



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

Need of Sex education as a right in India

Mahak Agrawal^a

^aKLE Society's Law College, Bangalore, India

Received 13 January 2022; Accepted 22 January 2022; Published 25 January 2022

In this era, unlimited information is available on the Internet and due to COVID children become prone to the technological world. Where every child (specifically age 1 to 10) knows how to access the internet and make use of the Internet, it is evident that they resort to the internet for every information they want. Hence this article discusses what happens if no proper education is given to a child/teen regarding sex and its other notions. It has also discussed the current scenario prevailing in India regarding sex and its other notions. As it is considered taboo in India. This article also talks about what could be the right time to talk about sex education and also discuss notions such as Homophobia, gender equality, child abuse, sexual abuse, and violence. A major concern of this article is 'Need of Sex Education as a Right in India'. This article has also provided International Perspective on Sex education. It suggests some ideas through which Government may make guidelines or courses to provide quality sex education to the students.

Keywords: *sex education, consent, sexuality, sexually transmitted diseases.*

INTRODUCTION

We have all heard of the term Sex Education or Sexual Education which is still considered as a stigma in Indian society. So what is Sex Education? It is imparting knowledge and educating people regarding human sexuality, sex, sexual health, sexual rights, sexual anatomy of humans, age of consent, reproduction, safe sex, birth control in an age-appropriate manner. It

also includes emotional relations and responsibilities. Studies show that the majority of parents do not accept the responsibility for providing sex education, with 88% of the male and 58% of the female students in colleges in Mumbai reporting that they had received no sex education from parents.¹ The young population is very curious about changes and especially when they hit the age of puberty, curiosity about sexual matters arises. This is a very tender age and due to ignorance of their questions, the Internet leads the way. They resort to the internet which is the source of unlimited information. But how will they know what information is true and reliable? Here comes the question of the Need for proper Sex Education.

India is home to 253 million adolescents (aged 10-19 years) who comprise 21% of the country's population as per the 2011 census who receive little to no education about their sexuality.² During the age of adolescence i.e. 10-19 years of age, young people experience a drastic development in their physique and behavior. At this time they need support and knowledge from their parents, teachers, and health care workers. Sexual development is a normal process that all young people experience, and they have the right to frank, trustworthy information on the subject.³ But due to the taboo surrounding matters of sexual nature and widespread gender inequality, they cannot attain the knowledge required. Because of the existing socio-cultural and religious beliefs, the sexual health program takes the backseat and the main issue related to physical health remains unaddressed.

CURRENT SCENARIO OF INDIA

The Adolescent Education Programme (AEP) was first introduced by the Government of India in the year 1993. It organized a nationwide seminar including parents, educators, students, and sexologists. Later in 2005, UNICEF along with the Ministry of HRD and National AIDS

¹ Shahajahan Ismail, Ashika Shajahan, T.S. Sathyanarayana Rao, & Kevan Wylie, 'Adolescent sex education in India: Current perspectives' (*Indian Journal of Psychiatry*, October 2015) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4711229/>> accessed 09 January 2022

² *Ibid*

³ Anna Katz, 'Sex Ed goes global: The Netherlands' (*Duke*, 19 July 2018) <<https://dukecenterforglobalreproductivehealth.org/2018/07/19/sex-ed-goes-global-the-netherlands/>> accessed 09 January 2022

Control Organisation (NACO) updated it to align it with the government's stated goal of "no new HIV infections by 2007".⁴ But many states including Karnataka, Gujarat, MP, Maharashtra, Chhattisgarh, and Rajasthan protested against the Adolescent Education Programme. The then Chief Minister of Karnataka even said, "Why should we impart western sex education? Our values are good enough." This all led to an end of the debate on imparting sex education in India, and hence a reform initiated by NCERT 15 years ago went off the track. Recently, India updated its Education Policy after almost 3 decades. Many things were changed, including but not limited to, Board exams, discontinuation of MPhil courses, common entrance exams for Universities. But one chapter was missing- Sex education.

