

# **WHY CHILD MARRIAGES CONTINUE TO CHALLENGE US?**

## **A NEED FOR A CROSS-SECTORAL DIALOGUE**



**HAQ: Centre for Child Rights  
SAHAJ**

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## Acknowledgements

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That child marriage still remains a reality in India is a fact no one can deny. This practice continues in some measure throughout the country. HAQ: Centre for Child Rights and SAHAJ, Vadodara are amongst many organisations that have been working to address this issue.

One of the important lessons from groups around the world is that there is a need for integrated, multi-sectoral responses to end child marriage, and strategies for engaging different sectors should be tailored to that sector's interests and priorities.

Keeping in mind some of these lessons learnt, the contextual factors and some of the challenges faced in child marriage prevention programmes, a consultation was organised to facilitate a cross sectoral dialogue on issues related to Child, Forced and Early Marriage on 27-28 September 2019. It brought together practitioners, researchers and activists to discuss strategies that address sectoral interests and priorities.

While dwelling on the discussions at the dialogue, this report also seeks to improve collective understanding of different perspectives and standpoints, and contradictions related to child marriage, child protection and adolescents' rights, the emerging issues that deserve particular attention and feasible multi-stakeholder strategies and actions within the context of SDG commitments.

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We are also grateful to all the participants who contributed to the rich discussions. Above all we thank the children who inspire us and teach us every day, and on whose behalf we are trying to arrive at some consensus, so that policy, plans and action be coordinated and for their benefit.

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## Abbreviations

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ABAD	Apni Beti Apna Dhan
BBBP	Beti Bachao Beti Padhao
CCT	Conditional cash transfer
CEDAW	Convention on the Elimination of Discrimination Against Women
CEFM	Child, early and forced marriage
CMRA	Child Marriage Restraint Act, 1929
CNCP	Children in need of care and protection
CRC	Convention on the Rights of the Child
CWDS	Centre for Women's Development Studies
DISE	District Information System for Education
ECM	Early and child marriage
FGM/C	Female Genital Mutilation/Cutting
FOGSI	Federation of Obstetrics and Gynaecologists Society of India
GOI	Government of India
HMA	Hindu Marriage Act
HRC	Human Rights Council
ICPD	International Conference on Population and Development
ICRW	International Centre for Research on Women
JJA	Juvenile Justice (Care and Protection of Children) Act
MJAS	Mahila Jan Adhikar Samiti
MOSPI	Ministry of Statistics and Programme Implementation
MTP	Medical Termination of Pregnancy
MWCD	Ministry for Women and Child Development
NCPCR	National Commission for Protection of Child Rights
NFHS	National Family Health Survey
NGO	Non-governmental organisation
NSSO	National Sample Survey Office
PCMA	The Prohibition of Child Marriage Act, 2006
PLD	Partners for Law in Development

POCSO	The Protection of Children from Sexual Offences Act, 2012
PWDVA	The Protection of Women from Domestic Violence Act, 2005
SAARC	South Asia Association for Regional Cooperation
SC	Scheduled Caste
SDG	Sustainable Development Goal
ST	Scheduled Tribe
TAG	Teenage Girls
TOC	Theory of change
UNFPA	United Nations Population Fund
UNGA	United Nations General Assembly
UNICEF	United Nations Children Fund
UNSG	United Nations Secretary General
VLCP	Village Level Child Protection Committee

# 1. Introduction

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## 1.1 Child marriage challenge

Child marriage is a reality in India and globally. It has been associated with a wide range of ill-effects on girls, particularly dropping out from school, higher risk of domestic violence, complications due to early pregnancy and childbirth. These immediate effects, in turn, lead to infant and maternal mortality, malnutrition, female disempowerment and many more problems. The prevalence of child marriage has declined across the world, especially among girls below the age of 15<sup>1</sup> but the practice has not been eliminated.

The recent trends and patterns, and emerging issues call for a serious enquiry into the perceptions of and approaches to child marriage. Although it is widely viewed as a 'cultural' or 'social' practice, newer dimensions have been added to it over the years. The issues related to adolescent sexuality and agency, which translate into under-age marriages have not received sufficient attention.

Child and early marriage has garnered growing attention worldwide since the mid-2000s and much more since The Elders, a group of independent global leaders working together for peace and human rights, initiated Girls Not Brides in September 2011 as part of their efforts to highlight the harmful practices that hold girls and women back, and to encourage and empower others to work to create a world without child marriage. The concern shared by several international organisations and UN bodies has led to the inclusion of elimination of child marriage in the Sustainable Development Goals (SDGs).

Globally, one in five young women (21 percent) were married before their 18<sup>th</sup> birthday<sup>2</sup>, a definite improvement from one in three in the early 1980s. About 650 million girls and women alive today were married as children and 12 million girls under 18 are married each year. While it has been possible to prevent nearly 25 million child marriages in the last decade, more than 120 million additional girls are likely to marry before their 18<sup>th</sup> birthday by 2030.<sup>3</sup>

The progress in reducing child marriage has been uneven across regions and countries. The levels of child marriage are highest in sub-Saharan Africa, where almost four in 10 girls (37 percent) were married before age 18 (including 76 percent in Niger, 68 percent in Central African Republic, and 67 percent in Chad), followed by South Asia, where three in 10 were married before age 18.<sup>4</sup> South Asia witnessed the largest decline in the prevalence of child marriage in the past decade from 49 percent to 30 percent.<sup>5</sup> According to UNICEF, India has the highest absolute number of child brides globally – 15,509,000. About 27 percent of girls in India are married before their 18<sup>th</sup> birthday and 7 percent are married before the age of 15.<sup>6</sup>

Although the child marriage discourse is centred on girls, a sizeable number of boys also are married before the age of 18. According to UNICEF, 115 million boys and men globally were married before the age of 18.<sup>7</sup> The countries in which child marriage among boys is most common are geographically diverse and differ from the countries in which the practice is most common among girls.

