



**REPORT**  
**DATE: 4TH - 5TH FEBRUARY, 2020**



# **ADOLESCENT SEXUALITY AND THE LAW**

**EASTERN REGION CONSULTATION**



**ORGANISED BY:**






## LIST OF ABBREVIATIONS

**AJWS:** American Jewish World Service

**CEHAT:** Centre for Enquiry into Health and Allied Themes, Maharashtra

**CINI:** Child in Need Institute, West Bengal

**CMPO:** Child Marriage Prohibition Officer

**CRC:** United Nations Convention on the Rights of the Child

**HIV:** Human Immunodeficiency Virus

**IIG:** Indian Institute of Geomagnetism, Tamil Nadu

**LGBTQIA+:** Lesbian, Gay, Bisexual, Pansexual, Transgender, Genderqueer, Queer, Intersexed, Agender, Asexual, and Ally Community

**NFHS:** National Family and Health Survey

**NUJS:** National University of Juridical Sciences, West Bengal

**PCMA:** The Prohibition of Child Marriage Act, 2006

**POCSO:** The Protection of Children from Sexual Offences Act, 2012

**PLD:** Partners for Law in Development, New Delhi

**RBSK:** Rashtriya Bal Swasthya Karyakram

**RCI-VAW (TISS):** Resource Centre for Interventions on Violence against Women, Tata Institute of Social Sciences, Maharashtra

**RKSK:** Rashtriya Kishore Swasthya Karyakram

**SAG-KP:** Scheme for Adolescent Girls – Kanyashree Programme, Ministry of Women & Child Development

**SCC:** Supreme Court Cases

**SEEDS:** Socio Economic and Educational Development Society, Jharkhand

**SRHR:** Sexual and Reproductive Health and Rights

**STI:** Sexually Transmitted Infections

**TULIR:** Tulir - Centre for the Prevention and Healing of Child Sexual Abuse, Tamil Nadu

**WBCPCR:** West Bengal Commission for Protection of Child Rights

## INTRODUCTION

On 4<sup>th</sup> and 5<sup>th</sup> February 2020, a two-day Eastern Region Consultation on ‘Adolescent Sexuality and the Law’ was organized by Partners for Law in Development (PLD), Swayam and New Alipore Praajak Development Society (Praajak) in Kolkata. This meeting is a continuation of national level consultations held by PLD with CEHAT and RCI-VAW (TISS) in Mumbai (August 2017), PLD with AJWS in New Delhi (December 2018) and PLD with TULIR in Chennai (September 2019), to document grassroots experiences of working with the Prohibition of Child Marriage Act (PCMA) to help girls prevent/exit forced marriages; as well as PLD’s socio-legal studies on elopements by under-age girls; the use of Protection of Children from Sexual Offences Act (POCSO) and the PCMA in cases of consensual relations. Resource persons from sectors such as sexual and reproductive health, law, child abuse, and sexuality education participated in the consultation and shared their experiences and challenges faced while working with adolescents. The consultation was a means to consolidate experiences from different interventions into adolescents’ lives and see how to engage with stakeholders beyond the social sector, including the media and the State.

### Welcome Address and Introductions: Setting the Context

The consultation began with a welcome note by Deep Purkayastha, Executive Director, Praajak, followed by an introduction by Madhu Mehra, Executive Director, Partners for Law in Development (PLD) setting out the context and objectives of the meeting.

Madhu noted the common concern of many working with the adolescents i.e. the blindness in law and policy, towards the specificities of this age group. The law divides people according to age, as adults or children, with 18 years as the dividing line. Adolescents are a population group within children; adolescence is a unique stage of life, defined by puberty which marks the onset of distinct attributes, heightened feelings, aspirations and experiences. Instead of recognizing these specificities, the law treats 0 to 18 year old persons as a homogenous group, infantilizing adolescents. The Prevention of Sexual Offences against Children Act, 2012 (POCSO) is a case in point, in that it denies adolescents the capacity to consent in relation to sexual activity. This consultation seeks to engage with cross sectoral stakeholders, to draw upon their experiences and

understandings of how the law impacts young populations they work with, and to build consensus on policy concerns for collective follow up. The consultation agenda is attached as *Annexure A*.

The four broad themes identified for discussion related to different aspects of adolescence were **Health, Education, Crisis Intervention and Child Marriage**. The law and policy on these concerns was at the centre of the discussion.

There were 45 participants drawn from at least 9 states namely Assam, Bihar, Jharkhand, Manipur, Meghalaya Mizoram, Nagaland, Odisha, and West Bengal working on thematic concerns ranging from adolescent capacity building, disability rights, adolescent health, advocacy on strengthening existing child protection mechanism etc. The list of participants is attached as *Annexure B*.

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## Session 1:

### Mapping Our Work with Adolescents: Approaches and Challenges

Anuradha Kapur from Swayam facilitated group work to map concerns identified by participants working across sectors. The participants were divided into sub-groups on four themes: **Health, Education & Capacity Building, Crisis Intervention and Child Marriage & Law** – each given a set of questions to collectively respond to as part of the group work.

#### The questions were as follows:

1. Does your organization differentiate between approaches adopted for small children, from approaches adopted for teens? If yes, please describe how the approaches differ from one another?
2. What kinds of issues related to teens in relation to sexuality come up in your work?
3. How do you respond to or address the issues of teenage sexuality?
4. The age of consent has been increased from 16 to 18 years under POCSO. How does this increase in age of consent impact your work?

The concerns identified by the thematic groups were presented in the plenary for discussion. The key points under each theme are listed below.

### **Sub-Group on Health**

The participants shared that they adopted distinct approaches in their work with those above 10 years, and those below 10. With children under 10, the interventions are largely with parents and the communities. But with those over 10, social workers have more personal and individual interactions. They worked on self-empowerment and resilience by discussing local governance and social consciousness in youth and community camps.

In relation to sexuality, they typically engage with adolescents on issues of teenage anxiety, puberty, menstruation, taboos, health, sexuality etc. They emphasized focusing on mental health of adolescents as their major concerns relate to identity crisis and expected conformity to social norms.

