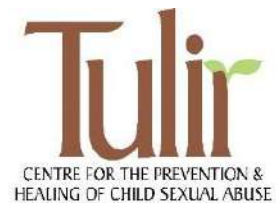




ADOLESCENT SEXUALITY AND THE LAW

SOUTHERN REGION CONSULTATION

ORGANIZED BY



Date: 27th – 28th September, 2019



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Venue: Beverly Hotel, Kilpauk, Chennai

Introduction

Partners for Law in Development (PLD) in partnership with Tulir organized a two-day consultation to understand and discuss the criminalization of adolescent sexuality. This consultation sought to address in particular the impact of laws and policies on adolescents' sexuality, crisis intervention services, sexual and reproductive health and capacity development. Sixty participants¹ representing individual practitioners as well as about 35 organisations working with adolescents across the domains of healthcare, education, sexuality and law came together to debate and discuss the specific opportunities and challenges presented by legal and state-driven interventions and mandates as well as the methods and avenues they used to navigate these structures.



Some participants at the conference

After a round of introductions from participants, Madhu Mehra of PLD briefly introduced the work of PLD as a women's rights group and Tulir as an organization involved with child rights. The two organisations had come together to discuss that category of persons who fell between child and adult, often slipping through the cracks in between. Children are understood as individuals under the age of 18 and adults are imbued with a sense of capacity, responsibility and accountability. Yet, anyone shy of 18 even by a couple of months is infantilised and not recognized as having any capability. Thus,

¹ Refer Annexure for list of participants



Madhu Mehra from PLD opening the conference

how can this category of adolescents be understood? Is everyone comfortable with ‘adolescent’ as a terminology?

Madhu briefly touched upon PLD’s history engaging with laws concerning adolescents, questioning who these laws serve, protect and punish. She set the tone by noting that child protection laws have an undifferentiated, uniform approach for everyone from 0 to 18 years. Conducting these consultations annually since 2016, Madhu explained how the purpose of the

gathering was to engage with the categories of child protection and child rights, questioning their meaning, relevance, forms and whether they are the same thing. She noted this year’s consultation was being held against the backdrop of a global push to nullify all child marriages and increasing government desire to be seen as taking strong action on these issues. It was in this context, under these circumstances, that the consultation was organized to engage with questions of adolescent sexuality and the law.

There was also the need to open up the conversation around adolescent sexuality and engage with the queer and transgender community. How do adolescents who identify as LGBTQIA+ experience sexuality? How does the definition of abuse interact with their lived experiences? How do these categories play out in the LGBTQIA+ community? There was a need to complicate the conversation and engage with its many layers.

It was for this engagement with the complexities and layering of the subject that the consultation was organized, reaching out to professionals working in the sectors of healthcare, child abuse prevention, gender, sexuality education, and LGBTQIA+ issues. Madhu concluded with the hope that such multisectoral conversations will result in multiple perspectives emerging on contexts and challenges of adolescent sexuality.



Participants at the conference

DAY 1

Mapping areas of our work and adolescents: Approaches and Challenges

The participants were divided into groups based on their areas of work. The groups were:

1. Organisations working in the area of healthcare services to adolescents
2. Organisations working in the area of issues of LGBTQIA+ adolescents
3. Organisations working in the area of child sexual abuse prevention and redressal
4. Organisations working towards the empowerment of women and girls
5. Organisations working in comprehensive sexual education

The groups were asked to discuss three key questions on working with adolescents and handling issues related to adolescents:

1. Does your organisation differentiate in its approach for adolescents (>11 years) and younger children (<10 years)?
 - a) If yes, what approaches are used for the two categories?
 - b) If no, why?
2. What kinds of concerns arise in your work related to adolescent sexuality (abuse and consensual)? How do you address these concerns?
3. In what way does the age of consent (at 18 years) impact your work?

Participants separated into their respective groups to discuss the questions. Each group tackled the questions from the point of view of their area of work and noted the responses to the questions. The key points that emerged through the discussion are as follows:

1. Organisation working on LGBTQIA+ adolescent issues:

- Adolescents who are not cis-gendered and heterosexual often face bullying, discriminatory treatment, violence from peers, non-acceptance from their family, and higher risk of HIV. Activists are often unable to reach out to these youth because norms prohibit them from interacting with those below 18 years of age, despite them being the group that most needs the inputs of these activists.
- There is also a prejudice against those from the LGBTQI+ community interacting with children as there is a common stereotype that the paedophilia is rampant in the community. This poses significant challenges in working with LGBTQIA+ youth and helping them navigate the many issues they face by virtue of not conforming to traditional gender norms.
- It is also important that the idea of consent be complicated to include pleasure and not just danger, because a focus only on the latter assumes that adolescents have no agency over their bodies. This is particularly important as many LGBTQI+ adolescents explore their sexuality through sexual relationships before they are 18 years of age. These are consensual relationships with their peers or with older members of the community, who the adolescents reach out to while exploring their sexuality. It is important to question if all these relationships are to be viewed as one of a victim and perpetrator.

2. Organisations working in the area of healthcare services to adolescents:

- The group approached the questions from a medical viewpoint, noting that adolescents are categorized as between 10 and 19 years according to WHO. They understood working with adolescents to be different from children due to differences in the stages of brain development.
- There are multiple challenges which arise while working with adolescents, particularly given the present legal environment which necessitates mandatory reporting of sexual relations of those below 18 years of age.
- Doctors believed that they are often in a quandary because while mandatory reporting is required by the law, it also results in a violation of their duty to protect the privacy of their patients as promised under the Hippocratic Oath. Mandatory reporting also results in many vulnerable populations, such as tribal communities where early sexual initiation is the norm, not accessing doctors for contraception or care. This fear of accessing healthcare results in a higher risk of Sexually Transmitted Infections (STIs) and early pregnancies in some cases.
- There is also a need to deal with sexuality among adolescents with disabilities. Since there is not enough discussion on adolescent sexuality, it becomes even more challenging for medical professionals when they have to deal with it in the case of adolescents with disabilities, and they are often unsure on what is the right advice to be given to parents of these adolescents when they complain, for example, about masturbatory behavior.
- Access to abortion and contraception needs to be made easier as presently, mandatory reporting deters adolescent girls from accessing proper medical services which is a significant risk to their health. Doctors are also continuously anxious about abiding by the law, often not wanting to provide abortion services to adolescents because of the legal hassles, which they recognized was an issue. The law also needs to take into account the changes in technology and medical services over the years and update the laws related to medical termination of pregnancy accordingly.