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<sup>1</sup> Shipra Jha, Girls Not Brides. Cross-Sectoral Dialogue.

<sup>2</sup> UNICEF, 2020. Retrieved from: <https://www.unicef.org/stories/child-marriage-around-world>

<sup>3</sup> Ibid.

<sup>4</sup> Retrieved from: <https://data.unicef.org/topic/child-protection/child-marriage/>

<sup>5</sup> Ibid.

<sup>6</sup> Retrieved from: <https://www.girlsnotbrides.org/where-does-it-happen/atlas/india>

<sup>7</sup> Colleen Murray Gastón, Christina Misunas & Claudia Cappa, 2019. Child marriage among boys: a global overview of available data, *Vulnerable Children and Youth Studies*, 14:3, 219-228, Retrieved from: <https://doi.org/10.1080/17450128.2019.1566584>

## 1.2 Recent trends and patterns in child marriage in India

All sources of data show high prevalence/incidence of child marriages in India but conclusively point to a declining trend. According to the Census 2011, 102 million girls below the age of 18 years were reported married and of these 46 percent were married at or before the age of 15. Between Census 2001 and 2011, about 20 percent of all females who married (15.3 million) were below the age of 18 years. A Ministry of Statistics and Programme Implementation (MOSPI) publication showed an increase in women's mean age at marriage from 21.1 years in 2012 to 22.2 years in 2016.<sup>8</sup>

The most comprehensive set of data, provided by the National Family Health Survey (NFHS-4), shows huge improvement from the last decade. Less than 27 percent of the women in the 20-24 years age group were married before the current legal age of 18 years and of these, 20.2 percent were married in late adolescence (between 15-17 years) and only 6.6 percent were married as young adolescents (below 15 years). Census data 2001 to 2011 also shows similar improvements.<sup>9</sup>

Among men, 20 percent of those aged 25–29 and 29 per cent of the 45-49 year olds had married before the legal age of 21 years. For men aged 25–49, the median age at first marriage increased by almost two years from 22.6 to 24.5 years between NFHS-3 and NFHS-4. However, geographical variations were noted with higher rates prevalent in some of the states and districts.

The mean age at marriage was higher at 23.1 years in urban areas than in rural areas at 21.7 years. By and large, urban women marry later than rural women. The median age at first marriage for women aged 25-49 was 1.7 years more among urban women than rural women (19.8 versus 18.1 years).

The finding of NFHS-4 that women with 12 or more years of schooling and belonging to the highest wealth quintile marry much later than others indicates the role of education and economic status in decisions related to marriage. The median age at first marriage for women aged 25-49 increased from 17.2 years for women with no schooling to 22.7 years for women with 12 or more years of schooling. Women in the highest wealth quintile married at a median age of 20.8 years than women in other wealth quintiles that ranged between 17.4 and 19 years.

Socio-economic status and higher levels of education are probably the major reasons for higher median age at first marriage for women aged 25-49 among the Christians (21.6 years), Jains (21.2 years), and Sikhs (20.9 years) than women from all other specific religions (18.0 - 19.2 years).

The highest prevalence of child marriage was amongst girls belonging to Scheduled Tribes (ST) followed by Scheduled Castes (SCs) - 15 percent and 13 percent respectively. This pattern is evident among the top 10 states with the highest prevalence of child marriage, with the highest rate of child marriage among SC girls in West Bengal and among ST girls in Arunachal Pradesh.<sup>10</sup> Maharashtra has the highest percentage of girl child marriage in other castes and Bihar, Gujarat and Telangana report very high prevalence of child marriages amongst the girls from Other Backward Castes below the age of 18.<sup>11</sup>

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<sup>8</sup> Sample Registration System, Office of the Registrar General of India. Cited in Government of India, Ministry of Statistics and Programme Implementation, 2019. *Women and Men in India (A statistical compilation of Gender related Indicators in India) 2018*. Social Statistics Division, Central Statistics Office. Retrieved from: [http://www.mospi.gov.in/sites/default/files/publication\\_reports/Women%20and%20Men%20%20in%20India%202018.pdf](http://www.mospi.gov.in/sites/default/files/publication_reports/Women%20and%20Men%20%20in%20India%202018.pdf)

<sup>9</sup> Memorandum submitted by CSOs to the Task Force set up to examine the age of motherhood and related issues. Ministry of Women and Child Development (Women Welfare Division), Government of India, Gazette Notification dated June 4, 2020.