The organizations highlighted the lack of organic discussions due to gender segregation at an early age, taboos, misinformation and overload of information through social media, and mixed messaging about desire and consent through pornography. They work with parents of adolescents to teach them how to listen to their children's concerns. They also try to create awareness for boys and girls, parents and caretakers, and all stakeholders in service providing systems.

For this group working on health, the dissemination of information was impacted by criminalization of sexual activities of adolescents through POCSO. They reported additional challenges in tribal areas where customary practices allow mixing between young person's, which runs contrary to the age of sexual consent in law, giving rise to conflict with the law that harms the young from these marginalized communities.

### **Sub-group on Education and Capacity Building**

This sub-group used multiple criteria to categorize adolescents and children, using age as well as individual maturity. This allowed for more realistic classification, enabling richer discussions with stronger participation. Different approaches were adopted to interact with each age group. For instance, for young children they used puppets, songs and art; for older children they used games; and for those closer to 18 years they used workshops and projects.

They identified diverse and far-ranging issues relating to adolescent sexuality which included: sexual exploration and desire, elopement, trafficking, hygiene, restricted mobility, social media and risks, access to pornography, consent, handling rejection, intimate partner violence, the need for safe spaces for romantic and sexual relationships, rigid gender roles, taboos around contraception and abortion, and lack of support from school systems.

This group stressed upon the need for cross-cutting responses to create awareness for adolescents including pictorial methods, plays, sports. They worked with Childline coordinators, health workers, peer educators and home makers to this effect. Special emphasis was given to sex education and mental health. They collectively noted that POCSO is problematic as it criminalizes adolescent sexuality.

### **Sub-group on Crisis Intervention**

They adopt distinct approaches for younger children, while with teenagers they preferred working in smaller cohesive groups. Even amongst adolescents, specific concerns of persons with disabilities were discussed such as consent and privacy.

Another aspect of working with adolescents for the participants was to connect with families, particularly female members to raise their awareness about bodily changes post puberty, to ensure that teenagers are supported within their families through these physical and emotional changes.

Their experiences with POCSO were complicated as they felt that age was not a sufficient factor to determine capacity to consent, yet the law was rigid on this issue. This group agreed that age specific capacity did not work either for young people or indeed, for adults with intellectual disabilities.

### **Sub-group on Child Marriage and Law**

This group, like the other, felt age was not a conclusive indicator for demarcating adolescents from children. They preferred to distinguish between junior adolescents (10 -14 years) and senior adolescents (15 -18 years).

They impart information on sex and marriage to a mixed group of genders for the both age groups of 10-14 years (junior adolescents) and 15-18 years (senior adolescents), to remove the gendered stigma around such topics. In terms of approach, they build capacities of young people

to create a cadre of peer leaders to speak and work with adolescents instead of relying on adult facilitators who can be perceived as patronizing.

The issues common to adolescents they work with include parental control over adolescent sexuality, impact of social constructions of gender roles on mental health; they also draw upon interlinkages of child labour, child marriage and elopement. Sex education, community awareness and sensitization are used as means to create safe spaces for capacity building and for empowerment of adolescents.

They noted that the use of POCSO to target consensual relationships had a traumatic impact on adolescents. The age of consent in POCSO does not account for biology or indeed, cultural variances, such as the customs of inter-mixing and premarital relations in tribal communities which stand criminalised.

#### **Common Concerns:**

- There is a lack of disaggregation by age and development, leading to neglect of the needs of the ‘adolescent,’ with all persons under 18 years being uniformly viewed as having same needs and capacities.
- Age appropriate delivery of services is essential to meet unique requirements of children across their developmental stages to address their evolving capacities.
- Adolescent programmes are singularly focused on bodily growth and menstruation in the public domain, making it harder to dialogue on sexuality education, sexual reproductive health and sexual expression. Young boys get excluded from adolescent programmes which focus on menstruation alone.
- There needs to be normalization of interactions between the genders, and greater parental support for adolescents while respecting their privacy.
- The increase of age of consent in POCSO from 16-18 years has unrealistically focused on age without regard to agency or evolving capacities of the adolescents.

## Session 2:

### Panel on Early and Child Marriage

Introducing the concerns and focus of the panel discussion, Madhu Mehra from PLD addressed the obstacles posed by the static nature of child marriage discussions, in either grappling with contemporary trends of elopements, or the need for differentiated responses. The colonial narratives of child marriage and images of custom driven marriage of little girls in bridal finery contributes to treating all underage marriages as forced. It is this narrative that drives the global and national push for legislative change to render all underage marriages as void. She invited the panelists to speak to their field experiences in relation to using the Prohibition of Child Marriage Act (PCMA) and the interventions their organizations carry out in response to underage marriages.

#### **Anindita Mazumdar, Founding and Managing Trustee, Equidiversity Foundation**

Anindita introduced her organization's work which focused on enhancing leadership and active participation of women in governance. They have been conducting a study on three key aspects: girls who choose to elope, the causes behind this and community responses to prevention of eloping and reintegration of such girls.<sup>1</sup> They work in areas of West Bengal such as Sunderbans and Birbhum which are high trafficking zones.

Their statistical data indicates that the general marriageable age for girls is 16 years and for boys it is 19 years. While speaking to adolescents who had eloped, it emerged that young girls chose to run away because of their family situations including poverty and mobility restrictions. Many young boys chose to run away because they had already started working and were keen to start a family. Their organization had noted that consent and agency as values were alien to adolescents interviewed. Interestingly, their data showed that most of the young girls interviewed after marriage acknowledged that in retrospect, if they had had other choices, they would not have chosen marriage. This was not the case for young boys they had spoken to.

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<sup>1</sup> This study is still in progress.

As a result of years of spreading awareness at community levels, there is a general recognition that underage marriage is wrong. Once they get married, adolescents are considered to be adults overnight. In an environment where sexual health and expression was never discussed, post marriage it becomes much harder to address issues of sexual autonomy, health, domestic violence etc. However, it is a complex layered issue as many benefits accrue to women once they turn 18 years, such as safe delivery services.