The World Health Organisation (WHO) defines 'Adolescents' as individuals in the 10-19 years age group and 'Youth' as the 15-24 year age group. While 'Young People' covers the age range 10-24 years.

However it also notes that while age is a convenient way to define adolescence, it is only "one characteristic that delineates this period of development". Age is often more appropriate for assessing and comparing biological changes which are fairly common universally than social transitions which are more dependent on the socio-cultural environment.

3. Organisations working in the area of child sexual abuse prevention and redressal:

- The group noted that organisations adopted a differentiated approach to working with children and adolescents based on the area of work. While most organisations had a differentiated approach when dealing with awareness and education on sexuality, mental health intervention, etc. they often had a standardized approach in child protection issues.
- Organisations faced different issues based on the area in which they were engaged with adolescents. Most organisations worked in the area of adolescent sexuality, health, legal aid and advocacy. They faced challenges ranging from lack of awareness of how to discuss adolescent sexuality amongst parents and teachers and criminalization of adolescent sex where boys are almost always branded as the perpetrator to victim blaming and shaming.

4. Organisations working towards empowerment of women and girls:

- It was noted that, while organisations adopted a differentiated approach, there was no uniformity in how organisations defined adolescents, young women, girls, etc. Organisations differentiated their approach based on their area of intervention —political upliftment, advocacy, education, etc.
- A key question to consider is whether it is appropriate to categorise all adolescents as one homogenous group or whether it would be better to look at adolescents within their specific identities—religion, minority status, caste, gender identity, etc. Such an approach would better capture the diversity and specificities in this age group.
- Double standards in the law, ambiguity in the definition of adolescent in law and policy, and the differentiated treatment of adolescent boys and girls (where the former is almost always seen as the perpetrator and the latter as the victim) are critical issues which need to be addressed.

5. Organisation working on comprehensive sexual education:

- Almost all organisations working in the area of sexual education adopt an age-segregated approach to ensure that their message and mode of delivery is appropriate to the audience they with which they are interacting.



Group Work

- For younger age groups, the focus is health and safety oriented aspects. For older children, there is a more comprehensive approach including the topics of safety as well as desire, pleasure, choices and consequences. Similarly, with regard to the pedagogy, while younger children are engaged through games and activities, with older age groups there is a greater focus on answering their questions and creating a safe space for discussing sexual relations.
- An important challenge identified by these organisations are structures which children have to navigate with regard to instances of sexual abuse. Often parents, law, police and other such structures make it difficult for the child to access retribution even if they do manage to complain about the abuse they are facing.
- 18 years of age cannot be treated as an absolute for deciding whether a person can give their consent or not as the ability to give consent is when the individual acquires the ability to make decisions and the agency to make full and free choices. Agency and independent thought must be inculcated from an early age as it is not something which can be suddenly expected when a person turns 18 years.

Key Takeaways:

- The categorization of adolescents as a separate group is closely linked to the organisation's area of work. Despite their different approaches, organisations seemed to agree that adolescence was a stage of biological and mental development between childhood and adulthood.
- Different organisations face different challenges when talking about or working in the area of adolescent sexuality, depending on their area of intervention. Therefore, while medical professionals faced problems related to mandatory reporting, LGBTQIA+ organisations found it difficult to access youth due to the prejudice against their community and child abuse prevention organisations grappled with criminalisation of adolescent sex and its impact on boys.
- Adolescents must be taught at an early age to exercise their agency as it is not something that they can automatically exercise on reaching majority.
- The effect of mandatory reporting on the access to quality healthcare and confidential

Panel on Adolescents and Health-related Concerns

Cristelle from Dil Se gave an introduction to her organization and its growth from a shelter to a home for abused pregnant teenagers that also provides natural birthing care to those who need it. In the following conversation with Vidya Reddy (Tulir), she described how it was possible for the organization to provide contraceptives like copper Ts to girls who requested for them at the centre, while providing contraceptives like Copper T to girls who were already giving birth at the center was possible, highlighting the unclear legality of this. While it would be the midwife who conducts the insertion, it was not clear if this had to be reported under the Prevention of Child Sexual Offences Act, 2012 (POCSO) since it can be interpreted as a possible apprehension of sex. She also noted that, in most cases of adolescent pregnancy, the boys who were involved were often not in the picture after the girl become pregnant.



Vidya Reddy of Tulir moderating the panel



Mandatory Reporting under POCSO

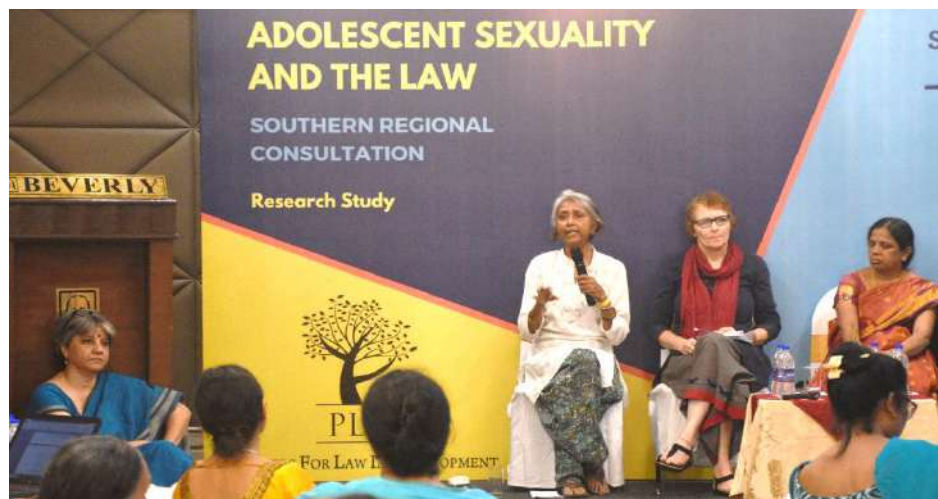
Section 19 (1) of the Prevention of Child Sexual Offences Act 2012 states:

