

ARE CONSENT LAWS ROOTED IN RACISM?

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Abstract

The age of consent in America has a very broad and peculiar history in the American justice system. The age of consent has been a widely debated legal topic dating back to the early 1800s. During this period, the age of consent was just seven years old. The age of consent was set in place to ensure the safety of little girls and younger women from sexual exploitation. While debating where to set the age of consent, there were different arguments against raising the age of consent. Many debates had a common denominator: racism. One analyst has said of the arguments, “many were well rooted in fear and disdain for young women, specifically, young Black girls living in southern America.” Consequently, in the south, the argument for an increase in the legal age of consent met with much opposition due to the fear of cross-racial lawsuits. This led to the age of consent remaining at seven years old throughout the 1800s. Eventually, during the nineteenth to early twentieth century, the age of consent was raised to 16 years old. Women in America from across all racial and class demographics argued against the racism that influenced these laws. This article will apply a critical and

analytical lens on the arguments against raising the age of consent.

Introduction

The United States of America has had a long and complex relationship when dealing with raising the age of consent. The age of consent refers to the legally defined age at which a person is held to have the capacity to voluntarily agree to sexual intercourse.¹ Sexual intercourse with a person under the age of consent may lead to criminal charges of statutory rape or sexual assault.² While age of consent in the U.S differs across state lines, the current national average is between 16 and 18 years of age.³ In 1890, the age at which girls could consent to sex was 12 or younger in 38 states. In Delaware, it was seven. This made it extremely easy to get away with sexual abuse as the consent law during this period was extremely low.⁴ The prominence of child sexual abuse and the transmission of sexually transmitted infections aided in the passing of consent laws in various states. During the late 19th century there

¹ *Age of Consent Law and Legal Definition, 2022*, US Legal, Inc., <https://definitions.uslegal.com/a/age-of-consent/>, (last visited April 12, 2022).

² *Id.*

³ *Id.*

⁴ Kimberly Hamlin, *What Raising the Age of Sexual Consent Taught Women About the Vote*, Smithsonian Magazine, 2022, <https://www.smithsonianmag.com/history/what-raising-age-sexual-consent-taught-women-about-vote-180975658/>, (last visited March 24, 2022).

were many cases of young girls being sexually exploited and their accusations being dismissed by the notion that they “consented,” usually confirmed by the other person involved. Men accused of raping girls as young as seven years of age simply raised the defense that “she consented” to avoid prosecution.⁵ These events and one-sided defenses were more common when young Black women are involved. Due to over-sexualization and adultification bias,⁶ cases that involved sexual assault against young Black woman were given little consideration.⁷

The Effect of the Law on Young Black Women Historically

When women across the U.S were crying to raise the age of consent they faced many obstacles, and lawmakers considered several factors, one such factor being race. In

⁵ Id.

⁶ Adultification bias is a stereotype in which adults view Black girls as less innocent and more adult-like than their white peers, devoid of any individualized context. In other words, adultification bias is not an evaluation of maturity based on observation of an individual girl’s behavior, but instead is a presumption of a typology applied generally to Black girls. *See*, Jamilia J. Blake, Rebecca Epstein, *Listening to Black Women and Girls: Lived Experiences of Adultification Bias*, Gender, Justice & Opportunity, <https://assets.aecf.org/m/resourcedoc/georgetown-listeningtowmoenandgirls-2019.pdf>, (last visited April 12, 2022).

⁷ EJI Reports, *Sexual Violence Targeting Black Women*, 2022, <https://eji.org/report/reconstruction-in-america/the-danger-of-freedom/sidebar/sexual-violence-targeting-black-women/>, (last visited April 12, 2022).

the southern part of the country, many young Black girls were being raped and killed and the assailants were being acquitted.⁸ This was due to the conceived notion that Black girls were over-promiscuous beings. Slavery era stereotypes such as being hypersexual, promiscuous, and angry has negatively impacted and adultified Black girls.⁹ This adultification bias was a huge barrier to raising the age of consent. Due to the view that Black girls were naturally more mature, raising the age of consent to its current level was a prolonged process.

Historically, the rape of Black girls was not viewed as a criminal act.¹⁰ One example came from an 1855 case in Missouri. In this case, a court convicted a young enslaved Black woman named Celia of murder for killing a white man who had enslaved and repeatedly raped her. She received a death sentence and was hanged. The court rejected her self-defense claim, concluding that enslaved Black women had no right to resist white slaveowners' sexual advances.¹¹ This

⁸ Id.