Critiquing the age of consent under POCSO, Anindita noted that the law completely criminalizes any understanding of sexual and gender identity and desire. It makes girls vulnerable to being sent to shelter homes, and boys being subject to the criminal justice system.

### **Malavika Das, Purva Bharati Trusts**

Malavika began by clarifying that though she has worked on women's rights issues for the past 10 years, child rights could not be disassociated from women's rights. She shared both national and Assam specific data on number of cases of child marriage registered and the most affected districts.

She attributed early marriage to a number of factors including a smaller number of high schools in rural areas, poor accessibility, inadequate adolescent counselling and awareness. As a lawyer she highlighted the problems faced in registering cases and pursuing them in court. She specifically highlighted the concern of public prosecutors colluding with accused in politically charged cases. The legal procedures are not transparent, and many child marriages are executed through affidavits or marriage deeds. Even though there are legal aid service lawyers, there is a lack of sensitivity and awareness regarding adolescents.

### **Deep Purkayastha, Executive Director, Praajak**

Deep introduced his organization and their work with youth and adolescents on gender equality, gender rights and improving agency. He stressed upon the need to look beyond legal approaches and understanding root causes of child marriage. Despite stringent laws, child marriages are still happening in private. Further, it is important to distinguish between child and adolescent marriages and understand them separately.

They run weekly circles with young men and women to speak about patriarchy, gender-based violence and have noticed that post such discussions, many adolescents explore the possibility of

breaking rigid gender norms. They try to interact with family members and have been able to negotiate a delay in marriage. However, they have been unable to question the centrality of marriage in everyone's lives.

They stressed that while there is a desire to enact more laws, the power held by communities to address early marriage and encourage conversations has to be appreciated. Even under the current law, the Child Marriage Prohibition Officer can play an important role, but district level machinery is not as active.

The Panel concluded with Madhu noting that non-governmental organizations must rethink how they plan to engage with the State, as over the years the legal and criminal justice system have rendered adolescents more vulnerable. There is also a need to recognize that the compulsory nature of marriage for girls – for both social and economic survival, is part of the problem, so as to shift the goal post from delaying marriage to advocating autonomy and agency for girls, irrespective of marriage.

### **Discussion**

Through answers to questions posed by participants it emerged that adolescent sexuality is recognized in various traditions and customs of India, but the PCMA does not account for this diversity. Further, the Convention on Rights of the Child ('CRC') recognizes that a child has evolving capacities and childhood is not a stagnant phase, but we have unquestioningly adopted the age of 18 years as the only benchmark with a uniform perspective of age groups before that. In the absence of comprehensive research or discussion on the age of consent, passing new laws have had the effect of policing adolescent sexuality.

### **Highlights:**

- The flattened discourse on child marriage as forced, custom driven, or young girls being married off to much older men, fails to account for the increasing shift towards early marriage and of elopements. There is an urgent need for differentiated responses for older adolescents and children, and between forced and self-arranged marriages.
- The law completely criminalizes any understanding of sexual and gender identity and desire.

- While there is a desire to enact more laws, we must appreciate the power held by communities to address early marriage and encourage conversations, as studies have shown that the law is being used more by the community workers to spread awareness rather than the police or the Child Marriage Prohibition Officer to prosecute.
- There is a need to interrogate why we continue to consider marriage as compulsory in both social and economic terms for girls and how to envisage autonomy, status and opportunities for girls/ women beyond and apart from marriage.

### **Session 3:**

#### **Adolescents and Health Related Concerns**

Introducing the focus of the panel, Deep Purkayastha, Director of Praajak highlighted the necessity of sexual and reproductive health and rights (SRHR) information and services for adolescents which enable them to access contraception, safe abortion services, sanitary products for menstruation etc. SRHR remains one of the most challenging areas in terms of quality of information and access. Girls' health as it is, is of low priority in society, but sexual and reproductive health for them is tabooed. The selective information provided is not just inaccurate, it is also not designed to address the diverse needs such as sexual orientation, gender issues, nor different kinds of disabilities. Additionally, he also stressed upon taking into consideration the indigenous knowledge systems on socio-cultural issues when framing laws and policies with respect to adolescents as currently, the law does not take into account the social realities of indigenous people, one of them being healthy recognition of sexuality in adolescents in such communities.

#### **Mahananda Jha, SEEDS**

Mahananda began by noting a study by SEEDS conducted in 2016 where they surveyed the health of 589 girls from Jharkhand. 80% of the girls were found to be anaemic and SEEDS attributed this to irregular food habits and lack of awareness. They carried out interventions to

change their food habits followed by an assessment after 3 years, which showed greater awareness found significant health improvement amongst 80% of the girls in age group of 10-12 years. In Jharkhand SEEDS had trained 210 persons from marginalized rural populations on health and hygiene. As of now, 8000 families have been given sanitary napkin vending machines. He highlighted that rather than additional laws, girls need to be empowered. Delivering sexual and reproductive health services seems highly unlikely, he feared when even nutrition and menstrual hygiene are areas of challenges.

### **Lea Christen, Calcutta Rescue**

Lea briefly described the work done by Calcutta Rescue. Their education centres in North Kolkata provide tuition along with free meals to students between the ages of 4-18 years from neighbouring slum areas. They adopt preventive interventions which include classes for adolescents above the age of 12 years to foster awareness about body image, gender-based violence, marriage, puberty, etc. In collaboration with SWAYAM, they also conduct workshops for mothers on sexual health and reproductive rights, and gender-based violence. For young children (4 years and above), workshops focus on good-bad touches, and how to speak up about such situations. Other interventions include home visits and counselling parents of adolescents as well as behavioural therapy sessions for teenagers. She criticized the 'mandatory reporting' provision in POCSO as it compelled them to report information that was confidential. This even creates a reluctance from school authorities to engage with them. Even during house visits for sensitization about child marriage, they face hostility.

