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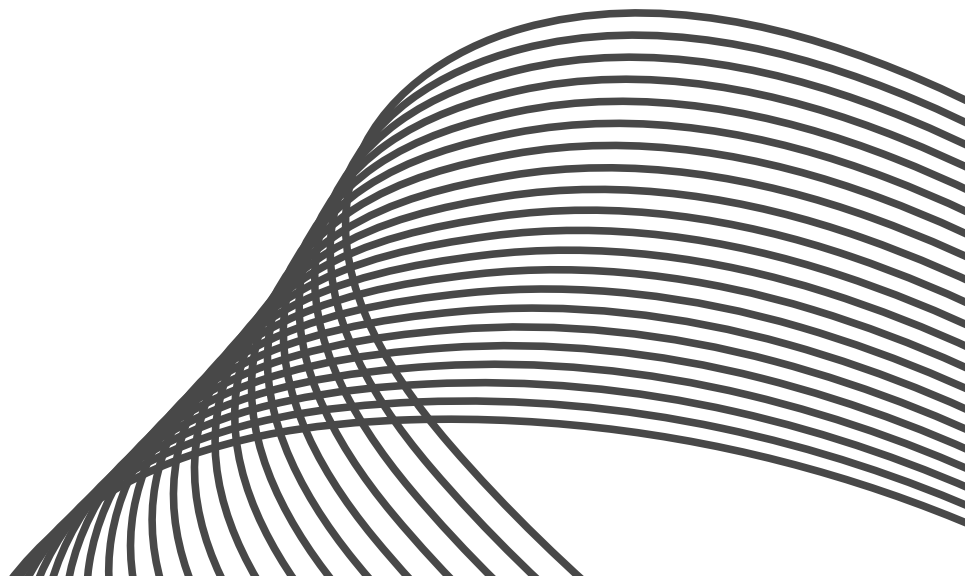
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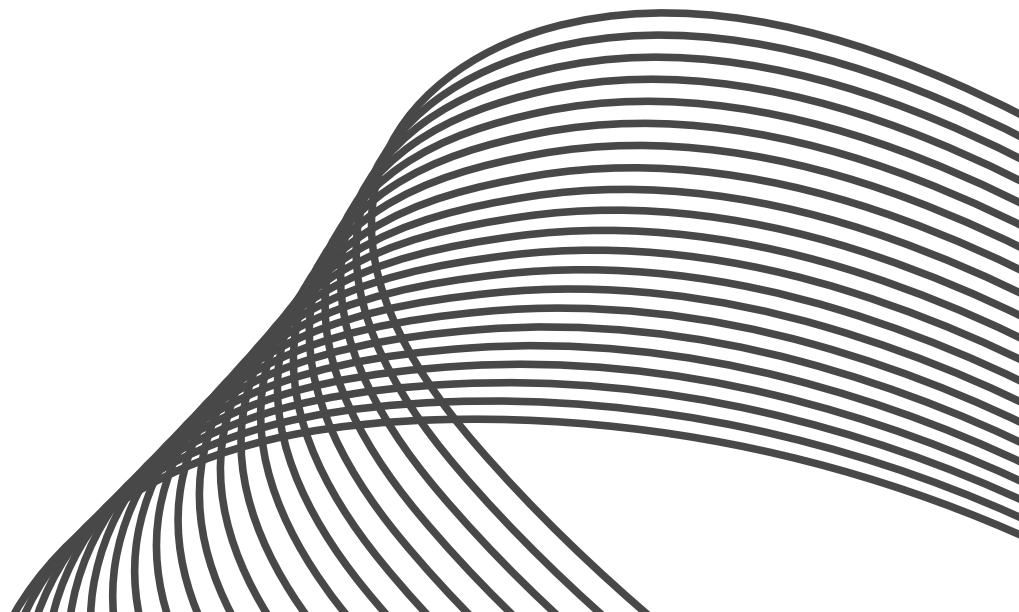
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## AGE OF CONSENT: COMPARATIVE ANALYSIS OF INDIA AND UK

~Vaishnavi Parate<sup>1</sup>

### Abstract

*The former Chief Justice of India has raised concerns about the criminalization of teenagers engaging in consensual sexual action under the Assurance of Children from Sexual Offences (POCSO) Act. The Act criminalizes all sexual actions for minors under 18, regardless of genuine consent. This has led to a discussion among legal scholars, as under the POCSO Act and the Indian Penal Code, any sexual act with a female under 18 years old is considered assault and her consent has no meaning. India passed a new law against child sexual abuse in 2012 and significantly amended the rape statute in 2013. The age of consent for sex has been raised from 16 to 18 years old, changing the definition of a child and the rape statute. This essay reexamines discussions around the legal age of consent in late nineteenth-century India, evaluating them in the context of recent legislative changes, decisions on sexual assault cases, and how the new laws will affect teenagers and their sexuality. The legal changes have created difficulties for teenagers exploring their sexuality and courts making decisions about elopement, romance, and love. Additionally, the increasing consent age has entrenched regressive societal norms associated with marriage and increased family control over teenagers' sexuality, leading to challenges in accessing reproductive and sexual health care.*

