

CRIMINALISING CHOICE: Case Studies from Gujarat

Aarti Nayak, a 16-year-old Adivasi girl from rural Dahod, was staying in a residential high school where she was a star athlete when she was suddenly summoned home to her family. Upon reaching home, she learnt that she was to be immediately engaged to a 24-year-old Patel boy from the village her father worked in as migrant labour.

Shaken by this decision, knowing its effects on her life and education, and given no opportunity to protest it, she called the boy she liked—Chetan—and they eloped. They were on the run for nearly 15 days, at the end of which they were caught by the police against a First Information Report (FIR) lodged by her father.

The complaint? Kidnapping and abduction of a girl to compel marriage under Section 366 of the Indian Penal Code (IPC). Chetan was arrested and remains in lock-up. Aarti, though not married, was yanked out of the education system immediately.

Aarti is not an aberration, her story is a pattern. An exploratory study¹ conducted by ANANDI of 731 formal police complaints (First information Reports / FIRs) and 29 in-depth personal interviews related to abduction and kidnapping of young girls reveals that consent, choice, and agency of young women and girls, especially in the context of sexuality – remains deeply criminalised by both law and society.

Nearly 87% of the total FIRs were launched under the same section of the IPC as that used by Aarti's father: Kidnapping and Abduction of a Girl to Compel Marriage. Though the complainants most often do not know

legal jargon, these sections are applied by the police officer taking the complaint based on the details provided.

This, combined with the fact that 91% of the FIRs had the address of the abductor mentioned, raise suspicion of the law being weaponised by parents wanting to track down daughters who had eloped.

The data from the in-depth interviews, though limited, is even more telling in corroborating this suspicion. In 20 out of the 24 cases where FIRs had been registered, the survivors had left home out of their own volition.

However, the FIRs mentioned these as abductions under the guidelines of the Supreme Court on missing children. Out of the five cases where the FIRs were not registered, in three cases the parents had severed all ties with the girls as they continued to live with the partners and in two cases the parents compelled the girls to leave their partners of her choice.

Since two-thirds of the FIRs studied were in reference to young girls under the age of 18, and hence technically 'minors' under the law, it becomes pertinent to mention how the law in India treats sexual consent under 18.

Protection of Children from Sexual Offence Act (POCSO), 2012 and the Supreme Court's guidelines on Special Oppressional Procedures for Missing Children focus on 'protection' from harm, and violation against the person under 18 years, thus collapsing the age of consent with the age of marriage.

This undermines the principle of 'evolving capacities' in relation to adolescent girls

spotlight

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and any explorations of agency are brought under the category of crime against them, which leaves no room to exercise their agency. This also renders sexual consent void, as all under-18 sexual acts are criminalised by law.

The non-recognition of choice and agency of the girl leads to criminalisation making her further vulnerable to different forms of violence. The girls, who are brought back from alliances chosen by them, are often married off by force to men who can pay the highest bride-price. At home, their movements are restricted and they face stigmatisation and distrust from her parents. Out of the 29 girls interviewed in the study, only two girls (6.9%) could continue with their education after they were brought back home.

A study of the data also reveals a perceptible time lag between the discovery of the 'missing' girl and the registration of the FIR - only 20% of the cases were registered within two days of the kidnapping, with a majority being filed between 3-5 days.

Interviews with the survivors as well as community leaders reveals that this is often the time used for negotiations of customary penalty, known as *davo*, wherein the parents of the girl demand a pre-fixed penalty from the boy with whom she eloped. Without paying *davo* the young couple does not get social sanction for their union. Until the time *davo* is paid up, the girl is ostracised by her natal family.

The custom of *davo*, the amount of which can range from Rs. 10,000 to Rs. 200,000, is perceived in many regions as a measure that deters youngsters from exercising their choice in marital alliances. Irrespective of whether *davo* is honoured or not, the young girl involved in the relationship ends up bearing the social, emotional, and economic burden that enhances her vulnerability.