<sup>10</sup> Young Lives India and NCPCR, 2018. India Child Marriage and Teenage Pregnancy Report. Based on NFHS-4 (2015-16)

<sup>11</sup> *ibid.*

Although the minimum age for marriage has remained unchanged since 1978, there has been a steady increase in the age of marriage of both women and men. The NFHS data shows that nearly half of married women now in their 40s were married by the time they were 18 but among women currently in their early 20s, that proportion is down to just 25 percent. The share of men married before they were 21 is even lower now.<sup>12</sup> Nirantar views the gradual decline since the early 1990s in the proportion of women married by the ages of 15, 18 and 20 years to be a positive sign that extreme child marriage is declining even though the practice persists among the older adolescents.<sup>13</sup> Only 12 percent of Indian women who married before age 20 were younger than 15 at the time of marriage.<sup>14</sup>

Nonetheless, the increasing trend in underage marriage among girls as well as boys requires in-depth analysis of intra-state and intra-district variations, and the rural and urban dynamics.

### 1.3 Need for a cross-sectoral dialogue

India's civil society has led the opposition to child marriage with various non-governmental organisations (NGOs) integrating the issue in their interventions, through research and advocacy related to health, education, legal reform, children's rights, women's rights and unorganised labour in the informal sector. They have tried to frame strategies to curb the practice based on feminist or children and young peoples' rights perspectives and their work experience. The interventions to address early or child marriage over the last couple of decades have brought about interesting changes in the trends and patterns, which have not been sufficiently acknowledged due to paucity of documentation and research.

Several organisations across the world with undiminished commitment but different perspectives, varied experiences and inconsistent results flag plenty of unresolved questions. A plethora of conversations and consultations have nuanced the understanding of the situation and underlying challenges but as evidenced from the terminologies used, the approaches adopted and the confusions in the legal framework, child marriage remains a contested issue.

For many years, child marriage was seen as a women's rights and women's health issue. Indeed, its location in the Ministry of Women and Child Development (MWCD) of the Government of India in the section on Women's Development indicates that it is still viewed as a women's rights issue. However, over the last decade or so, children's rights organisations and activists have positioned it as a violation of child rights and a child protection issue.

Since 2012, a child marriage prevention programme of HAQ: Centre for Child Rights in partnership with MV Foundation, Telangana (till 2015) and Jabala Action Research Organisation (hereafter referred to as Jabala), West Bengal and Mahila Jan Adhikar Samiti (MJAS), Rajasthan, has been going on. It began as a governance and accountability initiative within HAQ, where communities were



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<sup>12</sup> S. Rukmini, Instead of a task force, delaying marriage needs more education. *livemint*. February 17, 2020.

<https://www.livemint.com/news/india/instead-of-a-task-force-delaying-marriage-needs-more-education-11581958682675.html>

<sup>13</sup> Nirantar Trust, 2015. Landscape Analysis on Early and Child Marriage in India. page 7. Retrieved from: <http://www.nirantar.net/uploads/files/EM%20Report%20-%20English.pdf>

<sup>14</sup> Nirantar Trust, 2015. page 7

mobilised to hold the government accountable and strengthen governance systems, even as government agencies were trained and supported to address the issue. But it has evolved over the years to include an adolescent girls' empowerment component, as well as one for involving young men and boys. Special efforts to involve mothers and fathers seek to prevent social backlash on girls who resist their marriage.<sup>15</sup> An evaluation of this initiative based on the Triple S (Self, Society and System) model<sup>16</sup> used learning and adaptation to frame the problem and identify pathways.<sup>17</sup> Many sticky issues related to the issue of child marriage and how it should be addressed emerged during the project implementation and evaluation. Many conceptual and ideological issues related to the girls' agency and unresolved right to choice, and children's evolving capacities remain in the context of legal restriction on marriage of girls and boys before the ages of 18 and 21 respectively. While child marriages are stopped or delayed, the centrality of marriage remains unchallenged. Many girls get married often after crossing the age of 18 years. These are some of the issues that need to be probed especially to deal with gendered attribution of roles and responsibilities to girls and boys, and the dilemma between indivisibility or hierarchy of rights in the approaches. The experience on the ground and evaluation of the programme has clearly shown that child marriage is a highly protracted, multidimensional and intersectoral human rights issue, which is caused by the very same drivers that perpetuate it.<sup>18</sup>



In view of the fact that child marriage is a multi-dimensional, inter-sectoral issue, how must law respond to it has been a core issue of debate for long. The practice of child marriage is no longer commonly practiced by higher castes and upper classes and has begun to intersect with caste and poverty. There are now concerns about harsh penal laws for social issues such as child marriage often targeting the most marginalised groups, which have adopted it as a cultural practice. Questions have also emerged in the light of the Supreme Court Order in the petition filed by Independent Thought (discussed later in detail);<sup>19</sup> government's announcements regarding making child marriages void ab initio instead of

<sup>15</sup> Enakshi Ganguly. Cross Sectoral Dialogue.

<sup>16</sup> Triple S Model by Renu Khanna. See HAQ Centre for Child Rights, 2018. *Towards ending child marriage*. Retrieved from: <https://haqcr.org/wp-content/uploads/2018/07/haq-towards-ending-child-marriage-2018.pdf>

<sup>17</sup> <https://www.haqcr.org/new-at-haq/report-of-the-child-marriage-prevention-programme-summary-report/>

<sup>18</sup> Renu Khanna. Presentation of the results of the Evaluation of Child Marriage Prevention Programme at the Cross Sectoral Dialogue.