Notwithstanding anything contained in the Code of Criminal Procedures, 1973, any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to,--

- a) *the Special Juvenile Police Unit; or*
- b) *the local police*

Section 21 mandates the punishment for those who do not mandatorily disclose instances of adolescent sexual abuse as imprisonment of up to 6 months or a fine or both.

Dr. Sampath Kumari, a senior gynaecologist at a government hospital in Chennai, spoke about the ways in which government hospitals handled cases of POCSO. They have a particular responsibility to mandatorily report cases of adolescent pregnancy and this



Panelists discussing adolescents and health-related concerns

becomes more relevant when adolescent girls approach these hospitals for medical termination of pregnancies (MTPs). There seemed to be a lack of clarity on the procedures for an MTP, especially on whether it is the consent of the girl or her parents that is final. She noted that doctors do face some



The Medical Termination of Pregnancy Act, 1971

This Act details when pregnancies can be terminated by registered medical practitioners, where the termination can take place, and what are the other conditions under which a woman can terminate her pregnancy. As per the law, a pregnancy can be terminated if it is under 12 weeks or, if it is beyond 12 weeks but below 20 weeks and two registered medical practitioners believe that continuing the pregnancy would be harmful to the physical or mental health of the mother or child.

situations where the couple is married and both are underage but come in for an abortion. In such situations, while the boy may state that he gives his consent, that consent bears no value as they are both below 18 years of age. There was also a question of whether the police needs to be informed in case of an MTP and which cases require the court's permission. The discussion on the issue concluded that an abortion for a girl who is below 18 years of age and is less than 20 weeks pregnant requires the consent of the girl and her parents. For pregnancies over 20 weeks, a court must permit the abortion. In either case, when a girl below 18 years is pregnant and brought to the hospital for an abortion, a case needs to be registered under POCSO. Similarly, in the case of girls below 18 years who are raped and brought for medico-legal examination, it was noted that parents give consent for invasive and non-invasive examinations in case of girls below 12 years while if she is above 12, the girl consents herself. Adolescents are often not informed that they have a right to refuse an examination, although it is a key aspect of consent.

Shyamala Nataraj from SIAAP represented the findings of a study done by them on what consent meant to young people. The research had a sample of 831 students across Delhi, Jaipur and Chennai. Consent is voluntary, clear and definite to each specific interaction and there is no envelope consent.



Discussing what consent means to young people today

However, adolescents seemed to understand consent to be a general acceptance for non-specific interactions. There were only two particular points at which adolescents explicitly mentioned giving consent—at the initiation of a relationship and at the point of sexual intercourse. The research noted that gender differences enter a relationship from the very beginning, with girls acting as gatekeepers and

saying yes to the emotional intimacy of a relationship, and boys acting as the initiators and considered the yes to a relationship to indicate consent to physical relations as well. This differentiated understanding often results in confusion for both parties. The research also looked at agency in a relationship, noting that the agency of both parties was seen to be varying over the course of the relationship. For girls, agency is the highest at the initiation of a relationship. It dips at the stage of non-physical interactions and plummets at physical interaction (not including sex). This is because she only passive accepts these interactions, never explicitly saying yes or no to each interaction. Finally, at the stage of sexual intercourse, it rises again, although never reaching the original level. For boys, agency is low at the initiation of a relationship, rises in non-physical interactions and peaks in physical interactions. This shows that, while there is a focus on teaching girls to say no, there is not enough focus on teaching them to say no within a relationship. In the final stage of sexual intercourse, the girl is often able to say no to sex, but is sometimes afraid of some form of threat or blackmail.

The questions to Shyamala Nataraj were focused on better understanding the research methods as it is often challenging to conduct comprehensive and accurate research on these personal issues particularly



Questions to the panel

agency becomes difficult to navigate in the case of adolescents with mental disabilities. Adolescents with specific disabilities—such as speech and hearing-impaired or vision-impaired—grow up together with touch being an important form of interaction. It is important to discuss these particular issues to comprehensively deal with the subject of adolescent sexuality.

amongst adolescents. The questions also asked for further insights as to how adolescents can be taught to exercise their agency and bodily autonomy.

The research was conducted amongst 15- to 19-year-old adolescents and required the researchers to draw on their experience of having worked on questions of sexual intercourse and HIV amongst high-risk populations. The questions were made less intimidating by not asking the respondent directly what his or her action was, but instead asking it in terms of what is popular among their peers and friends. With regard to their agency and bodily autonomy, it was noted that adolescents need to be taught from an early age how to exercise their agency. The same is true of women. It is not possible to suddenly exercise agency in a particular situation of sexual intercourse when they are not given any opportunity to do so in other situations of their lives.

The panel concluded with a discussion on the sexuality of adolescents with disabilities. Questions of MTP, consent and

Key Takeaways:

- There is a need for uniformity of understanding and procedure among stakeholders when dealing with issues of MTP, adolescent pregnancy and mandatory reporting.
- Adolescents need to be empowered to exercise their agency and consent, understanding that consent for one thing does not mean consent to everything.
- The conversation on consent, particularly with regard to medical examinations and procedures, should include adolescents' right to say no and refuse consent if they are not comfortable.
- The particular issues of adolescents with disabilities, especially with regard to exercising autonomy over their body and understanding consent, requires more attention.

