

Saving child brides — on SC ruling on sex with minor wife

By ruling that marriage cannot be a licence to have sex with a minor girl, the Supreme Court has corrected an anomaly in the country's criminal law. Under the Indian Penal Code, it is an offence to have sex with a girl below 18 years of age, regardless of consent. However, it made an exception if the girl was the man's wife, provided she was not below 15. In other words, what was statutory rape is treated as permissible within a marriage. By reading down the exception to limit it to girls aged 18 and older, the court has sought to harmonise the various laws in which any person under 18 is a minor. Overall, the judgment is in keeping with the reformist, and indisputably correct, view that early marriage is a serious infringement of child rights. The judges draw extensively on studies that demonstrate child marriage is a social evil that adversely affects the physical and mental health of children, denies them opportunities for education and self-advancement, infringes on their bodily autonomy and deprives them of any role in deciding on many aspects of their lives.

As a move to strengthen the fight against child marriage and help stricter enforcement of the Prohibition of Child Marriage Act, 2006, the judgment cannot be faulted. But the practical implications of the judgment are worrying. Are all men married to girls between the ages of 15 and 18 to be condemned to face criminal cases as rapists? Given the prevalence of child marriage in this country, it is doubtful whether it is possible — or even desirable — to implement the statutory rape law uniformly in the context of marriages. What, for instance, does this mean for those married under Muslim personal law, which permits girls below 18 to be married? The age of consent under the IPC was raised in 2013 from 16 to 18 to bring it in line with the Protection of Children from Sexual Offences Act, 2012. However, the age above which marriage is an exception to rape was retained at 15, as fixed in 1940. POCSO criminalises even consensual teenage sexual activity and the latest ruling has brought this into the domain of marriage. A teenager could be prosecuted for a sexual offence under POCSO even if he was just a little above 18. In the same way, a teenage husband may now be threatened with prosecution for rape. Significantly, if boys under 18 but over 16 are charged with penetrative sexual assault under POCSO or rape under the IPC, which can be termed 'heinous offences', they could face the prospect of being tried as adults, according to the juvenile law as it stands now. Treating all below 18 as children may be good for their care and protection, but whether 18 is the right age for consent in this day and age remains a moot question. The state's argument that given the widespread prevalence of child marriage it is not possible to remove the exception may be flawed from a formal standpoint, but its concerns about the implications of the verdict must not be underestimated.

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