Many in India believe that Sex Education as the name suggests will teach how to have sex. But it is a misconception. It only teaches about sexual hygiene, sexual health, gender sensitivity, contraception, STI, sexual expression, consent, and awareness about sexual abuse. In India over 100 children are sexually abused every day. The numbers seem to increase day by day.⁵ A study suggests that, due to lack of sex education, the children don't even know about sexuality at the age when they need to know about it.⁶ Conclusively, they have conflicted notions regarding one's sexuality and it leads to abuse, bullying, and exploitation. Telangana in its initiative towards sex education becomes the first state in India to include Gender Education at the graduate level discussing gender in its composite form and does not only talks about crime against women.⁷

WHEN TO START SEX EDUCATION? HOW YOUNG IS TOO YOUNG?

Ideally, Sex Education should start at a young age, we can say when the child is a baby (4-5 years). We don't need to wait until he hits the age of puberty. Parents often think their kid

⁴ Kaveree Bamzai, 'Indian Schools still not ready for education' (*India Today*, 18 June 2011) <<https://www.indiatoday.in/magazine/education/story/20070618-no-sex-education-in-indian-schools-748388-2007-06-18>> accessed 10 January 2022

⁵ Shahajahan Ismail, Ashika Shajahan, T.S. Sathyanarayana Rao, & Kevan Wylie (n 1)

⁶ 'The Underwear Rule' (*Council of Europe*) <<https://www.coe.int/en/web/children/underwear-rule>> accessed 10 January 2022

⁷ Nikhila Henry, 'Telangana becomes first state to make gender education compulsory' (*The Hindu*, 11 January 2016) <<https://www.thehindu.com/news/national/telangana/Telangana-becomes-first-State-to-make-gender-education-compulsory/article13994037.ece>> accessed 10 January 2022

doesn't need to learn about these things at this age. But this is a misconception. Because Sex education is not just about having sex or sexual intercourse. There are many more things. The significance is given upon sexuality, which means to know one's body and others, relationships, social etiquettes, gender, good touch, and bad touch. On the other hand, various study shows that education regarding sex, sexuality should start at the age of 10 years. Georgetown University Research shows that at this young age, the kids start identifying sexual behaviors, sexual and gender identities, and in the absence of knowledge about all this, they will take unnecessary risks associated with sex.⁸ If we look into a case study of the Netherlands, they start sex education at an early age of 4 years. It is proven that the Netherlands has the least child abuse cases, lowest rates of teen pregnancy, and lowest STIs. If the parents are approachable from an early age regarding these matters, and they build a healthy attitude towards it, then the kids are less likely to fall victim and the cases of child abuse would also decrease.

HOMOSEXUALITY IN SEX EDUCATION IN INDIA

In India where Section 377 of the Indian Penal Code⁹ criminalized homosexuality and has recently been struck down by the Supreme Court recognizing the right of the LGBT+ community to live a free life, it was very difficult for the LGBT community to cope with the prevailing situations, where they had to face bullying, discrimination everywhere they go. While we talk about sex education in India, we can mainly think of teenage pregnancy, HIV/AIDS infection. While homosexuality and safer sex are topics not much talked about, they are equally important. In India, people don't want to accept different sexual orientations. Because of their old age thinking. In a recent case of *S Sushma v Commissioner of Police*¹⁰, a same-sex couple eloped and moved to Chennai and sought protection from their parents because they objected to their relationship. While hearing the case, Justice N Anand Venkatesh

⁸ Susan M. Igras, Marjorie Macieira, Elaine Murphy & Rebecka Lundgren, 'Investing in very young adolescents' sexual and reproductive health, *Global Public Health* (*International Journal for Research, Policy and Practice*, 13 May 2014) <http://irh.org/wp-content/uploads/2014/05/Investing_in_VYAs_SRH_2014.pdf> accessed 10 January 2022

⁹ Indian Penal Code, 1860, s 377

¹⁰ *S Sushma v Commissioner of Police* [2021] SCC OnLine Mad 2096

said that the matter should be dealt with sensitively, as it shows how society is struggling to acknowledge same-sex relationships in India.

