sabari case and also the Vijayalakshmi case the Hon'ble Judge has suggested that it is high time that the legislature takes into consideration cases of this nature involving adolescents involved in relationships and swiftly bring in necessary amendments under the Act. The legislature has to keep pace with the changing societal needs and bring about necessary changes in law and more particularly in a stringent law such as the POCSO Act.

While detailing the biological and mental changes during the age of adolescence in the *Vijayalakshmi case (supra)* the Hon'ble Judge has further pointed out that various studies have

³⁰ *ibid*

largely show that the basic human motivations and emotions arise from distinct systems of neural activity. It is also important to acknowledge in addition to this, the vast exposure that is available to adolescents and youth in the form of digital content that play a major role in influencing their growth and identity. It is only natural that in the cases of the adolescent people, nature that are on the rise at present and it does not help matters to avoid acknowledging that the society is changing and influencing people's identity and cognition, constantly. Therefore, painting a criminal colour to this aspect does not help for the cases where both were at adolescent age.

CONCLUSION

Special Acts such as the Prohibition of Dowry Act, the Prohibition of Child Marriage Act, the Protection of Women from Domestic Violence Act, and the Protection of Children from Sexual Offences Act, s.498-A of the IPC are enacted with the intention to eradicate such wicked behaviours from society. Misusing such provisions to satisfy the victim's vengeance and wishes renders the enactment's aim ineffectual and meaningless.

Number of instances reported under POCSO Act are elopements of adolescent girls with young adult boys, both their ages are easy to attract without comprehending the repercussions of legal rules, and such attraction among the adolescent age group is natural. As the Court correctly pointed out in the Sabari and Vijayalakshmi cases (supra), both society and law enforcement authority are misusing the provisions of special Acts for their own benefit. If a child marriage within the same community occurs with the approval of both parents and society, no complaint is filed. If it is the opposing community, it causes dissatisfaction in both adolescent communities. Law enforcement officials often side with the girl's parents, trapping the young boy in difficulties and resulting in the loss of a young life through imprisonment. Three recent judgements have raised awareness among the legal community about the importance of exercising extreme caution while dealing with and awarding judgements under such special laws.

Findings:

- Special laws enacted to address the issues related to women and children are sometimes misused by the authorities which results affect the other gender adversely.

- In case of POCSO Act is concerned, many of the cases are of the nature elopement of adolescent girl with her own will.
- In such circumstances, the boy face harsh penalty, including not only the loss of life in prison, but also the tarnishing of a person's and their family's reputation.
- In such cases, where the victim girl generally loses parental support, the Court and State government fail to address the victimised adolescent girl's safety and financial needs.
- The girl has the right to have a life partner of her choice.
- Even though an adolescent girl has been given granted the right to pick career and the liberty to vote, prescribing age limits through law in choosing her life partner is disabling them and it is against Article 14 of the Constitution of India.

Suggestions:

- In the POCSO Act the consensual relationship among the adolescent and young age adults (16 - 23 years) may be dealt with by seeing the nature of the relationship/case accordingly the course of action may be taken.
- While sentencing punishment, the Court must consider the offender's intention as well as the age difference between the person involved with adolescent girl/boy.
- As in other developed nations, involve Court intervention to monitor the progress and manner in which the prosecution is proceeding in order to prevent a miscarriage of justice and significantly reduce the number of false cases stacking up before the Court.
- The legislature has to keep pace with the changing societal needs and bring about necessary changes in law and more particularly in a stringent law such as the POCSO Act.

DISCRIMINATION AGAINST WOMEN IN PERSONAL LAWS OF INDIA WITH SPECIAL REFERENCE TO GUARDIANSHIP UNDER HINDU LAW & MUSLIM LAW

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ABSTRACT

“Best interest of the Child” should be the paramount consideration for Guardianship. Guardianship of a minor person means an overall supervision of the minor’s personality. It means utmost care should be extended for the welfare of the minor. Guardianship is basically the parent-child relationship which nourishes the physical and emotional development of the child. It is the right and primary duty of the parent to take care of the child and make decisions for the welfare of the child. Generally, the issue of guardianship arises for want of capacity or disability of the wards to take care of themselves or manage and protect their property. The concept of guardianship was evolved by the courts during the British administration which says that the natural guardian of infant is only his father during his life and on his death comes under the guardianship of the mother. Later on the power to appoint guardian was conferred on District Courts by the Guardian and Wards Act, 1890. The Hindu Minority and Guardianship Act, which came in to effect in the year 1956 modified the former Hindu Law of Guardianship of infant. Section 6(a) the Hindu Minority and Guardianship Act, 1956, stipulates that the father shall be the natural guardian of a boy or an unmarried girl, only after him, the mother can be the natural guardian. There is no plausible explanation as to, why father has to be given first preference than the mother. The world is changing day by day with lot of developments in all the fields. ‘Only male members of the family are breadwinners’ has become unsound long ago. In recent times, in more number of families, the female members are becoming breadwinners and the concept of single mother is increasing. Mother, who is bringing and introducing the child to this world should be considered as a natural guardian along with the father. But this inherent right of natural guardianship is not given directly to a mother under Hindu Law and totally denied under Muslim Law. Hence, this paper is an attempt to analyze the discriminatory provisions relating to guardianship under Hindu Law and Muslim Law.

Keywords: Guardianship, Women, Discrimination, Hindu Law and Muslim Law.

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