<sup>19</sup> Independent Thought versus Union of India and Anr (case on October 11, 2017)

voidable as it is in the current law, and the Law Commission's recommendations.<sup>20</sup> Each one of these needs to be addressed in detail with sensitivity.

Following an evaluation of the HAQ-Jabala-MJAS programme, and against the back drop described above, HAQ: Centre for Child Rights in partnership with SAHAJ, Vadodara, organised a cross sectoral dialogue on child marriage on September 27 and 28, 2019. Representatives of various civil society organisations and activists, who have been engaged in policy research and advocacy, social mobilisation and programmatic interventions towards the elimination of child marriage attended the event and shared their insights and concerns about the persisting practice, recent trends and effective approaches and strategies.

The cross-sectoral dialogue with a wide range of stakeholders on child marriage aimed at reaching a degree of consensus on the understanding of the issue and agree on some non-negotiables, if possible. It enabled the sharing of lessons, discussions and debates on the changes in the social and policy environments, which necessitated a revisit of the strategies. The participants raised certain fundamental questions, which have not been articulated in the policy discussions. They are arguably in the realm of principles and norms rather than directions that action agenda could benefit from. They are important, nonetheless, as a semblance of resolution of the dilemmas they pose.

## **1.4 Rationale, objectives and structure of the report**

Various organisations working for the elimination of child marriage, including HAQ: Centre for Child Rights and SAHAJ, have recognised the need for integrated, multi-sectoral responses. Acknowledging the validity of different perspectives, importance of contextual factors and the lessons learnt, the cross-sectoral dialogue brought together practitioners, researchers and activists to discuss strategies that address sectoral interests and priorities.

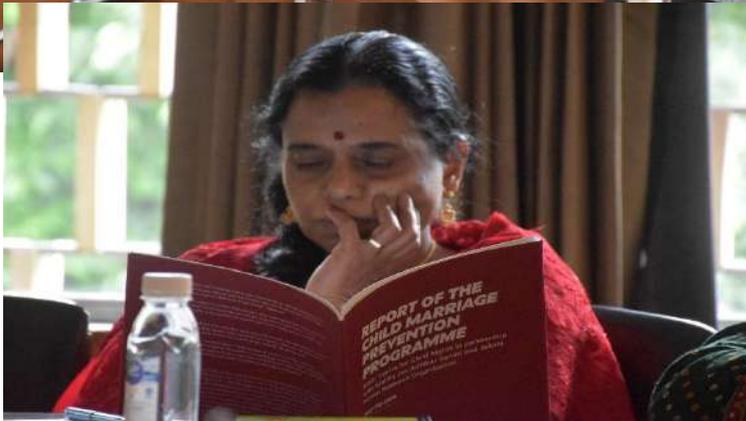
This report seeks to improve collective understanding of different perspectives and standpoints, the effectiveness of legal provisions in view of the inconsistencies, and contradictions related to child marriage, child protection and adolescents' rights, the emerging issues that deserve particular attention and feasible multi-stakeholder strategies and actions within the context of SDG commitments. It complements the presentations and exchange of ideas during the cross-sectoral dialogue with key findings from the existing literature and discussion papers nationally and globally to present a comprehensive statement of the current situation, achievements, barriers and bottlenecks to widen the scope of the debate towards more effective approaches and strategies.

Section 2 of this report explores the conceptual underpinnings of the position taken by women's rights movement and child rights activists, which appears to be converging on the theme of adolescent empowerment and the evolution of the global discourse on child marriage. Section 3 on child marriage discourse, policy and trends in India, navigates through the socio-cultural and economic context and historical context of policy and legislation, which has influenced the current legal framework, national policies and action plans, programmes and interventions, and the recent trends and patterns.

Recognising that child marriages may have declined over the years but do not show signs of elimination, Section 4 identifies and discusses the piecemeal approach in policy and programmes, disempowerment of children and women due to age and gender, and lackadaisical roles of the state and social institutions as key impediment to progress. Section 5 is an enquiry into the scope, limitations and lessons from the key strategies and approaches that have been employed or promoted for addressing child marriage. And Section 6 concludes the enquiry in child marriage with a brief discussion on the issues that need further reflection.

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<sup>20</sup> <http://lawcommissionofindia.nic.in/reports/report205.pdf>



## 2. Global approaches to addressing ‘child’ marriage

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### 2.1 Conceptual frameworks

Several decades of discussions and debates on human rights and social development issues in various fora and platforms has resulted in the global consensus that child marriage is a violation of children’s human rights. However, differing socio-cultural perspectives, persuasions and ideologies have hampered the evolution of the discourse due to the inability to arrive at a consensus on the terminology and the framing of problematic issues and approaches. The ongoing debate between women’s rights (feminist) and child rights activists on the appropriate approaches to addressing child marriage is based on disagreement on the terminology to be used to describe the phenomenon.

Children’s rights organisations and activists in India and globally, have positioned child marriage as a child protection issue, there are others who view it from the prism of women’s rights as a barrier to women’s empowerment, there are those who focus on it as a women’s and adolescents’ health and reproductive rights issue. Few have begun questioning several fundamental assumptions that seem to underpin this phenomenon. The only consensus that they all have is regarding the need for it to be based on an approach based on indivisibility of rights and intersectionality.