### Keywords

*Age Of Consent, India, United Kingdom, Sexual Act, Adolescence, Age Of Marriage, Legal Provisions.*

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## INTRODUCTION

The legal age of consent for sexual behavior in India is eighteen. This implies that to participate in consensual sexual conduct without breaking the law, a person must be at least 18 years old. Even if it is consensual, having sex with someone under the age of 18 is illegal and can lead to accusations of statutory rape or sexual exploitation of a minor. While 18 is the legal age of consent for sexual activity, it's important to remember that under Indian law, people between the ages of 16 and 18 are shielded from prosecution for having consensual sex with someone in their age group as long as there is no exploitation or coercion involved.

## WHAT IS THE AGE OF CONSENT?

A point-by-point report by the Indian Founded of Populace Thinks states that among those individuals who detailed to be in pre-marital sentimental associations, 42% of men and 26% of ladies conceded to locks in sex with their accomplices, with a sizeable number being beneath the age of 18. In this manner, criminalizing sex between young people in a society where it is very predominant would lead to making thousands of men helpless to assault cases at whatever point the issue of the need for permission comes up. "The "age of consent" is the minimum age at which a person is considered legally able to consent to sexual acts. Persons under the age of majority (i.e.: minors) cannot legally confirm that the sexual conduct they engaged in was consensual. In other words, according to the law, they are not old enough to have sex. Therefore, if a person over age consents to engage in sexual activity with an underage partner, that activity may be considered legal rape. In fact, in some jurisdictions, a sexual act may be considered statutory rape even if all the participants are minors."<sup>2</sup>

We all have the right not to want sex or any other form of sexual activity – kissing, touching, or performing a sexual act, for example. We all have the right to change our minds at any time. Or agree to perform sexual activity with someone but not with another person. Without consent, any type of sexual activity is sexual violence.

## MEANING OF ADOLESCENCE

What is "adolescence" and how does it offer assistance to characterize and control sex life? Modern open wrangles, such as those around 1998-99 bringing down the "age of assent" for

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<sup>2</sup> *Id.*

cheerful men, regularly neglect the later history of the changing concept. This. This chapter investigates the advancement of understanding of 'adolescence' within the UK from a chronicled point of view. It covers several periods when political wrangles about any changes in the law have rebuilt definitions of the "age of assent" and investigated the designs of control and resistance that have molded enactment and social state of mind. It at that point investigates how the meaning of age of assent is right now debated and appears to how the concept can be re-examined based on the improvement of social and political hypotheses, in specific. Is related to changing the understanding of "gracious rights". The chapter concludes by analyzing whether later advancements bolster the claim that sex is progressively equitably arranged. He contends that the proof is complex and contradictory, requiring examination that's touchy to sex states of mind, complex legitimate settings, and the assortment of shapes of sexual conduct. Be that as it may, developing an understanding of the relationship between sex, assent, and citizenship is apparent.

### AGE OF CONSENT IN INDIA

The anticipated response to the preceding query would be "eighteen years," neither more nor less. This isn't incorrect or correct. We must first examine the execution of the original Age of Consent Act, of 1891 in India to fully comprehend the current state of consent in that country. This activity is essential because it allows us to make comparisons between the socio-cultural problems that afflicted the age of consent from the beginning. Given that Hinduism is the predominant religion in India, it makes sense that Hindu literature and ideas would serve as the foundation for many of the rituals observed by the populace. The customs that were common at the time make this clear. This covers Sathi and child marriage, among other things, but not exclusively. Raising the legal age of marriage for Hindu girls was the driving force behind the start of the social reform movement. It was no secret that the main source of opposition was the concern that reformists would turn against Hinduism.<sup>3</sup>

As the aforementioned makes clear, legislation and significant discussion surrounding the age of consent are frequent occurrences. In India, the legal age of consent to engage in sexual behavior is currently eighteen. Any sexual activity between two or more people who are younger than the legal age is illegal. The legal age of consent to sexual activity is the same as the legal age of marriage

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<sup>3</sup> Amita Pitre & Lakshmi Lingam, *Age of Consent: Challenges and Contradictions of Sexual Violence Laws in India*, 29 SEX REPROD HEALTH MATTERS 1878656.

for girls, which is 21, although it is higher for boys. The Prohibition of Child Marriage (Amendment) Bill, 2021 is an amendment that is currently pending, but it hasn't produced results yet because of numerous delays brought on by the Parliamentary Committee that has been evaluating it.

