As Supreme Court stands up the girl child, many other laws will be questioned

The Supreme Court on Wednesday finally rid the Indian Penal Code of an eyesore, which had earlier permitted sexual intercourse between man and his wife below the age of 18 but more than 15 years of age, striking a blow in favour of the rights of an adolescent and sending the welcome message of equality across the various contradictory laws on this subject.

The age of consent to marry, since 1978, had been set at 18 years. Two years later, the Law Commission, in its 84th Report had also recommended that this age for a married female under Section 375 of the IPC be made 18 years.

But on Wednesday, the Supreme Court in Independent Thought v. Union of India, WP (C) 382 of 2013, where the second exception to Section 375, IPC was interpreted to read "sexual intercourse or sexual acts by a man with his own wife, the wife not being under 18 years of age, is not rape" extensively analysed the various laws prescribing the age of a female in that regard. These include the Prohibition of Child Marriage Act, 2006 (18 years), Prevention of Children from Sexual Offences Act, 2012 (18 years), Juvenile Justice Act, 2015 (18 years).

It found that the age of consent being 15 years for a married female, was inconsistent with existing laws as well as arbitrary, unfair, and violative of the right to life of the minor under Article 21 of the Constitution. Focusing on the right of health and choice of young girls (between 15 to 18) the Court has corrected a legislative gap which had nullified Parliament's 1978 move to protect young girls by making the age of consent to marry 18 years.

But the Court skirted the issue of marital rape, which is currently being hotly debated in society. It restricted itself to reading the second exception to Section 375, IPC, though it was faced with concerns as to whether its interpretation would constitute creating a new offence, as also the fact that the challenge to the second exception had been given up by the petitioners.

The Court has relied on a purposive and harmonious construction in interpreting a criminal statute, although some may legitimate ask query whether in interpreting a criminal statute, only a strict interpretation of its language is permissible .

Though termed a "reading down" of the words, the Court's decision actually constitutes a "striking down" of the age of consent being 15 years and replacing it with 18 years. An interesting comparison can be drawn to the decisions in 2013 and 2014 in the wake of the Nirbhaya case when petitions were filed to interpret the age of a juvenile to be 16 years against 18 years under the Juvenile Justice Act 2000.

At the time two Benches of three-judge strength had (in Salil Bali v. Union of India, (2013) 7 SCC 705 and Subramanian Swamy v. Raju, (2014) 8 SCC 390) declined the petitions to reduce the age of a juvenile from 18 years to 16 years, holding it to be part of legislative policy and in conformity, even though the discrepant provisions relating to the age of the various statutes including the Penal Code were cited. Yet the Supreme Court did not to do so.

The present decision does not refer to or deal with the reasoning in Salil Bali or Subramanian Swamy, and while it is good law today, it may end up being revisited on the rationale of those decisions which are for benches of a larger strength.

While the Penal Code does not deal with the age of puberty, under Islamic Law a woman attaining puberty (considered 15 years under Sharia law) may marry as held by the Bombay High Court in Daud Hasan Mhaglunkar 1993 (95) Bom LR 686. The change by this judgement is liable to be

questioned on that ground too.

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