Panel on Early and Child Marriage

M P Antoni from Kerala State Commission for Protection of Child Rights (KeSCPCR) spoke about how Kerala has been handling the issue of child marriage. As per the state vision, there would be no child marriages by 2019. However, this has not been entirely achieved. Despite the state faring well on development indicators, child marriages continue to take place for reasons ranging from ignorance to concerns for safety of unmarried girls. Kerala has implemented a number of remedies which have helped the state in reducing the incidence of child marriages. The state implemented the Kerala Prohibition of Child Marriage (2008) through which CDPOs are also Child Marriage Prohibition Officers. Additionally, through its widespread network of multiple actors such as *anganwadi* workers



Panelists discussing early and child marriage

school and ministerial authorities, and the school parliament worked together to address the issue of teenage pregnancy amongst girls of 15-16 years. Through awareness programs using street theatre carried out by the students themselves after discussions with the government functionaries, incidents of teenage pregnancy were brought down to zero in the school.

Sejal Dand from Anandi spoke about the difficulties of navigating adolescent sexuality, child protection laws and child rights while working in a predominantly tribal area. Research findings by her organisation showed that, of 731 FIRs across three districts, 86.59% had been registered by parents, only 21% were filed within 20 days, and in 90% of cases the abductor's name was known. This clearly indicated how laws intended to protect children were being used by parents against them. Cases of



Adolescent sexuality and child rights amongst tribal communities

and helpers, ICDS officials and CWC officials, District Child Protection Units and ChildLine network, they are immediately notified of any attempt at child marriage in a community. The KeSCPCR has conducted various workshops to understand the community's points of view on child violence and marriage. He concluded by citing the example of a school in Nilambur (Malappuram district) where the Kerala Institute of Local Administration (KILA),

elopement were being filed as abduction and rape so much so that in a case study sample of 29 cases out of the 731 cases, only four were found to be real cases of abduction, while in the remaining 25 cases, the girls had wilfully chosen to elope. Yet, all 29 boys were in jail with adult men serving their time as mandated under POCSO. There are also some unique aspects to elopement in tribal areas. For

instance, during a particular period of "akha teej," families forcibly marry off their girls resulting in a spike in elopements around this time. Girls see eloping and marrying as the only way for them to exercise their agency. Similarly, "dawwas" which used to be easily arbitrated for elopement are now as

high as Rs.1.5-3 lakhs with the money going into the hands of the “panch” who act as intermediaries between the families. The present focus of Anandi was the increasing number of honour killings, not limited to those by Khap Panchayats. The organisation has records of 25 cases from January to September 2019, of which the police have no records. This goes to show how a large number of young people are being killed/murdered because they choose to elope.

Manisha Gupte from MASUM introduced her work as trying to prevent forced, early, child and hasty (FECH) marriages. Conversations of forced marriages look only at girls who are forcefully married off as a result of having sexually transgressed. As heterosexuality is assumed in a marriage, there is no data on homosexual or asexual persons who are forced to get married. Early, child and hasty marriages are seen to be common to both arranged and marriages of choice. There are many factors unique to sugarcane cutting areas that necessitate early marriage such as parents being unable to leave young girls behind and sugarcane contracts being usually given as couple contracts. Skewed sex ratios and soaring land prices result in high demand for the limited number of girls who are there in the village. Brides are sought from poorer villages, sometimes breaking caste hierarchies. With rising aspirations among girls, there is a desire to marry boys who are not farmers but have both land and a job, resulting in boys sometimes getting a job only till they get married. With parents forcing girls to get married at 18, they often elope prior to that—this often results in further pushing down the age at which girls get married. The girls who elope are often doing it for the freedom that they believe they will get by moving out of their parents’ home. In order to provide a comprehensive approach, MASUM is providing bus services to young women to increase their mobility and allow them to complete their education. They are also encouraging the community to take a pledge to eradicate early marriage from the village. MASUM also catalyses meetings between boys and girls to interact as friends in non-sexually charged environments.

Deekshitha Ganesan from CLPR located her comments in the implementation of Prohibition of Child Marriages Act (PCMA) in Karnataka and the recent amendment using the example of a case. While PCMA states that annulment of the marriage can be done within “two years of attaining majority,” it leaves in quandary the time between marriage and the time of attaining majority. In a recent case, a 12-year-old girl was abducted by a major who was also a person with disability (PWD). Even though the girl escaped and went back home to her parents, she was forced to marry the same boy since he had conducted a marriage ceremony after abducting her. The marriage was then consummated



Prohibition of Child Marriage (Karnataka Amendment) Act, 2016

In 2017, the Karnataka Government passed the *Prohibition of Child Marriage (Karnataka Amendment) Act, 2016*. The amendment states:

2. *Substitution of section 3: In the Prohibition of Child Marriage Act, 2006 (Central Act 6 of 2007) (hereinafter referred to as the principal Act), In section 3, after sub-section (1) the following shall be inserted, namely:-*

“(1A) Notwithstanding anything contained in sub-section (1) every child marriage solemnized on or after the date of coming into force of the Prohibition of Child Marriage (Karnataka Amendment) Act, 2016 shall be void abinitio”.

against the wishes of the girl's parents. Although the child was moved to a shelter home and a petition was filed for voiding the marriage, there were multiple legal challenges. The Court asked why criminal proceedings were not initiated and needed to be convinced that criminal proceedings were not required for annulment. When the respondent finally came to court and admitted that he had made a mistake, the judge changed and there were new legal and procedural challenges that emerged. The long legal processes and time taken have resulted in both parties no longer being available for case proceedings. While the Karnataka government passed the amendment saying that every child marriage after the date of amendment was void from the get go and provided enhanced punishment for some offenses, there is a need for clarity on whether a court decree is needed for a child marriage to be considered void and what the procedures are.