**Child marriage.** The term “child marriage”, preferred by child rights organisations and activists, is essentially a legal conception drawing upon an age of majority when a person is considered ready for marriage. It has been used in India from the enactment of its first law (viz., the Child Marriage Restraint Act, 1929) till date, and refers to any formal marriage or informal union between a child under the age of 18 and an adult or another child. Child rights advocates have based their position in accordance with the Convention on the Rights of the Child (CRC), which has pegged the age of majority to 18 years. A marriage of minor(s) is viewed as a violation of children’s rights as it is believed to scar children physically, psychologically and emotionally.

The child protection approach, which continues to influence children’s rights organisations and activists, highlights the lost developmental opportunities, risks and threats to reproductive health and risks and increased vulnerability to domestic violence of girls who enter into matrimony. The assumption is that early initiation into sexual activity after marriage, followed by pregnancy and childbirth can lead to maternal as well as infant mortality. Moreover, women who marry young are more likely to experience domestic violence within the home.<sup>21</sup> Most of the literature, especially project oriented grey literature, draws upon indicators such as school dropout rates, maternal and neonatal mortality, and malnutrition.

This perspective becomes problematic when it disregards the **will** of adolescents, locates sexual activity within the institution of marriage and attributes victimhood. Its inability to accommodate adolescent boys in its analytical framework is its major lacunae, probably because it draws heavily on the gender discourse propagated by the women’s rights movement. While children’s rights organisations and activists have tried to bring boys within the ambit of interventions for adolescents, they have failed to consider them in the policy discussions on early or child marriage.

**Early marriage.** The term “early marriage”, preferred in the women’s rights movement, refers to marriages involving persons below the age of 18, or before the legal age of marriage in their country,<sup>22</sup> or older people who are unable to **consent** due to factors such as their level of physical, emotional, sexual

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<sup>21</sup> UNICEF, 2005. *Early Marriage: A Harmful Traditional Practice*. UNICEF: New York. This analysis was conducted for Cambodia, Colombia, Haiti, India, Kenya, Peru, South Africa, Turkmenistan and Zambia, and India was found to have the highest overall rate of domestic violence.

<sup>22</sup> United Nations. *Preventing and Eliminating Child, Early and Forced Marriage: Report of the Office of the United Nations High Commissioner for Human Rights, GA Res 26/22, UN GAOR, 26<sup>th</sup> Session, Agenda Items 2 and 3, UN Doc A/HRC/26/22 (April 2, 2014).*

and psychological readiness for marital commitment, or **lack information** regarding available options in life.<sup>23</sup> The notion of “child marriage” is subsumed within “early marriage” in this formulation and this logic allows for addressing the issues of individuals legally permitted to marry but who may face intense pressure to enter matrimony despite misgivings, inhibitions or lack of preparedness.

However, the difference in the legally acceptable ages at marriage - 18 years and 21 years for females and males respectively in Indian law - contradicts the argument for attainment of legal 'majority'. Perspectives that determine the difference between what is an acceptable legal age for women and for men are gendered and closely linked to the control of girls' sexuality, the reinforcement of stereotypes or traditional notions about women's gender roles in families and society as wives and mothers.

Through the term “early marriage”, women's rights organisation Nirantar<sup>24</sup> seeks to distinguish the **needs** of adolescents and young people from those of children while Breakthrough India seeks to convey the emotional, psychological, sexual and physical **readiness** of an individual for marital commitments. Although the term “early” frequently overlaps with “child” marriage in policies, programmes and other documentation, it broadens the scope with regard to the age at which marriage is culturally or legally acceptable.<sup>25</sup>

According to Partners for Law in Development (PLD), “In its problem description and policy solutions, the child marriage discourse presents all underage marriages as forced, largely custom driven, it treats “age” as the primary indicator of force and harm in relation to marriage. The global narratives frame all underage marriages as “forced” and as manifestations of harmful traditional practices. Both these descriptions fail to describe the different trends *within* child and early marriages.”<sup>26</sup> Pointing to the involvement of different age cohorts (from infants to 18 year olds) and varied contexts in underage marriages, it further states:

“The combination of capacities of the parties as well as the contexts within which the marriages occur determine whether these are forced, self-arranged or traditionally arranged. Labelling every union of a girl younger than 18 years as “forced” is neither reflective of reality nor respectful to the adolescent whom the policy responses seek to protect.”<sup>27</sup>

According to the report of SAMA Resource Group for Women and Health on Early Marriage and Health, “The relativity in the understanding of 'early' poses further complexities. Early can be determined by choice, aspirations, situations and opportunities that women, men and communities may perceive as having. This raises questions and dilemmas regarding early marriage. Would marriage for women at 19 or 20 years not be considered early? And how do we understand self-choice marriages that may be early?”<sup>28</sup>

**Early and child marriage.** The term “early and child marriage” is preferred by some to reflect the complexities in the lives of adolescents and young people who are most affected by the practice. The decline in child marriages has also contributed to the use of ‘early and child marriage’ rather than only child marriage.<sup>29</sup>

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<sup>23</sup> UNFPA and UNICEF, 2016. *Final Mapping of Child Marriage Initiatives*. Retrieved from:

<https://asiapacific.unfpa.org/sites/default/files/pub-pdf/FINALMapping%20of%20Child%20Marriage%20Initiatives%20in%20South%20Asia%281%29.pdf>

<sup>24</sup> Nirantar, 2015. *Early and Child Marriage in India- A Landscape Analysis*. Retrieved from:

<http://www.nirantar.net/uploads/files/EM%20Report%20-%20English%20%5BSummary%5D.pdf>

<sup>25</sup> Bishnoi, Karuna; Singh, Neelam. *Adolescent empowerment. Window of opportunity for addressing gender based violence*. Breakthrough India. Unpublished draft.

