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Understanding Consent: Legal Interpretations and Social Implications

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ABSTRACT

“Consent is not simply saying ‘Yes’ or ‘No’ it’s about understanding and trust a person gives.”

The word “consent” is the major wordplay. This word plays a crucial role in any encounter. Be it a Contract, agreement, or Sexual encounter, etc. Consent is the foundation of any intimate relationship, understanding and trust. It is not necessary that consent is only important for relationships between the couples but when a person be it whether a woman or man if says ‘yes’ or ‘no’ the other person should be mindful and capable enough to understand why the person has said yes or no. Generally, when a couple is in a relationship, both partners give their mutual consent without any coercion at the time of coitus, or sexual intimacy. In a way, they are putting that trust in their partners, showing that they have faith in them and the comfort that they can be intimate with each other without any fear and enjoy that too.

Keywords: *Consent, Sex Education, Pornography.*

I. INTRODUCTION

“Consent is not simply saying ‘Yes’ or ‘No’ it’s about understanding and trust a person gives.”

The word “consent” is the major wordplay. This word plays a crucial role in any encounter. Be it a Contract, agreement, or Sexual encounter, etc. Consent is the foundation of any intimate relationship, understanding and trust. It is not necessary that consent is only important for relationships between the couples but when a person be it whether a woman or man if says ‘yes’ or ‘no’ the other person should be mindful and capable enough to understand why the person has said yes or no. Generally, when a couple is in a relationship, both partners give their mutual consent without any coercion at the time of coitus, or sexual intimacy. In a way, they are putting that trust in their partners, showing that they have faith in them and the comfort that they can be intimate with each other without any fear and enjoy that too.

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(A) Significance of the Research

As we understand the concept of ‘Consent’ and lay out different side of debate, it is essential to address why this debate is important and why it deserves a comprehensive work. The need for the understanding of Consent and what are its implications on our society, the importance of inclusion of sex education in school curriculums, the legal implications of neglecting the term consent at the time of any sexual activity could play a source of debate, it doesn’t only limit to only at the time of sexual activities but also misusing and displaying of private information and pictures and videos without other party consent. Since time and age the concept of consent has been evolving according to the change in society, inclusion of new technologies, has also become one of the major reasons as to why people are forgetting their boundaries and crossing it.

II. IMPORTANCE OF INCLUSION OF SEX EDUCATION IN SCHOOL CURRICULUMS

“Education is the way which leads people from darkness to light.”

Even today when we talk about introducing sex education in school curriculums, many still have that prejudice that there is no need for kids to learn about sexual activity at such a young age or why is it that a boy or girl should learn it in such a young age, it’s not ethical, it is not according to our culture and traditions, etc. It’s still a taboo topic to discuss it in our India, even after facing many heinous crimes of rape, spreading intimate videos and photos without knowledge of other party, blackmailing them.

(A) Understanding of sex education

Many still have such misconceptions that sex education means talking only about sexual activity. But in reality, sex education talks about the importance of knowing about reproductive health, its organs, and adolescents, and raises awareness of sexually transmitted diseases to protect people from false or half knowledge.² Rather it helps in access of accurate information and helps students in understanding the gravity of it. So that they are mindful and capable enough to make better choices about their sexual and reproductive health. Many students from young age rely on unreliable sources like Pornography photos and videos, to know about sexual activities, which creates misconception and spread myths among the youth that the grave activities where woman consent is not essential, or torturing of woman is how sexual activities are to be enjoyed. Which creates a myth in the young minds of boys that doing sexual activities

² Goldfarb, E. S., Lieberman, L. D., & Department of Public Health, Montclair State University, Montclair, New Jersey. (2021). Three Decades of Research: The Case for Comprehensive Sex Education. In *Journal of Adolescent Health* (Vol. 68, pp. 13–27). <https://doi.org/10.1016/j.jadohealth.2020.07.036>

is their birth right and forcing woman or young girls into it is not wrong. Sex education gives us comprehensive sex education, it delivers realistic, age- appropriate information, which helps in dissipating misunderstanding about sex and all the other activities which comes with it.

Its not just about education of sexual activities, it also teaches the importance of beginning of the sexual activity which takes place after getting consent, which is very crucial part of any sexual or non-sexual activities. It also teaches respect towards all the genders, endorsing gender equality and inclusivity environment. importance of knowing one's body, and worship it accordingly, which supports in reducing bullying, discrimination, and stigma around gender and sexuality issues helps in empathetic towards emotional well-being which is key to a healthy development of personality.

Even World Health Organizations (WHO) and UNESCO advocate for sex education as a key aspect in improving health outcomes and accomplishing sustainable development goals related to health, gender equality, and education.³

Sex education, also known as SELF-AWARENESS AND UNDERSTANDING OF YOUR OWN BODY OR WHAT MAKES YOU FEEL COMFORTABLE. Sexual wellness helps in building intimacy between the partners, creates trust and faith in them, promoting of healthy communication between the couples always helps in strengthening the bond between the couples.