### **THE AGE OF CONSENT DIFFERS FROM THE AGE OF MARRIAGE**

In the current Indian environment, the age of consent and the age of marriage seem interchangeable because there is no age difference at least not for girls. However, some fine points undermine the entire concept of equity in the ages of consent and marriage that has been established by significant law. As such, this is not a simple black-and-white issue. Since it has already been discussed above, there isn't much more evidence to support the claims made about how personal laws influence the age of consent discussion and the relationship between that age and marriage age.<sup>4</sup>

### **AGE OF CONSENT IN DIFFERENT UK TERRITORIES**

It is additionally unlawful for anybody under the age of 18 to take and/or send an obscene picture of themselves, indeed in case it is to an accomplice and they have explicitly agreed to the photo being taken or she took a selfie. On April 5, 1993, Stonewall protected three youthful gay people - Hugo Greenhalgh, William Repel, and Ralph Wilde - sometime in the European Court. It has been contended that the law prohibiting "gay person acts" abuses human rights and meddles with their right to protection. "The day is critical in LGBT history because it is the 98th commemoration of Oscar Wilde's capture in London, which afterward led to his arraignment and imprisonment for having sex with a man. In 1994, the age of assent for men to have sex with men was brought down to 18 - the Stonewall compromise would proceed to challenge until a break even with the age of assent was come to in 2001. The age of assent in Northern Ireland was set to 16 in 1994-2008, in line with the rest of the UK."<sup>5</sup>

### **LAWS REGARDING THE AGE OF CONSENT**

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<sup>4</sup> *Id.*

<sup>5</sup> Consent Matters: A Comparative Study of Rape Laws in India, UK and Canada, INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES, <https://ijlmh.com/paper/consent-matters-a-comparative-study-of-rape-laws-in-india-uk-and-canada/> (last visited Sep 2, 2024).

Usually, the age at which the law has decided that young people are developing sufficiently to create their own choices. It is outlined to prevent children and youths from being mishandled by seniors. Although it is illegal to have sex sometime recently at the age of 16, you'll possibly be indicted for breaking the law. But the huge address is, does it truly work?

The Marriage and Civil Partnership (Minimum Age) Act 2022, which won Royal Consent final April, comes into force on (February 27). This implies 16- and 17-year-olds will not be allowed to wed or enter into a gracious association, indeed if they have parental assent.

As of now, it is illicit to require the advantage of powerless children to orchestrate their marriage and could be a criminal offense, in any case of the circumstances, whether or not drive is utilized.

This altar will split down on constrained relational unions that can cause enduring hurt to children and is part of the government's continuous commitment to handle savagery against ladies and young ladies.

Those found blameworthy of organizing child relational unions were confronted up to seven long times in jail. 18 is broadly recognized as the age at which an individual gets to be a grown-up and has full citizenship rights.

### **IMPORTANCE OF AGE OF CONSENT**

Within the UK, we all know the law that says individuals under the age of 16 cannot assent to sex. It is cherished within the law and is to a great extent taken after. Guardians over the UK make the day-by-day choice not to let their child's accomplice remain unless both are over 16. But why does this law exist? Is it a bit self-assertive to glue age into a lawful report and anticipate individuals to aimlessly take after it? Most likely, but there are other focuses to consider as well.

This article analyses the rise of adolescent sexual regulation in Canada and the United Kingdom and examines conceptions of childhood versus adulthood, known as "generational", as they are portrayed in the political process. In both cases, political manipulation of childhood identity relative to adulthood, both by gender and generation, is an important trigger, although regulation takes place within a context specific to each case. Furthermore, this generational politics goes beyond the specific regulation of young people's sexuality through hegemonic notions of

femininity and masculinity and idealizes heterosexual families as a universal norm. Much more than that of society at large.<sup>6</sup>

### EXCEPTION IN MARRIAGE

Within the UK, the age of marriage is 16. Anybody matured 16 or over, in any case of sex or sex, can legitimately assent to sex. There are exemptions to this run of the show. It is unlawful for anybody in a position of belief to have sex with anybody 17 or younger in their care. An individual in a position of belief incorporates instructors, youth laborers, sports coaches, and anybody in a position of belief with a youthful individual. Anybody in a position of belief to drive sex with somebody in that belief or to take advantage of their position of belief to empower sex with individuals they care for is a criminal offense. Since 1967, the age of marriage within the UK has been set at 21, even though for hetero couples it is 16, and 13 of them are sent to jail.<sup>7</sup>

### CONCLUSION

Assent could be a term utilized in law to portray two or all individuals locked in in sexual movement who intentionally concur to lock in in sexual intercut. As it were those 16 a long time of age or more seasoned can assent. The law depicts assent as "free understanding," meaning consent is given in a circumstance where there's no constraint. Constraint is characterized as an act or hone of convincing somebody to do something utilizing drive or danger. So, for illustration, a free bargain cannot be taken out when.

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<sup>6</sup> Singh, *supra* note 1.

<sup>7</sup> The ages of consent around the world | The Week, <https://theweek.com/92121/ages-of-consent-around-the-world> (last visited Sep 2, 2024).