Before delivering the judgment, Judge quoted as he is not fully woke on this aspect he will take more time to churn. He also said that he is trying not to apply his preconceived notions on this subject and hence fixed an appointment with a psychologist regarding this case so that such a session will make him evolve. He prohibited Conversion Therapy and directed comprehensive measures to sensitize society to remove the prejudices among the LGBT community. He also talked about changing the curriculum of schools to educate children regarding sexual matters. The court also recognized that there is no specific law to protect the interests of queer people and acknowledged the constitutional courts to make such guidelines with necessary directions to ensure the protection of such couples from harassment sourced from stigma and prejudices.¹¹

SEXUAL ABUSE, CHILD ABUSE, AND VIOLENCE

A study on child abuse in India, conducted by the Ministry of Women and Child Development, reports that 53% of boys and 47% of girls surveyed faced some form of sexual abuse.¹² The children are not aware of their rights and hence they just bear the undesired behavior of sexual abuse and violence. Sex Education makes them aware of their sexual rights prevents them from getting themselves out of such socially unacceptable acts.

SEX EDUCATION: THE KEY TO ACHIEVING GENDER EQUALITY

The social norms are such that, they are proponents of old ideas. Due to this, many people believe a boy carries on the lineage of the family. Hence they don't want a girl to be born in the family. Here the family planning program of Govt. of India also fails because, to have a boy, people don't care about birth control. So gender equality plays a very vital role in Sex

¹¹ Tripathi Karan, 'Society Needs to change, Not the LGBTQIA+ Couples: Madras HC' (*The Quint*, 7 June 2021) <<https://www.thequint.com/news/law/society-needs-to-change-not-the-lgbtqia-couples-madras-hc>> accessed 13 January 2022

¹² Study on Child Abuse, India 2017: Ministry of Women and Child Development Government of India' (*Indianet*) <<http://www.indianet.nl/pdf/childabuseIndia.pdf>> accessed 12 January 2022

Education. If a boy and a girl are treated equally by society, then the problem of birth control, the population will also dropdown. UNESCO also has worked towards comprehensive sexuality education to improve girls' health and well-being. It has also hosted a program where educators came forward and discussed how important education is to empower girls and women.¹³

NEED FOR SEX EDUCATION AS A RIGHT

The main point which stops from incorporating Sex Education is Parental Control and Obscenity. Parents have such a relationship with their children that they want the best health and well-being for them. Hence, they have at times objections to Sex Education. On the other hand, the State has incorporated Article 21A in the Constitution of India¹⁴, which says, "The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine". The main objective to amend the article was to ensure the growth and development of its citizens. The State has already recognized Education as a fundamental right then why cannot it recognize Sex Education as a Fundamental Right under the said article? It is just because it is influenced by culture and societal behavior regarding what should and what should not be taught. As the government has a responsibility towards all of its citizens, it should provide for some provisions which include Sex Education Programme for adolescents.

In the case of **Mr. X. v Hospital Z**¹⁵, the court had cautioned that it couldn't assist in the spreading of "dreadful diseases such as HIV". The Court said that the Right to Privacy of an individual can be set aside who had the disease if it meant that a person who did not have the disease could be saved from having it. Through this judgment, the Court had highlighted the responsibility of both individuals and Governmental bodies in the prevention of the spread of Sexually Transmitted Diseases. Thus, if children are getting awareness regarding the spread of

¹³ 'Sexuality education: A powerful tool to achieve gender equality' (UNESCO, 25 June, 2019) <<https://en.unesco.org/news/sexuality-education-powerful-tool-achieve-gender-equality>> accessed 12 January 2022

¹⁴ Constitution of India, 1950, art 21A

¹⁵ *Mr. X. v Hospital Z* [2000], AIR 1999 SC 495

the disease and its precautionary measures then they should also be told about other notions of sex. Additionally, the elders have the responsibility to make them aware of the same. The very purpose of Sex Education is to make students aware of their bodies and how to take proper care of them. Hence, it is not obscene. India is one of the signatories to the 1994 United Nations International Conference on Population and Development (ICPD), hence, as part of its agenda, it is obliged to provide free and compulsory comprehensive sexuality education for adolescents and young people. According to the United Nations, Human Rights Council Report not providing sex education violates the human rights of Indian adolescents and young people as recognized under international law.