⁹ Rebecca Epstein, Jamilia J. Blake, Thalia Gonzalez., *Girlhood Interrupted: The Erasure Of Black Girls' Childhood*, Georgetown Law Center On Poverty & Inequality, (2017), [https://genderjusticeandopportunity .georgetown.edu/wp-content/uploads/2020/06/girlhood-interrupted.pdf](https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2020/06/girlhood-interrupted.pdf), (last visited April 12, 2022).

¹⁰ Id.

¹¹ EJI Reports, *Sexual Violence Targeting Black Women*. 2022, <https://eji.org/report/reconstruction-in-america/the-danger-of-freedom/sidebar/sexual-violence-targeting-black-women/>, (last visited April 12, 2022).

exemplified the struggle to change the perception that sexual assault and rape against Black girls should be taken seriously. In fact, Black girls were shunned from speaking out against sexual assault and rape, especially if perpetrated by white men.¹²

In 1850, arguments in favor of not raising the age of consent began to diminish as the age of consent started to rise in the northern part of the U.S.¹³ By 1900, 32 states had raised the age to between 14 and 18 years old.¹⁴ Raising the age of consent was the result of long periods of protests and rallies held by women in support of the cause. Women of all races fought hard and long to be able to make this a reality. Although raising the age of consent legally was a breakthrough for the movement, there remained other problems.

For example, many southern states refused to raise the age of consent, due to the racism shown toward black

¹² Rebecca Epstein, Jamilia J. Blake, Thalia Gonzalez, *Girlhood Interrupted: The Erasure Of Black Girls' Childhood*, Georgetown Law Center On Poverty & Inequality, (2017), <https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2020/06/girlhood-interrupted.pdf>, (last visited April 12, 2022).

¹³ Kimberly Hamlin, *What Raising the Age of Sexual Consent Taught Women About the Vote*, Smithsonian Magazine, 2022, <https://www.smithsonianmag.com/history/what-raising-age-sexual-consent-taught-women-about-vote-180975658/>, (last visited April 12, 2022).

¹⁴ Id.

women.¹⁵ White Southern lawmakers stridently opposed revised age-of-consent laws because they did not want black women to be able to charge white men with a crime.

Kentucky State Representative A.C. Tompkins went on record with his opposition, explaining, “We see at once what a terrible weapon for evil the elevating of the age of consent would be when placed in the hands of a lecherous, sensual negro woman,” insinuating that black women, who he claimed matured earlier and had a more sexual nature, would seduce men and then accuse them of assault.¹⁶

Other Efforts to Diminish the Adverse Effect

This statement was a defining factor for the lack of empathy and the polarization Black women experienced while fighting for states to raise the age of consent. Many female activists—regardless of race—were driven to fight even harder to force state legislators to raise the age of consent. This was especially true for Black women. Black female activists like Frances Ellen Watkins Harper and Ida B. Wells, were champions for

¹⁵ Id.

¹⁶ Id.

change, shedding light on how rape was used as a tool for white supremacy against Black women.¹⁷

Thus, eventually, in the southern states, the age of consent was increased from the childhood age of seven years old. This required long debates and women's organizations lobbying legislators for change. Black women focused on raising the age of consent through activism in Black women's clubs, churches, and civil rights organizations. Although women of all races and social classes had a hand in raising the age of consent, this alliance quickly dispersed shortly after the age of consent was raised to more acceptable levels, leading to black female activists being given the cold shoulder.¹⁸ However, this female alliance has recently united for the #METOO movement which combats sexual assault and sexual harassment.¹⁹ Today the age of consent across the country ranges from 16 to 18 years old because of the hard work women of all creeds put into raising it.

Conclusion

Analyzing the arguments against the age of consent gives us a legal playbook in how to discuss this topic in the future. The most progressive way to learn from the

¹⁷ Id

¹⁸ Id.

¹⁹ Gurvinder Gill and Imran Rahman-Jones, *Me Too founder Tarana Burke: Movement is not over*, BBC News, (2020), <https://www.bbc.com/news/newsbeat-53269751>, (last visited April 11, 2022).

past is to read, understand, and decipher its true meaning. When reading these arguments, the oversexualization and dehumanization of black women was prevalent. As we move forward as a nation governed by laws, it is important to understand the origins of the age of consent in our legal system. This benefits the country when making crucial decisions on sexual abuse, rape and sexual harassment incidents against women and will destigmatize the topic. This will vastly help women and children who suffer and have suffered from sexual abuse and harassment as our country progresses.