<sup>26</sup> Partners in Law and Development, 2019. *Why Girls Run Away to Marry: Adolescent Realities and Socio-Legal Responses in India*. No. 1, Adolescent Sexuality and Early Marriage Series. pg 71.

<sup>27</sup> *ibid.* pg 71.

<sup>28</sup> Sama Resource Group for Women and Health, 2015. *Dataspeak: Early Marriage and Health*. Retrieved from:

[https://www.girlsnotbrides.org/wp-content/uploads/2017/08/Highlights\\_Dataspeak.pdf](https://www.girlsnotbrides.org/wp-content/uploads/2017/08/Highlights_Dataspeak.pdf)

<sup>29</sup> Abhijit Das. Cross-sectoral dialogue.

**Forced marriage.** “Forced marriage” with its premise in coercion of minors or majors is unacceptable in both women’s rights and child rights perspectives as it constitutes the deprivation of choice and opportunities, outcome of violence, and a violation of human rights.

**Self-arranged marriage.** Although termed as child marriages because they contravene the law, they occur due to sexual behaviour during adolescence which the young parties seek to sanctify through marriage. Such marriages have begun receiving attention of late, especially due to the criminalisation of a number of young people.

Partners in Law for in Development (PLD) considers the distinction between forced and self-arranged marriages as vital as the distinction between child and early marriage for teasing out the nature of violations involved and creating context specific responses.<sup>30</sup> Treating “age” as the primary indicator of force and harmful traditional practice, and every union of a girl younger than 18 years as such, is viewed neither reflective of nor respectful to the adolescents whom the policy responses seek to protect.<sup>31</sup>

**Adolescent marriage.** Recognition of children and young people as social actors having agency is probably as important to children’s rights discourse as is gender to women’s movement. Child participation is acknowledged as an important basket of children’s rights articulated in the CRC, which ostensibly provides an edge to their rights to survival, development and protection. As the notions of children’s agency and their evolving capacities began to nuance policy discussions, the topic of ‘the will of the girl child’ is now broached in discussions in contrast to them being slotted in the victim category.

Alongside, the evolving discourse on adolescent empowerment, integration of issues concerning older children and young women, also began to be discussed. The emergence of adolescence as an important life stage in the development discourse has enabled discussions on the hitherto taboo subject of sexuality. Adolescent sexuality has been subjected to a narrow and truncated view, just like child marriage. The adolescent empowerment discourse has been critiqued for being excessively focused either on livelihood security or control of sexuality.

While semantics are important for conceptual clarity, the practices of child marriage, early marriage, forced marriage and adolescent marriage, whether occurring in conjunction or separately, are widely regarded as unacceptable. There is broad consensus that integrated, multi-sectoral responses are required to end them with strategies for engaging different constituencies and their interests and priorities. The way the problem is articulated and the responses are framed, has to be acceptable to all – hence the importance of semantics.

## 2.2 Evolution of the global discourse

The approach till the mid-2000s was influenced by the imperative of women’s health and reproductive rights. The International Conference on Population and Development (ICPD) in 1994 is considered a milestone in reproductive health and rights. The ICPD Programme of Action, signed by 179 governments, placed women’s reproductive health and rights at the centre-stage in national and global development efforts and called for an end to child marriage by enforcing minimum age of marriage laws and raising the minimum age of marriage where necessary.

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<sup>30</sup> Partners in Law and Development, 2019. *Why Girls Run Away to Marry: Adolescent Realities and Socio-Legal Responses in India*. New Delhi. pg. 70

<sup>31</sup> *Ibid.* pg.71

The second *Girl Child* Resolution<sup>32</sup> first mentioned ‘early marriage’ in its preamble, and its substantive provisions focused on the enforcement of laws which stipulate the minimum legal age for marriage and when both the intended spouses seek to enter the marriage only with the free and full consent.

The Progress of Nations report published by UNICEF in 1998 focused on child marriage as “women’s issue”. Its chapter on women’s health and related issues contained a section on teen births with a focus on reproductive health of girls as a tool to compare adolescents around the world, with number of births for women between 15-19, followed by sections on children, marriage and early motherhood.

A UNICEF Innocenti Research Centre paper ‘Early Marriage: Child Spouses’ in 2001<sup>33</sup> addressed child marriage as a “human rights issue”. It focused on the lack of choice or consent by girls, loss of childhood, impediments to education, physical and mental effects, and sexual health including HIV/AIDS and recognised the importance of going beyond policy and legislation to promote girls’ education and empowerment, and parental engagement for retaining them in school, delaying marriage and reducing health implications.