The kind of sex education we are talking about, not only creates awareness among the students but also creates a set of life skills through which they can learn and ask for, or identify sources of help. Through this, they can learn when to say no, how to deal with certain situations and of course 'no means no'. India is also a signatory to ECHR and ICCPR, and as per its provision, every person has the right to seek, receive, and impart information in law. These rights are essential to the realization of reproductive rights. As per the UNFPA report, fewer children mean that families and governments can spend more per child.¹⁶ This is especially relevant for girls, whose education is often sacrificed if resources are lacking. Furthermore, avoiding early pregnancies and early marriages encourages girls to stay in school. Guaranteeing the right to information regarding family planning and the use of contraceptives is also important to avoid early pregnancies.¹⁷

INTERNATIONAL PERSPECTIVE

As a School curriculum subject, sex education was first started in Sweden in the year 1955 followed by other European countries in the 1970s and 1980s. In the Netherlands, Sex Education is comprehensive and goes in public places. And on a global level, the Dutch

¹⁶ 'Sexual and Reproductive Health for All: Reducing Poverty, Advancing Development and Protecting Human Rights' (UNFPA, 2010) <https://www.unfpa.org/sites/default/files/pub-pdf/uarh_report_2010.pdf> accessed 12 January 2022

¹⁷ 'Reproductive Rights are Human Rights' (UNFPA & UNHR, 2014) <<https://www.ohchr.org/Documents/Publications/NHRIHandbook.pdf>> accessed 12 January 2022

curriculum is outperforming other countries for sexual health outcomes. All primary school students i.e. children who are as young as 4 years old have to compulsorily receive some kind of sexuality education. At this age, the students receive lessons on intimacy, relationships, and appropriate touching.¹⁸ The core curriculum includes sexual development, sexual diversity, and sexual assertiveness.¹⁹ When the children reach the age of 7, they learn about different body parts, and by the time they turn 8, they talk about gender stereotypes. After they reach the age of 11, they can discuss reproduction, safer sex, and sexual abuse. The Netherlands has one of the lowest rates of teen pregnancy in the world and the lowest HIV and Sexually Transmitted Diseases.

Whereas America's Sex Education Programme focuses solely on teaching abstinence i.e. it provides that youth should abstain from sex to avoid risks associated with it. Hence it is less focused on contraception methods, leaving the US at the top for teen pregnancies among western countries.²⁰ While compared to the Dutch, American teenagers give birth 5 times higher than them. In the US, the population under 25 makes up half of STI cases each year, while in the Netherlands it's only 10% each year.²¹ Scotland has become the world's first country to include LGBTQI+ history in the school curriculum from 2021. According to a survey by Stonewall, around 40% of LGBT+ students in Scotland said they hadn't been taught about sexuality issues and just 22% had learned of safe sex in same-sex relationships.²² It was also found that school children didn't have much knowledge about intersex bodies and sex characteristics. The main reason behind bringing LGBT+ awareness was to bring sex education curriculum in the country. Britain and Wales reported over 7000 cases of assault and 4000 cases of rape during the period between 2014-2015. As a result, Britain announced its sex-ed

¹⁸ Padmini Vaidyanathan, 'Need for Comprehensive Sex Education: Moving beyond birds and bees' (*The Quint*, 6 May 2020) <<https://www.thequint.com/neon/gender/india-needs-a-comprehensive-sex-education-plan>> accessed 09 January 2022

¹⁹ Anna Katz (n 3)

²⁰ 'Reproductive Health: Teen Pregnancy' (*Center for Disease Control and Prevention*, 15 November 2021) <<https://www.cdc.gov/teenpregnancy/about/index.htm>> accessed 09 January 2022

²¹ 'Adolescent and School Health: Sexual Risk Behaviors Can Lead to HIV, STDs, & Teen Pregnancy' (*Center for Disease Control and Prevention*, 14 June 2021) <<https://www.cdc.gov/healthyouth/sexualbehaviors/>> accessed 09 January 2022

²² 'Scotland to become world's first country with LGBTQ- inclusive school curriculum from 2021' (*India Today*, 6 July 2020) <<https://www.indiatoday.in/education-today/news/story/scotland-world-s-first-country-to-include-lgbtq-in-school-curriculum-1697588-2020-07-06>> accessed 09 January 2022

curriculum. It suggested sex education to children as young as 13 years. The thought behind this is to inform and prepare children against assault so that they are less vulnerable to it and they should know when something wrong happens.