III. ANALYSIS OF THE WORD ‘CONSENT’

Consent is not a one-time thing. It is high time that we need to understand consent and boundaries. Both goes hand-in-hand. One cannot be achieved without the other. Consent is not about getting a simple yes or no, it is about understanding why the person has said yes or no , being capable and mindful enough to understand and respecting the boundaries of the other person and not crossing it. Getting consent, in the beginning, doesn't mean it is set in stone. It can be changed according to the situation. If the person is feeling uncomfortable at any point in time, consent can be withdrawn. Whatever you do has to be mutual, ALL THE WAY! It is important to get consent and get it again so that all parties feel comfortable at all times. Having an proper conversation of what are the likes and dislikes they have. What are the things they want to try and are both the partners comfortable enough to give consent? What are their boundaries which cross can lead to uncomfortable sexual intercourse, etc. all these should be

³ Comprehensive sexuality education. (n.d.). <https://www.who.int/news-room/questions-and-answers/item/comprehensive-sexuality-education>

properly discussed by the couples before starting any sexual activities. And keep on checking whether both the partners are enjoying it and creating that comfortable space is important.

Understanding consent is a state of mind; it is not enough for the other person to say NO! You have to learn to “hear” it. Pushing yourself into someone's space when they don't want you over them is sexual harassment. It cannot be justified by saying that we had ‘good intentions’ for doing such actions. It cannot be justified and it is not enough, it important to be sensible enough to be responsible for your actions. Just because you are in a relationship doesn't give you the right to own your partner's body.

Consent is not about saying yes or no to sex; it is about respecting the other person's space in every aspect of their life. Calling someone in the middle of the night to say you like the person and harassing them to like you back, stalking them, threatening to morph their pictures and post it on pornography websites, uploading of private videos to get revenge for breaking of relationship, or not accepting the proposal, defaming and humiliating them, for fun and entertainment, etc.

The crucial parts arise when if a woman or man says ‘No’, then the person should be prepared to accept a ‘No’ with a grace and respect the persons boundaries and their comfort, rather than pushing their boundaries to get a ‘Yes’. It is important to understand why did the person say ‘No’ being heedful enough to understand the meaning behind ‘NO’. understanding that not everyone is going to like us back. That’s a harsh truth but it’s a high time that we need to face the truth. Its an important lesson we all have learn in life.

First, learn emotions because sexual intercourse is simply two body parts fitting together. Because the consequences of not teaching these are far worse than you can begin to understand. The very first emotion taught is how to deal with rejection. Facing rejection should be normalized; everyone faces rejection. When you like someone, they will not like you back. The most normal thing in the world hurts, but it happens to everybody.

Sex education is all about the millions of different emotions we feel. It's all about the emotions, and it's also not as straightforward as feeling aroused and wanting to have sex. It is a mess of emotions—excitement, fear, wanting to run away—everything happening simultaneously, so the first thing to do is to understand that these emotions dictate how we act and react.

These emotions define whether you turn into a caring partner or an abusive one. This defines whether you understand consent or think force is acceptable; these will define your self-esteem and how you respect your partners.

If we are never taught to acknowledge, understand, and manage those emotions, it will impact the health of all our future relationships.

(A) Whether Bollywood responsible for the increase in stalking and sexual harassment cases in India?

Unfortunately, Bollywood is hugely responsible for this. They have embedded this “Eve teasing” culture into people's minds, where the male protagonist who pursues the female protagonist harasses her, crosses every boundary, and in the end, falls in love with her. But this doesn't happen in real life. Growing up, watching these kinds of movies certainly had a negative impact, especially on men's thinking that having sex is their right and they are entitled to it. But they have to be taught that having sex is not a right but a privilege. You have to seek their consent to be intimate with them, and if your partner shows the same excitement to be intimate with you, they are giving you that consent.

Most young people today are getting their sex education from watching pornography, and all they see is that every time a guy wants sex, every single girl is ready to do anything with him, but as we know, that is never going to happen in real life. Unfortunately, this is what is sinking into their heads, and there is an entire wave of young people growing up without even the concept of consent or even realizing that no is a valid word. Many men believe asking for a woman's consent breaks the heat. It is at the heart of sexual violence.

The lack of understanding around consent as a basic concept is one of the biggest issues in society today. A woman has her feelings, and they have the right to turn you down, and you have no idea just how much sexual violence this is leading to.

(B) Effects of Pornography

Contents posted on the various pornography sites are mostly very disturbing in nature, where it has ability to manipulate and create a misconception in the young brains of male youth, that this how a sexual activity is performed in aggressive and dominating of men on woman in the said course activity. Many young male youths get heavily influenced by this and their way of thinking and behaviour towards woman takes a change and they like to think that they have all the control over woman life and they can mistreat them however they like and it is their right to enjoy and there is nothing wrong in it. In the pornography websites they see women getting beaten aggressively with different kinds of things, getting mistreated and humiliated, all this when a young mind sees they have the want to do the same thing to women and this leads to wrong decision and mistreatment of women at large by their own men, be it brother, husband, uncle, boyfriend, best friend, or even a total stranger for that matter, they tend to commit rape,

sexual violence, harassment, humiliation, degradation in many ways. Because of all this mislead information through pornography websites, woman have become more of an easy prey in the hands of distorted men who think woman are just a puppet in their hands.