### **Sneha Misra, Aaina**

Aaina has been working in consultation with United Nations Population Fund in Koraput tribal region of Odisha since 2002. They also worked with Water-Aid and partnered with Mission Shakti to create sanitary napkin making units in the region. Sneha highlighted their work with adolescents with disabilities, their mental health, menstrual health and related social issues. The sexual health of adolescents with disabilities and those with communication problems is critical but ignored. There is inadequate information accessible or available to them, especially for visually impaired adolescents. It is imperative to develop materials for these specific populations and so they are working with the IIG Chennai to create a manual for the visually impaired. She

then addressed nutrition concerns, and how Aaina is working with 300 adolescent girls from 100 villages. Their studies indicate that while a greater number of boys (58%) have nutrition issues and are underweight, more girls are anaemic. Following this, folic acid and iron pills are being given to adolescent girls through Anganwadis. She noted that raising the age of consent criminalizes sexual desires of adolescents. The law along with the prevalent social norms has put the adolescents, who are already vulnerable, at risk of backlash from the community.

**Dr. Indrani Bhattacharya, Child in Need Institute (CINI)**

Indrani provided several reasons as to why there was a need for specific focus on adolescents including the fact that India is home to 243 million adolescents which is the largest adolescent population in the world. It is the most crucial phase in the lifecycle of human being for inculcating positive behaviours and attitudes. Their key vulnerabilities include SRHR, intimate partner violence as well as other forms of violence, malnutrition and anaemia, mental health and substance abuse, lack of education and livelihood opportunities. If enough interventions and resources were directed to this age group, such vulnerabilities could be prevented and improvements in health possible.

Adolescents face a plethora of challenges today including: limited access to information on SRHR, non-communicable diseases and nutrition; limited access to counselling and legal services; increasingly less interaction with family members; limited peer networks; peer pressure related to substances and sexual activity; social barriers connected to discrimination, early marriage and pregnancy; limited control over financial resources and consequently, a limited capacity of decision making.

CINI is working towards creating community-based safety nets for adolescents. Adopting a human rights-based approach, they sensitize key duty bearers such as family members, self-help and adolescent groups, service providers and policy makers to make Government schemes and services accessible to adolescents. They adopt five different approaches including institutionalization which involves formation of adolescent groups, child parliament at community level and child cabinets in schools. Collective analysis focuses on identifying vulnerable adolescents through social resource mapping on Education, Protection, Health and Nutrition indicators (eg. Child marriage, early pregnancy, school dropouts, etc.) and conducting focus group discussions with community and government functionaries. Prioritization and

planning select certain areas in villages and slums to address issues of priority such as early marriage, early pregnancy, unmet needs, etc. Implementation involves creation of safe spaces and linking vulnerable adolescents with Childline/Teenline, Anwasha Clinics, RBSK, RKSK, SAG-KP and other programs and services. Community based monitoring is based on tracking of vulnerable adolescents through a tracking register, updating social resource maps and interface meetings at the *sansad* level.

In moving forward, she insisted on beginning with instilling gender egalitarian attitudes among young children, especially boys. There was additional emphasis on expanding educational and market-oriented livelihood and skill building opportunities and simultaneously encouraging comprehensive sexuality education and safe spaces. Quality, confidential and non-judgmental services and contraceptive supplies must be available to all, irrespective of marital status. She ended putting forward that supportive environment requires a change in the mindsets of parents, teachers, health care providers, the judiciary and the political leadership.

### **Discussion**

In the discussion following the presentations, it was observed that challenges for providing SRHR to adolescents are huge in India, as even single adult women are known to face hostility from health care providers on sexual issues. Health care professionals are uncomfortable with issues of sexuality, which become further exacerbated by the criminalisation of adolescent sexual activity.

The need to work directly with adolescent populations to facilitate access to services was stressed upon by participants and panelists collectively. It was also noted that the clinics for adolescent health must be made available at the block level. The present clinics are not even equipped in terms of resources and manpower and frontline workers are not adequately aware of adolescent health concerns. It was highlighted again that the community workers and other stakeholders are facing problems due to the increase in age of consent under POCSO from 16 to 18 years. Elopements are quite common, and the girls' families frequently file complaints under the POCSO Act. The boys over the age of 16 years under Juvenile Justice Act, 2015 face the risk of going to jail. In this context, making underage marriages void will harm the girls, as well as the young boys involved in cases of elopements disproportionately.

### **Highlights:**

- It becomes challenging to work with the existence of ‘Mandatory Reporting’ provision under the POCSO Act as it compels the stakeholders to breach confidentiality of the child, and report information to the police. This deters school authorities and families from reaching out to social workers – which instead of helping the child, forces even consensual cases to be reported to the police.
- The sexual health of disabled adolescents and those with communication problems is critical but ignored. There is inadequate information accessible or available to them, especially for visually impaired adolescents.
- Single adults and adolescents often face hostility from health care institutions and sexual issues become difficult for them to address in health care centres owing to strict societal norms.
- There is a need to increase the availability of adolescent health clinics at the block level with adequate resources and properly sensitized health workers.

### **Session 4:**

#### **Criminalization and Sexual Consent**

Paromita Chakravarty, Jadavpur University introduced the session by noting the common concern amongst the organizations and community workers; that ‘mandatory reporting’ is a hindrance while working with adolescents as it puts them in a conundrum of whether to report the case to the police or drop it, rendering the adolescents in need without any help. Moreover, mandatory reporting compels adolescent girls’ and their families to seek unsafe abortion as health care providers are mandated by the provision to report the case. There is a need to move away from a protectionist approach and enable children to have access to information to let them navigate through their curiosities in a holistic manner.

### **Nicole Rangel, Laher**

Nicole began by noting that mandatory reporting as advocated by POCSO Act does not work well in reality. Neither does the increase in the age of consent to 18 years as it makes our work at the ground level very difficult. However, it is still difficult to determine the correct age of consent as children are exposed to sexuality much earlier in life than before. She noted that reducing the age of consent should not imply that 16-year olds be treated as adults or that the child rights protection available to those under 18 years be rolled back.