Deekshitha Ganesan from CLPR

Madhu Mehra from PLD introduced research studies done by PLD on child marriage and POCSO. From their research, it was seen that efforts of girls who wanted to escape child marriages were often thwarted because police are frequently hand-in glove with parents and the entire system is permeated by caste relations. These girls typically approach social workers through girls' collective groups, youth groups or social workers. The social worker takes on the responsibility of understanding the situation, and takes the risk of filing a complaint and collecting enough evidence to make a case. In some cases where the girl is too afraid to go to the police station, it becomes the social worker's responsibility to fight to get the issue to court. The local resolution to such situations is for the girl to make a penalty payment of Rs.9 lakhs to the village and to live on the outskirts of the village. It is evident that law rarely changes social norms. Looking at PCMA cases in trial court over a ten-year period, it was seen that nearly 65% of cases were initiated by parents, using the provision against their daughters who have eloped, in conjunction with criminal law. Similarly, PLD's research on trial court judgements on POCSO showed that, in cases of consensual relations, the case was almost always filed by the girl's family. If filed by the girl, it was only to get their partners to marry them, after which they would become hostile witnesses. There was a clear relationship between age of consent, underage marriage and POCSO. Given the severe implications of POCSO, including 20 years of imprisonment and death penalty, it is no longer possible to have a discussion on early and child marriages in isolation of POCSO.



Questions to the panel

The panelists were then asked questions by the audience. One question was how organisations could intervene in the case of a homosexual or asexual youth being forced into heterosexual marriages. Another question pointed to how suicide was seen a response or reaction that girls had in their relationships, and how this played in the communities the panelists worked in.

Manisha Gupte responded that, in the case of forced marriages, it was often very difficult to identify. In many cases, male-to-male physical interaction was very common and older men, with wives and children, engaged in sex with younger men without seeing themselves as gay. However there was a hope that, with the increased awareness of and conversations around LGBTQIA+ identities, there would be more people speaking out. With regard to suicides in relationships, while it was seen amongst both boys and girls, gender roles meant that girls' suicides were more private while boys were more open about it. As a result, girls were often dead by the time someone found out. It was also interesting to note that suicide was more common amongst friends of the girls who were left behind after a couple elopes, as they are the ones who face the ire of the community.

Key Takeaways:

- Child marriage continues to be a part of the fabric of communities despite the efforts of the law. There are also ambiguities and a lack of clarity in laws related to child marriage and annulment of such marriages, which makes the implementation of these laws difficult.
- In particular communities, the reasons for and the ways in which underage marriage takes place differs based on the local situations and norms.
- There is significant evidence to show that most POCSO and child marriage cases are filed by the parents of a girl to come in the way of a consensual relationship. The laws, which are in place to protect adolescents, are therefore used against them.
- In cases where the parents force their daughters to marry early, there is often little help from the system as there is a nexus between parents and the police.
- Given the relationship between POCSO and underage marriages, and the ways in which POCSO and PCMA are used together to usually imprison the boy, it is important to look at these laws more closely.

Report Launch: Why Girls Run Away to Marry

Based on stories of girls from three cities, this study introduces the issue of self-arranged marriages into the debate on child and early marriage in India. It questions the misplaced emphasis on law and deterrence approaches to tackle intersecting issues of adolescent sexuality and early marriage.

The end of Day 1 at the Southern Consultation on Adolescent Sexuality and the Law conducted by PLD in association with Tulir saw the launch of a report titled 'Why Girls Run Away To Marry.' The chief guest was Honorable Justice S Vimala and the guests on the dias were Geeta Ramaseshan (Advocate, Madras High Court) and Vaishna Roy (Associate Editor, The Hindu), joined by Madhu Mehra (PLD).

Once the report was launched, the Chief Guest was asked to say a few words.

Hon'ble Justice Vimala opened by appreciating how thorough and comprehensive the report was and went on concur on the complexity of cases involving adolescents. She went on to discuss the changing reality of the present age, contrasting it to 1860 when the IPC was formulated. In her opinion, efforts to develop the thinking skills of Indian youth has been insufficient over the years and it was imperative to have conversations with the youth on the importance of decision-making and responsibility. She stressed the role

Is the law a place of protection or punishment?

of family and education to guide them. Noting the gender bias inherent in the law that saw the girl as the victim by default, Justice Vimala questioned whether the law was a place of protection or punishment. Noting how the law was usually seen as a space of punishment, she referenced the inability of the Child Marriage Law to prevent the action, reiterating the need for attitudes and awareness to change this behaviour. She appreciated the participants of the consultation for engaging with multiple realities that impact adolescents and reiterated that youth should be allowed to take decisions subject to the support and guidance of adults. She recognized the utility of considering exemptions for adolescents under POCSO and concluded by acknowledging the pertinence of the report.

Vaishna Roy stated her overall agreement with the report and put forth the possibility of differentiated approaches in the law to avoid criminalization of boys for consensual sexual activity. She also called focus on the role of stigma in criminalizing adolescent sexuality. Illustrating the example of Ireland, she stressed the role of education and awareness (particularly sex education) in changing conservative societies, warning against the tendency to see marriage as the ultimate panacea for all problems and instead suggesting encouraging dignity in sexual relationships. She called out the taboo surrounding female sexual desire and spoke of how this, for example, impacted awareness of contraceptives. She briefly touched upon the role of popular culture in perpetuating this taboo and stigma before questioning whether abortion could be disassociated with criminality. In her opinion, returning the power over her body to the woman would in itself take away from the stigma surrounding sex in the country.

What is the role of stigma and taboo in criminalizing adolescent sexuality?

Geeta Ramaseshan noted the greater space for agency in the terminology ‘self-arranged marriages’ instead of ‘love marriages.’