Pornography can be of a good role in helping in changing the society mindset and help in promoting of factual information, and aged appropriate information, it is exactly why the makers of porn can help create change and make a difference! As we all know, pornography websites give us so much capital that we deserve something in return. It is important to address the crucial need for comprehensive sex education. The word 'NO' is a whole sentence in itself; it is a valid reason on its own. No means "NO"; you don't have to justify, explain or apologize for saying no. It's your decision.

(C) Changes that can be made in the pornography contents are:

1. the websites to put mandatory strict age limit, by putting proper authentication of age 21+ or more.
2. before displaying any videos a proper disclaimer of 'Consent obtained by all the parties' to perform any sexual act which will be exhibiting.
3. Any sexual activities like BDSM or other activities to have a age limit to be able to access and disclaiming that none of the parties were harmed or treated disrespectfully and both the parties have given voluntary consent and no coercion or duress has been done.
4. To launch and awareness on their websites of sex education and that they do not promote contents like rape, sexual harassment, degradation of women or men in any way.
5. They shall ban all the videos of forceful sexual activities videos, where the women has not given explicit consent.

(D) Legal Implications

If any person is coerced or misled into having sexual activity, the ethical and legal lines get blurred. If a person is taking consent for having sexual intercourse on the false pretext of a false marriage, it would amount to sexual assault or rape and be charged under Section 375 and punished under Section 376, or use of assault or any criminal force on women with intent to disrobe under 354B, voyeurism under 354C of the Indian Penal Code, 1860⁴ which the old the criminal act.

⁴ The Indian penal Code, 1860

In the new criminal law, the Bharatiya Nyaya Sanhita, 2023, there has been changes made in the punishment and new offences has been introduced of offences against woman and child in the act from the section 63 to section 99 of the new Act. In the new act S. 65 gives punishment for rape in certain case where woman is under the age of 16 years under 65(1) and woman under 12 years under 65(2) to be punished with rigorous imprisonment. S. 70 for Gang rape. Sec. 76 Assault or use of criminal force to woman with intent to disrobe and S. 77 Voyeurism⁵.

Many debate whether it counts as rape if both parties consent, even though they were duped into thinking they were getting married. If the man hadn't made a promise that they would get married, the woman wouldn't have given consent to begin with. This supports the idea that consent is meaningful only if both parties are honest and open with each other. Without full disclosure, consent is not truly informed consent. Therefore, any sexual relations that take place without full disclosure can be considered a breach of trust.

Under Section 90 of the Indian Penal Code, 1860, Consent known to be given under fear or misconception is defined. If a man makes a false promise of marriage, he falls under Section 90, which describes what is not consent rather than defining "consent". For Section 375, "consent" necessitates voluntarily participating both after the full exercise of the choice between resistance and assent and after the application of intelligence based on knowledge of the significance and morality of the act. It is only possible to determine whether there was consent or not after carefully examining all pertinent facts.

In the case of the State of U.P. v. Naushad⁶, The accused had sex with the victim after telling her he would pretend to marry her. He refused to do it after she became pregnant. It is clear from this that he never intended to marry her and only obtained her consent to have sex with her. The accused's actions qualify as rape because they involved sexual contact with her consent, which was granted in violation of Section 90 of the Indian Penal Code.

This Court believes that the accused engaged in sexual activity with the prosecutor by mistaking her true intentions, and the alleged consent that the accused is said to have obtained was not voluntary consent. The evidence makes it clear that the accused had no desire to legally wed the prosecutor; instead, she only wanted to have sex with her. He lied to her and never had any intention of getting married to her.

IV. CONCLUSION

To conclude, as women we often encounter some form of sexual violence or harassment every

⁵ The Bharatiya Nyaya Sanhita, 2023

⁶ State of U.P. v. Naushad (2013) 16 SCC 651, 658

day. It is not invisible, it is very tangible and very real. Basically, woman are forced to face these kinds of situation and expected to live with this as it is of not of any crucial matter. Many women who try to raise their voice or often suppressed or they receive death threats, rape threats, always living in the state of anxiousness. It is high time that tides to be turning, men to stand up and realise their responsibility and standing shoulder to shoulder with women to fight this plague. There is a large number of men who are still try to counter attacks with their justification and self-validation. And not only just men but also, they are women at large who still support these actions of men and support them in their actions and encourage them more to do so and criticise the woman that it must be her mistake of wearing too much of revealing clothes, raising voice against men, instead of staying at home and getting married to a man and take care of his household. We have a very difficult battle ahead of us and the fear of not standing up against the heinous, self- righteous perpetrators is so deeply ingrained, the shame, the blame, the lack of support. We need to turn the tables and need to be there for each other, no matter the gender, we need to support one another as human beings.