There must be support communities and safe spaces for children to speak about their experiences. But facilitators at the ground level are not ready or equipped for this. These concerns are not the sole result of the law either. The centrality of marriage in the Indian society has to be questioned. She weighed in on need for widening spaces for dialogues via child protection committees and for alternative safe spaces using innovative technologies. She concluded that it u=must be ensured that childhood is not being shrunk because we are moving away from protection to punishment.

### **Susmita Chanda, West Bengal State Commission for Protection of Child Rights (WBCPCR)**

Highlighting a 2017 study by Jabala Action Research Organization, Susmita drew attention to the fact that out of 70 cases of documented child marriage, 34 of them were love affairs and 49% of the ‘perpetrators’ were boyfriends and only 6 % were strangers to the girls. Most girls revealed that cases were registered forcefully by their parents and in few instances; cases were registered when the boyfriends refused to marry them. There were also cases in which marriages were fixed and only when they did not last due to dowry or other related issues, a case was registered under the POCSO Act.

Their studies have found out that the ages of most of the accused under POCSO Act are between 18-24 years and that psycho-social interventions are required for both the accused and victims.

It is also hard to define an age of consent as today the age of onset of puberty has also reduced. The POCSO Act must be evaluated every 5 years and this should be a layered process, with no generalizations regarding age.

### **Anuradha Kapoor, Swayam**

Swayam's work with women facing violence and child sexual abuse has led them to question what constitutes a consensual relationship. She further noted that special courts under POCSO Act are not child friendly and that the law must be revised. As a result of mandatory reporting, many children risk unsafe abortions and face stigma. The support services and state agencies' treatment of children also remain compromised. Unless there is a change in the environment, support is made available and adequate information is given to the children for their proper understanding of what they are doing, the laws will always fall short.

### **Tinku Khanna, Apne Aap**

Apne Aap works with survivors of intergenerational prostitution and victims of caste-based prostitution. Socio economic conditions are a reason for traditional persistence of prostitution. She recounted the history of criminalization of tribes under colonial rule and the creation of commercial brothels by zamindars. As a result, girls as young as 12-13 years began coming into prostitution. Such systems do not operate in isolation and involve panchayat leaders, police and local authorities as well.

It was noted that under personal law of the communities, parents got their children married and then made them participate in the sex trade. The organization works with the government to stop this practice and empowers girls to complete higher education and has also intervened through public interest litigation on the issue of trafficking.

### **Discussion**

It was pointed out that the state and legal system's blanket denial of the capacity to consent is problematic. These issues are linked to poverty and it is unethical to criminalize the poor. It is seen that in genuine cases of violence and abuse, the parents violate the law and it is only during the inter-caste and inter faith cases that they leverage the system. The state response is to constantly criminalize and use punishment to move our attention away from what is needed.

Another participant suggested that since most of the perpetrators are between age 18-24, we need to engage more with male adolescents about consent and coping mechanisms. Even though POCSO Act is gender neutral, only girls are viewed as victims while boys are treated as persons in conflict with the law.

It was put out that the government hospitals are less likely to render safe and confidential abortion services. As for the private sector, it is extremely costly with no guarantee of good service. Therefore, the linking of services with reporting is very difficult and doctors remain in a dilemma as to whether to report.

### **Highlights:**

It is difficult to determine a single age of consent as children are exposed to sexuality much earlier in life than before.

The studies have found out that the ages of most of the accused under POCSO Act are between 18-24 years and that psycho-social interventions are required for both the accused and victims.

As a result of mandatory reporting, many children risk unsafe abortions and face stigma. Service providers such as counsellors, social workers, gynaecologists, doctors etc. are unable to extend the confidentiality essential to the nature of their work with girls who approach them and hence, breach their trust.

Overwhelming focus on punishments takes the attention away from addressing key issues related to adolescent sexuality, empowerment etc.

## **Session 5**

### **Comprehensive Sexuality Education in Formal and Informal Spaces**

Introducing the concerns of the panel, Ruchira Goswami, Assistant Professor, NUJS highlighted the need to integrate a holistic sexuality education programme into the curriculum of the school. The programme should be inclusive enough to address the needs of people with disabilities and LGBTQIA+ communities in terms of ease of accessibility and availability. An implementation of comprehensive sexuality education program would enable adolescents to have a better understanding of sexuality, sexual orientation, gender, gender roles, contraception, consent etc.

### **Paromita Chakravarty, Jadavpur University**

Building on earlier discussions, Paromita focused on two points i.e. what constitutes informed consent, and our assumptions relating to adolescents. In the 1990s, sexuality education concerned risk control and was partly driven by the need to control spread of HIV. The impulses for commencing sexuality education had less to do with allowing young people to form their own positions on sexuality and more to protect ourselves. This is why it remains something of a missed opportunity and is actually a terrain which could become a space for dialogues to learn about adolescents and would benefit them as well. Even when the debate on introducing sexuality education in classrooms was raised, most of education providers resented the idea as it was a non-curricular and was deemed extra work without credits. Education has to be reinvented to connect it with real life experiences.

Sexuality education need not be treated as a separate discipline; rather it could be integrated into other subjects. For the political right, sexual education is a way through which the western culture was insidiously creeping into ours. Hence, resisting it was to resist globalization which was accompanied by the notion that its inclusion would make the girls and boys more sexual in nature. Intelligent framing of campaigns on sexuality education and awareness is hence required.

### **Shampa Sengupta, Sruti Disability Trust**

Shampa spoke of comprehensive sexual education from the perspective of working in disability sector and their work with special schools. For instance, for students from the Blind Boys' Academy, the only way of sexual exploration is by touching, hence their understanding of sexuality at the adolescent age had already begun in the school and hostel level. A lot of same-sex relations also develop during this time and teachers render severe punishments once this comes to their attention. When it comes to young girls, they are taught how to handle bodily and attitude changes during puberty.

For individuals with intellectual disabilities, sexuality comes in a very different form. It is important to teach them about the difference between sexual exploration in public and private spaces. There are a great number of cases of sexual abuse of intellectually disabled and hearing-impaired girls, who are unaware of how to stop the abuse or report it. There is also a need to speak of consent, sexual pleasure and gender fluidity.