Madhu Mehra spoke about the reasons for the study, pointing out that laws were often based on ideals and not ground realities. She called for engaging with the law through a multisectoral lens, noting how those worst affected by the law are often those who need its protection the most. She stated that endogamy and arranged marriages work through a certain logic and anything that disrupted this logic would not be approved. She clarified that girls below 18 would be allowed to

Why are those that are most in need of protection from the law often those worst affected?



Dignitaries at the report launch

give consent to abortion only if the age of consent was lowered, given that the case would have to be reported under POCSO now. She noted that the recent amendment on the penalties for boys has led to increased polarisation and commented on the police’s role, acknowledging their place in a larger power structure that prioritises the parents’ complaint over that of the girl. She concluded by

flagging the role of privilege in providing immunity from the law, noting that children have made multiple choices by the time they turned 18. Thus, in the absence of privilege, young people often paid a high price.



Geeta Ramaseshan, Lawyer in the Madras High Court, at the Report Launch

The audience then posed questions to the speakers. There was a comment adding on to Vaishna Roy's anecdote of a friend needing to consume alcohol to allow herself spaces of sexual exploration, describing how such behaviour was observed with men who sought to blur the boundaries and have same sex encounters, though they thought of themselves as heterosexual. Thus, it was agreed that society saw it important to have an excuse for sex, with marriage being the only accepted framework. The second question asked for any comparison of cases of consensual relationships before and after POCSO (where the age of consent was increased from 16 to 18). Geeta Ramaseshan said she was not aware of any comparative studies but prior to POCSO, these cases were treated as kidnapping and Section 376 was not applicable to girls under the age of 15. Responding to Vaishna Roy's query on separating abortion from criminality, it was clarified that pregnancies below 20 weeks could proceed with the

girl's consent independent of the case. Justice Vimala concluded by noting that mandatory reporting often led to more injustice to women, since cases where the perpetrators were known to the family were rarely reported and in other cases, mandatory reporting affected willingness to seek healthcare. When the reporting does not account for the girl's consent, it often does more harm than good.

To know more, please read reportage on the book launch carried by [The Times of India](#), [New Indian Express](#), [Samayam](#), and [The Hindu](#).

Dr. Jim Jesudoss from Sakthi Vidiyal spoke about the impact of law enforcement officials and their perspectives of adolescent sexual conduct. In his opinion, the authorities often induced guilt and judged the morality of adolescents engaging in consensual sexual behaviour, thus contributing to the self-damaging behaviours of these youth. He pointed out the discrepancy between such behaviour by the authorities and the promise of child-friendly procedure under the Juvenile Justice Act (JJA), noting how authorities often valued the dignity of the family over the rights of the child. Accepting his original support of mandatory reporting, Dr. Jesudoss explained how he has since revised his opinion, seeing how it was being used by the police to demand bribes and how mandatory reporting prevented girls from moving forward in their lives. He concluded by reaffirming the need to engage with the age of consent and question the ways in which adolescent consensual sexuality is understood and accounted for.



Juvenile Justice (Care and Protection of Children) Act, 2015

The Juvenile Justice (Care and Protection of Children) Act, 2015 addresses children in conflict with law and children in need of care and protection. It replaced the Juvenile Justice (Care and Protection of Children) Act, 2000. An important point of departure between the JJ Act, 2000 and JJ Act, 2015 is that while the former treated all children below 18 years similarly, the latter allows for juveniles in conflict with law in the age group of 16–18, involved in Heinous Offences, to be tried as adults. The Juvenile Justice Board has been entrusted with the responsibility of making the assessment to decide whether the child is to be tried as an adult or as a child.

Nirmala Rani from Nameless Faceless began by explicitly taking a stance against the criminalisation of consensual adolescent sexuality. She suggested that cases of elopement should ideally not be considered under the Prevention of Children from Sexual Offences (POCSO) Act or at the very least, must receive differentiated treatment. However, she reaffirmed the need to ensure the law continued to protect its intended beneficiaries. She also raised questions as to whether the children between the ages of 16 and 18 could receive special treatment by way of an amendment but urged the need for these changes to be made with the backing of public support given the larger socio-economic and political backgrounds in which they are rooted. She also touched on the role of enforcement authorities, noting that lowering the age of consent may not be helpful as the ultimate power lay in the hands of policemen and other authorities who were often biased and deliberately misinterpreted the age of consent. To illustrate this, she commented on how a significant number of secondary rape cases in Tamil Nadu between 2011 and 2013 were elopement cases, with a majority of them ending in acquittal even when the girl did not turn hostile.

Khushi Kushalappa from ENFOLD made a presentation by using four cases to illustrate various pain points and questions that arise with regard to the subject. She shed light on the discrepancies that



Panelists discussing criminalisation and sexual consent

sometimes arose with regard to the age of both parties when what is observed, reported and recorded do not seem to match. She illustrated how some of the boys (accused) have poor representation in court, affecting their quality of legal counsel as well as impacting their education in the long term. She raised the issue of paying compensation for consensual relationships, asking if that was fair practice, as well as the potential right of the biological father (accused) to influence adoption decisions. Finally, she also touched upon the role of parents and their support in handling the situation, noting how this support could be an influencing factor in how the case panned out. She noted some cases, however, that resulted in marriage proposals possibly as a means to avoid the consequences of a police case, though what would happen in case the boy was convicted was often left unanswered.

Akhila RS, a lawyer, pointed out the reactionary nature of the law, noting the absence of any data or evidence to support it. In her opinion, electoral policies and institutions were the cause of the laws not reflecting child-friendly procedures. Using the Sex Offenders Registry as an example, she pointed at the lack of public discussion or accountability mechanisms, making rehabilitation very difficult. She also noted that biology explains the need for individuals to be tried as adults only at the age of 18. She concluded arguing that the rehabilitative function of the justice system had been grossly ignored because of how time- and investment-reliant it is.