Families have to borrow heavily to pay up *davo* as well as to legally settle the cases. Though these loans are taken by the families, the social and economic burden of its repayment falls on the young couples and especially the young bride, forcing them into insecure and unsafe livelihoods, effectively ending any chance of further education in the face of crippling debt.

41% of the cases showed that the women got pregnant soon after eloping - either in a desperate bid to get society to sanctify their union or due to a lack of adequate sexual and reproductive health knowledge. This creates a whole other spiral of underage pregnancy and all its related risks, especially in the context of the couple being reluctant to access any health services for fear of being found out.

For an underage couple in love at the intersections of customary practice and the law, the options present themselves as a rock and a hard place. Why then, in the face of such deep criminalisation, do young women and girls continue to exercise their agency in matters of sexuality?

In each of the cases of agency being criminalised, there are deep links between sexuality and mobility. The urge to elope is not only prompted by an attraction to their partner, but also a need to escape the home. Among the young women and girls interviewed, 12 had left homes as they faced violence after their families

learnt about their romantic relationships or they anticipated a backlash. They had also faced violence when mobile phones they kept secretly were discovered by the parents. Across the board, the interviewees were overburdened with care and domestic work with severe restrictions on mobility, friendship, and use of mobile phones. They also had little choice when it came to decisions of education, career, marriage - and a majority of the interviewees saw elopement as a way to finally exert their choice, a breaking of the shackles that held them.

These figures create a picture of the social imprisonment that often accompanies a young woman into sexual maturity - especially in a society where honour (ijjat) is located in the sexuality of the unmarried woman and, by extension, her mobility.

Focused Group Discussions (FGDs), conducted with girls around the age of 14-16 puts some data to the restrictions on mobility. As per the data collated through the participatory mobility tool, 58.6% of girls were not allowed to visit their friends, and 31% of girls visited friends mostly in their hamlet which largely included the members of their extended family. 70% of girls had no access to sports or leisure outside their schools. 80% of the girls had never been to a theatre to watch a film. 82% could not access the markets alone. These figures create a picture of the social imprisonment that often accompanies a young woman into sexual maturity - especially in a society where honour (ijjat) is located in the sexuality of the unmarried woman and, by extension, her mobility.

Understanding the needs, desires and fears of young women and creating

ways to help them navigate the choppy intersectionalities of sexuality, mobility, and choice becomes an urgent mandate for civil society organisations and women's collectives. ANANDI, along with its partner women's collectives - Panam Mahila Sangathan (PMS), Devgad Mahila Sangathan (DMS), Maliya Mahila Shakti Sangathan (MMSS) and Mahila Swaraj Manch (MSM) - run an Alternate Dispute Resolution Forum, which has Gender Justice Committees over the last two decades.

This forum is now emerging as a key ally in support of young people who have exercised choice in selection of partners, to navigate with the different stakeholders - mainly the police, juvenile justice system, and the community leaders.

Protection to young couples and girls in particular to ensure that there is no further violence on them such as confinement, forced marriage, recording of these incidents to the police, and accompaniment and legal support to the girls have been some ways that the Gender Justice Committee prioritises in its work with young people criminalised by law and society locally.

ANANDI is also taking the research findings and recommendations² to other civil society organisations and different government departments to build a larger coalition to address the lacunae in the laws which criminalise young people's agency and choice with regards to exercising their sexuality.

Notes & References

1. Joshi, Pragnya. Criminalisation of Agency, Choice, and Consent: The case of young girls in Gujarat at the Crossroads of law and Customary Practices. <https://drive.google.com/file/d/1tK7XzMJd7x6t7KjwHOZu7dfAQmGVTeW/view>.
2. ANANDI. Research Findings and Recommendations: The early marriages in conflict with law and society: The Case of Gujarat. <https://drive.google.com/file/d/1bhlweBmQzaBZRxg7TFsBWBOa4VGgNZk9/view>.