### **Anindya Hazra, Pratyay Trust**

Anindya highlighted the perspective of the transgender community and how their experiences are missing in these conversations. Connecting back to the last two decades, transgender persons were under the regulatory lens of HIV and STI interventions, then evaluated along binaries such as who is a ‘good transgender’, and as of late, who is a ‘good’ citizen. In the context of this backdrop, sexuality educators in schools must deal with stereotypes about transgender persons and must learn to battle them.

There are also increasing connotations among medical conditions, gender identities and sexuality, such as children who are intersex and children who are gender non-conforming. Further, very few transgender and gender non-conforming children complete their education. They are not represented in conversations on sexuality education in classrooms and public spaces and this has an impact on their mental health.

Lack of visibility or representation also results in the inability of schools to address harassment and sexual assault of transgender and gender non-conforming students.

### **Ashok Nanda, Vikash**

Citing data regarding incarceration in the USA and China, Ashok noted that increasing rates of incarceration do not necessarily result in decrease in rates of crime or corruption. On the other hand, countries such as Iceland, Denmark and Holland have been focusing on regulation of conduct and have been decreasing criminalization through laws in order to get better results. There is a need to move from parent centric approaches in education to society centric approaches in order to ensure that children receive correct and adequate information.

### **Dr. Santana Adhikari, CINI**

The organization’s goal is to strengthen the implementation of the Adolescent Health Strategy-RKSK, Government of India to contribute to the all-round development of adolescents in identified districts of West Bengal, Jharkhand and Assam. These three states face grave problems related to health, early marriage and teenage pregnancy. Even though CINI has collected data on these issues, there is a dearth of large-scale data.

CINI has adopted peer education strategies and created safe spaces for adolescents. They encourage community-based monitoring and tracking as well as increased participation of

adolescents in their programs. They help select peer educators in communities and schools, train them to conduct sessions in these safe spaces and adolescent friendly clubs, following which there may be a referral of adolescents to clinics or service delivery points. Their training modules are available in regional languages and include participatory training tools. They also have drop boxes at these safe spaces, through which adolescents can ask their queries while maintaining their privacy.

They also train service providers on soft-skills and emphasise upon orientation of parents, members of panchayats and self-help groups. Their aim is also to ensure convergence by strengthening village level committees such as Child Protection Committees and Health Sanitation and Nutrition Committees with greater participation of adolescents.

### **Discussion**

During the round of participant questions and comments, it was brought up that education on life skills, sexuality and consent has been beneficial for victims of trafficking during their rehabilitation. It was also highlighted that new social media tools like Twitter, Facebook and Instagram should be explored as mediums of education, but it must be remembered that such platforms are not accessible to all, especially to disabled persons. It was also noted that instead of preparing more modules for sexuality education, there should be an introspect into their purpose and effectiveness.

### **Highlights:**

- Sexuality education need not be treated as a separate discipline; rather we must try to integrate it into other subjects.
- There is also a need to speak of consent and sexual pleasure and gender fluidity in the contexts of blind and intellectually disabled person individually.
- The absence of transgender community and their experiences from the conversation was also highlighted.
- Sexuality educators in schools must deal with stereotypes about transgender persons and must learn to battle them.
- There is a need to move from parent centric approaches to society centric education in order to ensure that children receive correct and adequate information.

It was also highlighted that new social media tools like Twitter, Facebook and Instagram should be explored as mediums of education, but we must remember that such platforms are not accessible to all, especially to disabled persons.

## **Session 6:**

### **Mapping Key Concerns and Ways Forward**

#### **Madhu Mehra, PLD**

Madhu commenced the session noting that over the past two days what had emerged was that the entire complex diverse category of adolescence had been collapsed into an infantilized model of childhood. The voices of adolescents are meaningless when they have no right to consent or participate in decision making. This must be kept in mind as we talk about the high number of elopements and recent indications that all underage marriages will be made void under law.

Our primary concerns are that firstly, the law does not address complexities of adolescents' lives resulting in a lack of quality services and infrastructure relating to sexual health and sexuality, particularly needed by adolescents. Secondly, the POCSO Act created a model which also hampers other stakeholders in providing assistance to adolescents.

#### **Ananya Chakravarti, WBCPCR**

Ananya closed the session with a note on the issue of conflation of adolescence with childhood. This issue is not a problem restricted to India but is experienced at a global level as the United Nations Convention on the Rights of Children (CRC) itself states that anybody under the age of 18 is to be considered a child whereas the priority in the instant matter was to discuss separate policies for adolescents.

It is also important to move away from a middle-class prism of morality, and question what constitutes coercion and free will. Merely questioning the age of consent, when the POCSO Act itself is protectionist, is insufficient.

The Commission had conducted a survey in collaboration with Jabala Action Research Organization on POCSO cases involving 15 and 16-year-old persons over the past five years. There was a clear pattern of parents filing cases when they objected to consensual relationships of their children, usually between 15-18 years of age.

We also need to interrogate the binary of genders that informs the POCSO Act and look into other incorporating provisions for multiple sexual orientations and genders. By the end of February, she hoped to organize an interstate meeting on POCSO Act to discuss this legally unexplored world of adolescent sexuality.

Responding to this, Madhu Mehra noted that even though the CRC defines a child as one between 0-18 years it also calls for different treatment within this age group, recognizing that the principle of best interest of the child is to be interpreted through the prism of evolving capacities. The CRC also states that a child cannot be criminalized for sexuality and that the minimum age of the children is set for different activities based on their capacity. She brought to the foreground that a system that is sensitive and child friendly but also recognizes different categories and accordingly has different provisions has to be created. She stressed that stakeholders should figure out how to generate a more layered understanding in law and a framework which distinguishes between trafficking and consensual relationships. The prospect of the interstate meeting deliberating these issues must be welcomed as there have been no discussions on these issues on the national level with government bodies.