Ontario has sex ed policy since 1988, but as time changes it needs to be changed. They updated it as per new norms in the year 2015. A major emphasis was made on sexting, cyberbullying, posting sexual content online. They teach the students regarding the use of technology and how the Internet can be used safely and they also impart knowledge regarding gender identities.²³ The United Nations Educational, Scientific, and Cultural Organizations (UNESCO) has commissioned a report as part of the development of the International Technical Guidance on Sexuality Education. It contained experimental and quasi-experimental studies from developing and developed countries and also included the US. The programs increased knowledge and positively impacted the behavior of the people. It increased the use of contraception and condom and also reduced sexual risk-taking.²⁴ As per a study, conducted between 2001 and 2009, significant improvements in adolescent sexual and reproductive health were seen after introducing sexuality education in Estonia: Nearly 4,300 unintended pregnancies, 7,200 STIs, and 2,000 HIV infections among adolescents aged 15–19 were averted. If even 4% of the reduction in HIV infections were attributed to sexuality education, the researchers estimate that the program would result in net savings.²⁵ According to UNESCO, "A dual emphasis on abstinence together with the use of protection for those who are sexually active is not confusing to young people. Rather, it can be both realistic and effective."²⁶

²³ Nicki Fleischner, 'Creative approaches to sex ed from around the world' (*Global Citizen*, 2 November 2015) <<https://www.globalcitizen.org/en/content/creative-approaches-to-sex-ed-from-around-the-worl/>> accessed 10 January 2022

²⁴ Heather D. Boonstra, 'Advancing Sexuality Education in Developing countries: Evidence and Implications' (*Guttmacher Institute*, 17 August 2011) <<https://www.guttmacher.org/gpr/2011/08/advancing-sexuality-education-developing-countries-evidence-and-implications>> accessed 10 January 2022

²⁵ *Ibid*

²⁶ 'International Technical Guidance on Sexuality Education: An Evidence-Informed Approach for Schools, Teachers and Health Educators' (*UNESDOC*, 2009) <<http://unesdoc.unesco.org/images/0018/001832/183281e.pdf>> accessed 10 January 2021

SUGGESTION

In India, a proper guide to impart Sex Education is needed. Generally, a student who is in 8th Standard gets to learn about human anatomy in Biology lectures in schools. So to impart Sex Education in children we need to start from a young age. For this, educators need to be trained. In my opinion, health care workers, school educators need to be trained and a separate class for this education should be taken. The World Health Organization gave a proposition to provide training to sexual educators in Europe in 2017 and made a report called "Training matters: A framework for core competencies of sexuality educators."²⁷ It stressed the need for training for quality sex education and provided for three components for proficiency in this field: Attitudes, Skills, and Knowledge. In India, there is a lack of infrastructure, hence the educators fall short to provide knowledge and hence fail students.

At some schools, sex education is provided but it only includes things such as menstruation, venereal diseases, reproduction, but there are various other aspects such as sexual health, sexual hygiene, sexual orientation, consent, good touch, bad touch, and sexuality which needs to be considered while imparting sex education among students. According to my opinion, Child abuse, violence, sexual abuse, even rape are some of the sexual offenses which are increasing in India because here people don't know the importance of values such as Consent, Respect, Tolerance. Students need to be taught how to respect other person's dignity and integrity. Students in schools are many times victims of bullying, abuse, and violence which should be properly dealt with by providing facilities like counseling. The Government may work on this matter and devise separate guidelines and policies to provide quality sex education and to remove prejudices against it. The Government may also enlist NGOs that can work towards providing quality and appropriate sex education to children.

²⁷ 'Training Matters: a framework for core competencies of sexuality educators' (WHO, 2017)
<<https://www.euro.who.int/en/health-topics/Life-stages/sexual-and-reproductive-health/publications/2017/training-matters-a-framework-for-core-competencies-of-sexuality-educators-2017>>
accessed 12 January 2022

CONCLUSION

In today's world, imparting Sex Education is most needed from an early age in children. It is a right of every individual to seek and impart knowledge regarding their sexuality and its notions. It is an essential right in the realization of reproductive rights. Provision of Sex Education may have multiple benefits such as reduced sexual offenses, less sexual transmission of diseases, fewer abortions, use of contraception, reduction in early pregnancies, reduced risk of child abuse, sexual abuse, and violence. Integration of expert help from healthcare professionals would result in making the program more efficient and it would impact the health and well-being of individuals in a great way.