Questions to the panel

After all four panellists had spoken, the floor was opened to questions. Much of the conversation revolved around the age of consent and what it should be. While one suggestion was to provide exemptions for the 16-18 age bracket and include a “proximate in age” clause, another questioned why the conversation only saw ages 16 and 18 as options for the age of consent when it was 12 years when the IPC was enacted. The second theme of questioning revolved around mandatory reporting, noting its role in helping victims of child sexual abuse (the “genuine” POCSO cases) while also recognising the reality of selective reporting due to the paternalistic and judgemental attitude of the police and courts. The dilemma posed to healthcare providers between the patient’s right to privacy and the legal mandate to report was also discussed, noting how mandatory reporting impeded access to healthcare. The conversation about healthcare also revealed the various levels of consent with regard to the Medical Termination of Pregnancy as well as DNA testing. The final question raised the need for legal amendments to take into

account gender and sexual minorities, and the need to have more inclusive legal frameworks was acknowledged.

Key Takeaways:

- There is a need to ensure last mile law enforcement with the authorities. This was evident in the number of concerns and level of suspicion expressed regarding the ways in which police in handled cases of consensual adolescent sexuality and elopement.
- The age of consent requires more detailed debate and discussion, with various viewpoints emerging – keeping it at 18, introducing an amendment to treat ages 16 to 18 as separate category while still retaining the age of consent, reducing it to 16.
- Participants noted the differing definitions of the word ‘adolescent’ in the law (person between 14 and 18 years as per Child and Adolescent Labour Prohibition Act) and healthcare (10-19 years) and called for the need for consensus.
- The effect of mandatory reporting on the access to quality healthcare and confidential sexual and reproductive health cannot be ignored.

Panel on Comprehensive Sexuality Education in Formal and Informal Spaces



Panelists discussing comprehensive sexuality education

Jaya from Sahodaran spoke about the need for more detailed understanding of LGBTQIA+ issues in conversations on adolescent sexuality. She detailed the increased vulnerability faced by gender non-conforming children who often do not have access to formal spaces, are victims of bullying, and are sometimes forced to have sex. While recognising Tamil Nadu as being relatively more progressive, she noted the absence of dedicated laws for the protection of the LGBTQIA+ community and the unwillingness of most states to act on the recommendations of the NALSA judgement. She concluded by observing the lack of statistics on large sections of the LGBTQIA+ community, also remarking that the population density of the community was too low to be a political force.



NALSA Judgement: National Legal Service Authority vs Union of India

This case was filed by the National Legal Services Authority of India (NALSA) to legally recognize persons who fall outside the male/female gender binary, including persons who identify as “third gender”. This judgement saw the Supreme Court legally recognising transgender people for the first time and acknowledged their entitlement to fundamental rights under the Constitution and International law. It also directed state governments to develop structures to protect the rights of this community.

Chintan Modi, a Prajnya Fellow, began by clarifying his identity (queer, he/him and they/them pronouns) and the placement of his ideology (feminist, queer affirmative, sex positive and against body-shaming). He described his work in peace education, moving past associations just with human rights and communalism to include structural violence as well. Given the entry of applications like Tinder and Grindr into the sexuality education space, he reiterated the need to be responsible with the resources being used to educate students. He suggested practical ways of integrated sexuality education in schools, such as making PE classes more accepting, inviting external speakers who identify on the spectrum and reinforcing consent even between students and teachers. He concluded with the call to include the queer agenda into gender sensitisation programs at schools, noting that the queer identity is experience in consonance with other identities. To illustrate this, he also noted sexuality education as is happening in Indian children’s literature and Young Adult fiction (Talking of Muskaan, Slightly Burnt, etc.)

Jasmine George from Hidden Pockets spoke of her work trying to blur the lines between formal



Discussion on blurring the lines between formal and informal spaces

and informal spaces in sexuality education, keeping in mind the changing nature of the subject with the proliferation of applications like Tinder and Grindr. She spoke of the need to accept technology as an actor, recognising that youth have access to information but do not know how to translate this into public health services. She described Hidden Pockets’ experience with men who often approach them for more information and later get drawn into conversations for the first time in their lives regarding questions of consent, pleasure, pain, etc. She concluded by flagging the need for sexuality education to address rejection, failure, desire, duties and responsibilities while simultaneously recognising that today’s youth have blurred the lines between formal and informal spaces.

Dr. Suchitra Ramkumar, a sexuality educator, described her methodology as rooting conversations on Child Sexual Abuse (CSA) around the umbrella of safety and growing up and stated that sexuality education should be anchored in the larger picture of child development. She explained how the nature and content of questions asked by children at different ages had not changed much in her thirty years of experience. She described her greatest difficulty as finding the right words to communicate with adolescents as well as ensuring that teachers remained engaged and trained for follow up. She concluded reaffirming the need for children to have access to nonjudgmental adults willing to share factual information and situate sex in the context of desire and consent.



Dr. Aishwarya Rao, panel moderator

The floor was open to questions regarding the transgender community. The questions addressed whether it would be advisable to have a separate school for transgender children, which children's home they are sent to by the Children's Welfare Committee (CWC), and if POCSO proved a hindrance to the community when children run away from home in search of more supportive environments. Jaya from Sahodaran stated that separate schools would increase stigma and noted the lack of state structures and support for transgender children as well as FTM transgenders. She mentioned that POCSO was intended for child protection but in the case of transgender children, the parents did not recognise the issue at all. One participant argued that teachers would be best suited to provide sexuality education and there was a suggestion to have a dedicated Sexuality Education teacher in all schools. The suggestion was met with a warning against being subjected to an individual's morality, the unwillingness by teachers to be seen as an LGBTQIA+

ally given the risk of association as well as the recommendation to make sexuality education everyone's job. There was a call to engage with these subjects in non-educational spaces as well, to avoid the power equation of classrooms.