### **Discussion**

When it came to participants' inputs, Anuradha Kapoor highlighted that the law must acknowledge the impact on families as a result of reporting by a child and they must receive support services as well. Another participant drew attention to the need to emphasize on mental health of adolescents as a part of educational and health policies of the state.

The two-day consultation was concluded with Madhu Mehra thanking all participants for their critical and meaningful engagement on behalf of Praajak, Swayam and Partners for Law in Development.

**Why Girls Run Away to Marry:  
Adolescent Realities and Socio Legal Responses in India**

**&**

**Grassroots Experience of the  
Prohibition of Child Marriage Act, 2006**

The launch of Partners for Law in Development (PLD)'s reports took place in presence of the Chief Guest, Honourable Retired Justice Nadira Patherya, High Court of Calcutta who is also the former Chairperson of the Juvenile Committee of Kolkata as well as panelists Professor Ruchira Goswami, NUJS and Madhu Mehra, Executive Director, PLD. It was moderated by Bulbul Bakshi, Secretary, Samikshani. The two field study reports titled "*Why Girls Run Away to Marry: Adolescent Realities and Socio Legal Responses in India*" and "*Grassroots Experiences of the Prohibition of Child Marriage Act, 2006*" were part of PLD's *Adolescent Sexuality and Early Marriage Series* of reports that were intended to generate discussion of legal responses to child and early marriages.

**J. Patherya** began by defining adolescence as a transitory period which is hard for both genders to adjust to mentally, physically and physiologically. Even though families are reluctant to openly speak of sex and sexuality, all of this information is easily accessible to adolescents who grow up with an overload of information. She shared her experiences of working with children and adolescents and how criminalization of sexual activities confused their understandings of consent. Her work had made her wary of how the law operates in reality- for instance, police officers not following procedure, lack of appointment of CMPOs and counsellors. She spoke of

the civil society's need to focus on not only imparting education to adolescents, but also going beyond that in assessing structural changes.

**Ruchira Goswami** who teaches sociology, human rights, gender and law at NUJS, also heads their Centre for Child Rights. While noting the criticisms of the law, she urged engagement with it for the purpose of using or challenging it.

Three laws came in quick succession after years of engagement with the legal system: PCMA, POCSO and the Criminal Law Amendment Act, 2013. These three laws interact with each other and impact adolescents, but we do not have sufficient research on this.

Even though PCMA and POCSO are gender neutral laws on paper, in implementation it is girls that are perceived as victims. Despite CRC clearly indicating that children have different evolving capacities depending on age and their preferences must be considered while making decisions which affect them, in India the age of consent and discourses around age of marriage were addressed in contravention to such provisions. In doing so, husbands and partners were potentially put at risk of criminalization. Further, the class dynamics of elopement and early marriage could not be ignored. POCSO and PCMA end up being used in targeting persons of certain socio-economic classes, while it is not as if violence or consensual sexual relations do not occur in urban spaces or amongst middle classes.

At this juncture, it would be wise to question why these legislative changes took place and why several civil society interventions supported the raising of age of consent. Similarly, we need to introspect into why a Young Defender's clause (for minors whose age difference do not exceed 5 years range) was not incorporated in the final draft of POCSO.

She stressed upon the need for data and qualitative studies on implementation of POCSO and PCMA, as has been done by PLD. We need to uncover the consequences of the judgment of the Supreme Court in *Independent Thought v. Union of India*, (2017) 10 SCC 800 to see whether all marriages between persons below the age of 18 years being made void is beneficial. Simultaneously we need to start thinking about same sex relationships which are not covered by PCMA but could be deemed criminal under POCSO.

**Madhu Mehra** began by questioning whether we have sufficient data on how the law is implemented and who is using it for what purpose while providing the context behind the two reports by PLD.

As far as POCSO is concerned, there has been an increased age of sexual consent coupled with mandatory reporting of real or expected sexual encounters with adolescents. While preparing the report “*Why Girls Run Away to Marry: Adolescent Realities and Socio Legal Responses in India*”, PLD had looked at the lives of 15 girls to see the dimensions of their contexts, how this shaped their relationship and the nature of legal responses that followed. All girls in the study were from resource poor settings, had limited life aspirations, and many of them had been compelled to discontinue school education to shoulder household work. Additionally, there was enforcement of taboos on mixing with opposite sex and the general belief that education would not be transformative for these children. Relationships were conducted in secrecy in order to avoid punishment or forcible marriage for girls which would become inevitable upon discovery of relationships by their families,

The study brings to light elopements, a trend in underage marriage which is largely missing from child marriage discourse, and calls for nuanced and differentiated responses.

PLD’s other study “*Grassroots Experiences of the Prohibition of Child Marriage Act, 2006*”, shows that the law to prevent and prohibit child marriage is in fact not accessible for girls who seek to do so. Most often, such girls seek the support of community groups and peer leaders, who in turn, mobilize different agencies to stop the marriage from taking place, or arrange for moving the girl to the safety of a shelter home, or help her nullify a forced marriage. Legal mechanisms do not intervene in the interest of the girls immediately and are more likely to be risky in alerting their families. Knowing this, the social workers inform concerned administration, Child Line, shelter homes, CWC, and the police to check the influence of community or the family in such a case. Such interventions are also accompanied by mediation and negotiation with families, and long-term support for the girls. They draw upon the law without formally instituting proceedings. The law, however laudable, on the ground is rendered ineffective by local power structures although it provides the moral basis for social workers to support the girl.

As far as statistics go, NFHS-4 (2015-2016) reveals that even though 27% of marriages are underage (which itself indicates a gradual decrease in the occurrence over years), the media age of marriage had increased to 19 years according to Census reports in 2011, making it largely a

phenomenon of ‘early marriage’. Therefore, it can be inferred that if socio-economic conditions force the young into early adulthood, it is not surprising that marriage will occur in adolescents from resource poor settings. The challenge before us is thus one in creating opportunities instead of merely delaying marriage.

