

Sexual Consent and Persons with Psychosocial Disabilities: Exploring Sexual Rights under Indian Laws

Authors : Sachin Sharma

Abstract : Sexual consent is integral to every sexual relationship. It is a process to facilitate sexual autonomy and bodily integrity. It assures complete sexual personhood and allows an individual to explore her sexual expressions independently. But the said proposition is not true for people with psychosocial disabilities. Generally, they are considered seraphic or mephistophelic and denied access to sexual autonomy. This result in institutionalizing the sexuality of disabled persons, where the eugenics-ableist narrative defines assessment and access to consent. This way, sexuality and disability are distanced apart. It is primarily due to the stigmatized socio-cultural constructs of sexuality that define sex within a “standard” and “charmed” circle. Such stigmatized expression influences the law, as it considers people with psychosocial disabilities incapable of sexual consent. The approach of legal institutions is very narrow towards interpreting their sexual rights. It echoes the modernist-ableism and strangulates the sexual choices. This way, it reflects the repressive model of sex and denies space to people with psychosocial disabilities. Moreover, judicial courts follow old and conservative methods while dealing with sexual issues. For instance, courts still practice the “standardized” norm of intelligence quotient (IQ) for determining the credibility of persons with psychosocial disabilities. Further, there is still doubt about assistive communicative techniques. This paper will try to question the normative structure of sexual consent and related laws while specifically addressing the issues of sex as desire and abuse. Considering the commitment to the United Nations Convention on the Rights of Persons with Disabilities (herein referred to as UNCRPD) and common law experience, the paper will draw a comparative study on the legal position of sexual rights in India. The paper will also analyze the role of UNCRPD in addressing sexual rights. The author will examine the position of sexual rights of people with psychosocial disabilities after the drafting of UNCRPD and specific state laws. The paper primarily follows the doctrinal method.

Keywords : sexual autonomy, institutionalized choices, overregulated laws, violation of individuality

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