A UNICEF working paper written by Anne Bernard<sup>34</sup> marked a further shift as it addressed the education of girls in various UNICEF-funded education programmes across the continents of Asia, Africa and Latin America. It identified restrictions by child marriage and teenage pregnancies on girls’ access to education and discussed how the situation could be improved, but without dwelling on the injustices or rights’ abuses of child marriage that call for the abolition of the practice.

“Problems of early marriage and pregnancy are prime examples of the need to involve girls, their families and the school in joint analysis and action. All those responsible for girls’ well-being should be supported in finding ways to help them balance home, child-care and academic responsibilities.”

UNICEF’s position shifted from a more holistic human rights issue to a more specific child centred one by 2005. The publication ‘Early Marriage: A harmful and traditional practice’ categorically acknowledged the harm caused to children, especially girls, by early marriage, and addressed child, early and forced marriages (CEFM) as a child rights issue rather than a contributing factor. In addition, it considered girls in formal marriage as well as in cohabitation, to determine relationships between early unions and socio-economic and demographic variables.

The UNICEF flagship publication “The State of the World’s Children” on ‘Adolescence, an Age of Opportunity’ in 2011 discussed the interface of child, early or forced marriages with female genital mutilation/cutting (FGM/C). The document refers to ‘adolescent marriage’ or the marriage (or union) as after age 15 but prior to 18 as the most frequent age of betrothal. The change in terminology is due to the theme as well as the global trends but the issues remain the same - health, education, development opportunities and improving overall life.

Some scholars uphold the view that international pressure has led to the inclusion of “elimination of child marriage” in the policy agenda in India, and attribute the growing interest in child marriage in the late 20<sup>th</sup> and early 21<sup>st</sup> century, to the ICPD. The inclusion of elimination of child marriage in the SDG, is part of the same international push.<sup>35</sup> UNICEF and UNIFEM worked together in support of the introduction of child marriage into the SDGs. The SDGs that were finally adopted were a result of intergovernmental

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<sup>32</sup> *The Girl Child*, GA Res 51/76, UN GAOR, 3<sup>rd</sup> Comm, 51<sup>st</sup> Session, 82<sup>nd</sup> meeting, Agenda Item 106, UN Doc A/RES/51/76. February 20, 1997.

<sup>33</sup> UNICEF, 2001. *Early marriage: Child spouses*. Innocenti Digest. No. 7, March 2001. Retrieved from: <https://www.unicef-irc.org/publications/pdf/digest7e.pdf>

<sup>34</sup> Bernard, A., 2002. *Lessons and implications from girls’ education activities: A synthesis from evaluations*. Working Paper Series, UNICEF. Retrieved from:

[https://www.unicef.org/evaldatabase/files/Global\\_2003\\_Lessons\\_and\\_Implications.pdf](https://www.unicef.org/evaldatabase/files/Global_2003_Lessons_and_Implications.pdf)

<sup>35</sup> Mary John. Presentation at the cross-sectoral dialogue.

negotiations, in which all governments agreed upon goals and targets.<sup>36</sup> Elimination of child, early and forced marriage was widely recognised as imperative for addressing global poverty and improving the welfare of girls and women worldwide.

### Situating girls in the adolescent empowerment discourse

One of the most captivating ideas to have originated at the turn of the decade and has endured till now is the possibility of social change and economic transformation being located in the adolescent girl. Investing in the adolescent girl has been propagated as the miraculous cure to the world's problems of poverty, embraced by UN bodies, international non-profits and national agencies and government."<sup>37</sup>

The UNFPA Executive Director Babatunde Osotimehin in his statement at Commission on Population and Development side-event 'Putting Girls First' in 2011,<sup>38</sup> expressed commitment to the empowerment of adolescent girls who "... are the unexpected solution to many of the world's most pressing problems, provided that we invest in them and promote their rights."

UNFPA's 'Action for Adolescent Girls' document - uses a statistic that says "an educated girl will use 90 percent of her future income towards her family, while boys re-invest only 35 percent".

Investment in girls, especially adolescents, continues to be advocated as smart economics. Her education, health and skills are expected to make her an active citizen in her community, a mother who will invest in her children's health and education, and an entrepreneur who can find solutions to break the cycle of poverty. The girls as agents of change paradigm views outcomes of delayed child marriage and child birth in terms of considerable economic returns to minimal investment.<sup>39</sup>

While such expectations are laudatory and make good advocacy, they do not address her basic rights and well-being. The concept of opportunity costs in considering the primary impact of investment translates "inactivity" and "joblessness" among adolescent girls into lost wages and opportunities, calculates the outcome of successive stages of education in terms of percentage increase in prospective earnings, and the cost of early pregnancy in terms of lost lifetime opportunities. In a nutshell, the empowerment of adolescent girls is offered as an attractive approach and strategy for making stark economic gains. The focus on their reproductive role overshadows their productive role.

## 2.3 International legal conventions and resolutions

The Universal Declaration of Human Rights had, in 1948, stated that consent cannot be 'free and full' when one of the parties involved is not sufficiently mature to make an informed decision about a life partner. Later, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1964, specified full and free consent as an essential condition for a legal marriage and obligated the State parties to take legislative action to specify a minimum age for marriage and ensure the registration of all marriages.<sup>40</sup>

<sup>36</sup> <https://www.girlsnotbrides.org/child-marriage-target-in-the-proposed-sdgs-what-next/>

<sup>37</sup> Dipta Bhog, Presentation at the cross-sectoral dialogue.