The above findings caution us against making underage marriages void per se, and in making laws more stringent without consideration of facts. Karnataka in 2016 had passed an amendment to the PCMA making all child marriage void while a Public Interest Litigation had been filed in the Odisha High Court regarding child marriage, and the Ministry of Women and Child Development was reported to be pondering on nationwide amendments to the PCMA. Increasing penalties and making marriages void, will largely hurt eloping couples without altering the root causes that drive underage marriages in contexts of poverty and lack of opportunities.

The panel discussion was concluded by **Bulbul** who noted that such a dialogue must be substantiated by individual stories of those who are and will be affected by such laws.

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## Annexure A

### AGENDA | 4<sup>th</sup> February, 2020

9.30am- 10.00am	<b>Registration</b>
10.00am- 11.00am	Welcome Address and Introductions: Setting the Context
11.00am- 1.00 pm	<b>Session 1:</b> Mapping Our Work with Adolescents: Approaches and Challenges
2.00pm- 3.30pm	<b>Session 2:</b> Panel on Early and Child Marriage
3.45 pm- 5.00pm	<b>Launch of Reports:</b> <i>“Why Girls Run Away to Marry: Adolescent Realities and Socio Legal Responses in India”</i> and <i>“Grassroots Experiences of the Prohibition of Child Marriage Act, 2006”</i> <b>Press Conference and Panel Discussion</b>

### AGENDA | 5<sup>th</sup> February, 2020

10am-11.00am	<b>Session 3:</b> Adolescents and Health Related Concerns
11.15am- 1.00pm	<b>Session 4:</b> Criminalization and Sexual Consent
2.00pm-3.30 pm	<b>Session 5:</b> Comprehensive Sexuality Education in Formal and Informal Spaces
3.45 pm-5.00 pm	<b>Session 6:</b> Mapping Key Concerns and Ways Forward

## Annexure B

### Participants

#### Assam

Name	Organization/Independent Profession
<b>Biliphang Brahma</b>	The North East Research & Social Work Networking (NERSWN)
<b>Dipika Basumatry</b>	The Action Northeast Trust (ANT)
<b>Mainao Basumatary</b>	The Action Northeast Trust (ANT)
<b>Malavika Das</b>	Purva Bharati Trust
<b>Rashmi Rekha Borah</b>	North East Network (NEN)

#### Bihar

Name	Organization/Independent Profession
<b>Nicole Rangel</b>	Lehar

#### Jharkhand

Name	Organization/Independent Profession
<b>Ashok Kumar</b>	Savera Foundation
<b>Mahanand Jha</b>	SEEDS

<b>Ravi Kumar</b>	Mahila Mukti Sanstha
<b>Shwetank Mishra</b>	PHF

### Manipur

<b>Name</b>	<b>Organization/Independent Profession</b>
<b>Helam Haokip</b>	Integrated Rural Management Association (IRMA)

### Meghalaya

<b>Name</b>	<b>Organization/Independent Profession</b>
<b>Memorial Khongkai</b>	

### Nagaland

<b>Name</b>	<b>Organization/Independent Profession</b>
<b>Ella Mary</b>	Youth Action for Rural Development (YARD)
<b>LozuaKape</b>	Prodigals' Home

### Odisha

<b>Name</b>	<b>Organization/Independent Profession</b>
<b>Ashok Nanda</b>	Vikash
<b>J.S Mohanty</b>	People's Cultural Centre (PECUC)

<b>Manju Prabha Dal</b>	Anganwadi Workers Organisation (AWWO)
<b>Sneha Mishra</b>	Aaina

### West Bengal

<b>Name</b>	<b>Organization/Independent Profession</b>
<b>Ratul Das</b>	St. Xavier's University
<b>Siddhartha Das</b>	Childline India Foundation
<b>Shubrashish Singh Roy</b>	24 Ghonta
<b>Swapan Bhoumick</b>	Advocate, Alipore Judge's court
<b>Biswarup Dutta</b>	
<b>Sangeeta Roy</b>	TISS (PhD Student)
<b>Dr. Indrani Bhattacharya</b>	CINI
<b>Shampa Sengupta</b>	SrutiDisability Trust
<b>Paromita Chakravarty</b>	Jadavpur University
<b>Anindya Hazra</b>	Pratyay Trust
<b>Dr. Santana Adhikary</b>	CINI
<b>Tinku Khanna</b>	Apne Aap
<b>Smita Sen</b>	Rupantaran Foundation
<b>Sudipa Chakraborty</b>	Saathi

<b>Moumita Chakraborty</b>	Self Employed Women's Association (SEWA)
<b>Himalini Verma</b>	Thoughtshop Foundation
<b>Poulomi De Sarkar</b>	Terre Des Hommes Foundation (TDH)
<b>Ismail Sardar</b>	Amra Padatik
<b>Paramita Banerjee</b>	Diksha
<b>Lea Christen</b>	Calcutta Rescue
<b>Anindia Majumdar</b>	Equity Foundation
<b>Lopa Bhattacharjee</b>	Family for Every Child
<b>Bulbul Bakshi</b>	Samikshani
<b>Ankan Biswas</b>	Advocate
<b>Aparajita Dhar</b>	Hummingbird Foundation
<b>Deblina Chakraborty</b>	Jabala Action Research Organisation
<b>Priya Roy</b>	Loreto Home, Rainbow
<b>Sreemoyee Sen</b>	Mental Health Foundation & Raksha Foundation
<b>Dipa Banerjee</b>	Mentaid - Special School for the Mentally Challenged
<b>Ruchira Goswami</b>	NUJS
<b>Anamika Dalpati</b>	Equity Foundation

### Participants from Host Organizations

Name	Organization
<b>Deep Purkayastha</b> <b>Arijit Adhikary</b> <b>Teesta Banerjee</b> <b>Dipak Shome</b>	New Alipore Praajak Development Society
<b>Madhu Mehra</b> <b>Swaranjali Agrawal</b> <b>Aarushee Mahajan</b>	Partners for Law in Development
<b>Anuradha Kapur</b> <b>Amrita Dasgupta</b> <b>Soumi Jana</b>	Swayam