Key Takeaways:

- There is inadequate understanding and representation of the LGBTQIA+ community in conversation, law as well as advocacy and activism. Their needs and expectations must be better understood and represented.
- The question of who bears responsibility for sexuality education is one that needs examining. Similarly, what resources are being used to engage with students and what spaces these conversations occupy are also important questions to be asked.
- The need for dedicated state and legal support structures for the LGBTQIA+ community was indicated and needs more thorough understanding.

Next Steps Forward: Summary of Points Raised in Group Discussion

Participants were split into four groups and asked to discuss the following:

1. Based on your work, what are your justifications for retaining or reducing the age of consent?
2. What are three issues that have emerged for you over two days?
 - a. What is it about these issues that is important?
 - b. What is the way forward?

The key points that emerged through the discussion are as follows:

- There was no consensus around the age of consent. Some participants felt it should not be lowered (because of biological maturity, access to protection under law, etc.), others felt it should be lowered (on account of the reality of premarital sex, criminalisation of boys, etc.) while one participant suggested an increasing of the age (citing maturity and physiological and mental development). There was also a suggestion to create an exemption in the law for adolescents between the ages 16 and 18 to prevent criminalisation of consensual sexual activity. There was a recommendation to revisit the debate following expert inputs but this was followed by a warning against medicalisation of age of consent. There was consensus on the need to decriminalise consensual sexual activity amongst adolescents.
- The relationship between the age of consent and the age of marriage will need to be reviewed in keeping with this decriminalisation. Similarly, there was a need to understand the interaction between POCSO and Prevention of Child Marriages Act (PCMA), especially with regard to access to services such as MTP.
- Participants agreed on the need for more conversation and debate on mandatory reporting. While it was seen as useful for CSA cases, especially when there were unequal power relations involved, it was seen as negatively impacting access to healthcare.
- The role of sexuality education was seen as key to conversations about adolescent sexuality. Participants agreed that this needed to be integrated with the curriculum with some arguing that it should cater to different stakeholders and begin as early as 2 years to ensure its impact on early identity formation. Participants also expressed the need to be more positive about sexuality choices, focusing on not just saying ‘no’ but actively saying ‘yes’ as well.
- Participants concurred on the need for more understanding of LGBTQIA+ issues as well as spaces of inclusive education. They also called upon JJA and POCSO to be made LGBTQIA+ inclusive.
- It was suggested that a think tank be instituted formulating a standardised curriculum for sexuality education that can be implemented in schools across the country.



Key takeaways being discussed

Conclusion



Participants listening to key points at the conference

The two-day consultation ended with participants and organisers alike agreeing to the need for deeper engagement and greater understanding. Participants stressed the need to involve all the stakeholders involved and impacted by the laws governing adolescent sexuality, particularly the medical fraternity and those who work directly on the ground before any uniform stance on topics like the age of consent could be reached. While there was overall agreement on the need to decriminalize consensual sexual activity, the best possible means to achieve this and the repercussions this could have on other laws and issues led to the conclusion that deliberation was better than hasty action. Overall, the two-day consultation reinforced the need for collaborative action and common platforms for knowledge sharing among lawyers, medical professionals, NGO partners, state actors and all other relevant parties to do what is best by our adolescents today.

ANNEXURE

Participant List: Southern Region Consultation

S No	Participant Name	Organisation/Affiliation	S No	Participant Name	Organisation/Affiliation
1	Aiswarya Rao	Pediatrician & disability rights advocate	32	Manuel	Sharana
2	Akila RS	Lawyer	33	Mona Basker	Pediatrician, CMC Vellore
3	Anjana Purkayastha		34	MP Antoni	KeSCPCR
4	Balakumari	Doctor	35	Mrinalini	PLD
5	Chandan Nayak	SAATHII	36	Muhammed Ali	ChildLine India
6	Chintan Modi	Prajnya	37	Nancy	Tulir
7	Cristelle Hart Singh	Dil Se	38	Nirmala Rani	Nameless Faceless
8	D Selvi	RUWSEC	39	Olga Aaron	BRAVOH
9	Deekshitha Ganesan	CLPR	40	P Chitra	
10	Deepika Kinhal	Vidhi Centre for Legal Policy	41	Parvathi Srinivasan	
11	Dr. Ishwarya	Indian Council for Child Welfare	42	Ratna Robinson	Peace Trust
12	Dr. S Anantharama Krishnan		43	Rohini Raman	Anweshi Research Centre for Women Studies
13	G Kumaresan		44	Ruchi Yadav	Hunger Project
14	Geeta Ramaseshan	Lawyer	45	Sampath Kumari	Gynecologist
15	Hima Bindu		46	Sandhiyan Thilagavathy	AWARE India
16	Janaki Sankaran		47	Sannuthi Suresh	
17	Jasmine George	Hidden Pockets	48	Sejal Dand	Anandi
18	Jaya	Sahodaran	49	SG Ali	
19	Jaya Lakkineni		50	Shaanthy Gunasingh	
20	Jennifer	ChildLine India Foundation	51	Shantamma	CIEDS
21	Jim Jesudoss	Sakthi Vidiyal	52	Shobhana	
22	K Raja Suganyan	Ekta	53	Shyamala Nataraj	SIAAP
23	Kamala		54	Suchitra Ramkumar	Sexuality educator
24	Kirthi Jayakumar	Red Elephant Foundation	55	Sudaroli Ramasamy	Prajnya
25	Krithika		56	Swagata Raha	ENFOLD
26	Krupa Varghese	AuxoHub	57	Swaranjali	PLD
27	Kushi Kushalappa	ENFOLD	58	Varalakshmi	
28	Lakshmi	CIEDS	59	Vidya Krishnamoorthy	UNFPA
29	Madhu Mehra	PLD	60	Vidya Reddy	Tulir
30	Manisha Gupte	MASUM	61	Yashasvini Rajeshwar	AuxoHub
31	Manjima	American Jewish World Service			