<sup>38</sup> UNFPA statement. April 2011. <https://www.unfpa.org/press/putting-girls-first>

<sup>39</sup> Dipta Bhog, Presentation at the cross-sectoral dialogue

<sup>40</sup> <https://www.ohchr.org/EN/ProfessionalInterest/Pages/MinimumAgeForMarriage.aspx>

The Convention on the Rights of the Child (CRC), 1990,<sup>41</sup> does not explicitly prohibit child marriage but its Article 1, which defines a child as “every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier”, when read in conjunction with other rights provides sufficient grounds for opposition to the practice. For instance, the right to articulate opinion and consent to marriage can be framed within the purview of the right to freedom of expression. The right to protection from all forms of abuse, and the right to be protected from harmful traditional practices do not leave scope for permitting actions that do not factor in the vulnerability and immaturity resulting from young age. The Committee on the Rights of the Child has, however, indicated that it considers 18 years, the upper threshold of childhood in the Convention, as the minimum age for marriage for both males and females.<sup>42</sup>

**Recommendation to India regarding child marriage by the Committee on the Rights of the Child**

The Committee on the Rights of the Child in its concluding observation to India’s third and fourth State Party Report on the implementation of the Convention in 2014<sup>43</sup> expressed concern at the high prevalence of child marriages in the country, despite the enactment of the PCMA, 2006. Viewing social norms and traditions, different personal status laws establishing their own minimum age for marriage applicable to their respective religious community, and the lack of awareness of the Act by law enforcement officers as impediments to its implementation, it recommended greater emphasis on the primacy of the PCMA, 2006, over religious-based personal status laws, awareness-raising programmes and campaigns to changing attitudes and counselling and reproductive education, with a view to preventing child marriages.

The Convention for the Elimination of Discrimination Against Women (CEDAW) explicitly prohibits child marriage. Article 16(2) states, “The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriage in an official registry compulsory.”<sup>44</sup> In addition to this explicit prohibition, CEDAW responds to CEFM by focusing on consent for marriage. Article 16(1)(b) grants women the right to “freely choose a spouse and to enter into marriage only with their free and full consent.” The Committee on the Elimination of Discrimination Against Women in its General Recommendation 21 emphasised this right as central to a woman’s “life and to her dignity and equality as a human being.”<sup>45</sup> As this right precedes explicit prohibition of child marriage by Article 16(2), this implies that the consent cannot be “free and full” when a party to the marriage is a child.

Although CEDAW appears far more direct in its approach to addressing child marriage than CRC, the recommendations of the Committee on the Rights of the Child to the State Parties, including India, have been more forthright and specific in their opposition to the practice.<sup>46</sup> It is noteworthy that India entered the following Declaration to Article 5(a), which deals with cultural and traditional practices that discriminate against women, and Article 16 (2) of CEDAW related to betrothal of a child and compulsory registration of marriages:

- I. With regard to articles 5 (a) and 16 (1) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent.

<sup>41</sup> Convention on the Rights of the Child, opened for signature November 20, 1989, 1577 UNTS 3 (entered into force September 2, 1990).

<sup>42</sup> Committee on the Rights of the Child. *Concluding Observations: India*. 35<sup>th</sup> Session, UN Doc CRC/C/15/Add.115 (February 26, 2004) para 32.

<sup>43</sup> Committee on the Rights of the Child. *Concluding observations on the combined third and fourth periodic report of India*. (CRC/C/IND/CO/3-4) #

<sup>44</sup> CEDAW Art. 16(2).

<sup>45</sup> Committee on the Elimination of Discrimination Against Women, 1994. *CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations*. 13<sup>th</sup> Session, UN Doc A/49/38.

<sup>46</sup> Committee on the Rights of the Child. *Concluding Observations: India*, UN Doc CRC/C/15/Add.115.

- II. With regard to Article 16 (2) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that though in principle it fully supports the principle of compulsory registration of marriages, it is not practical in a vast country like India with its variety of customs, religions and level of literacy.

Several resolutions of the United Nations General Assembly (UNGA) and the Human Rights Council (HRC) have created a common framework for the State Parties to act upon (*See Annexure I*). This has been acknowledged at the regional level by the South Asian Association for Regional Cooperation (SAARC). India is a member of the South Asian Initiative to End Violence Against Children, an apex body of SAARC that adopted a Regional Action Plan to End Child Marriage. Thereafter, the representatives of SAARC member states and key stakeholders adopted the Kathmandu Call for Action to End Child Marriage in South Asia, which enumerates urgent actions, including but not limited to denouncing child marriage as a human rights violation, harmonizing national laws and policies on child marriage, and eliminating discriminatory provisions concerning marriage in all laws.

Although the opposition to child marriage was implicit in different resolutions at the HRC, the first ever resolution on child and forced marriages was adopted unanimously in 2013. It called for the inclusion of elimination of child, early and forced marriage in the post-2015 development agenda, notably the SDGs. Over 100 countries, excluding India, co-sponsored this resolution.<sup>47</sup>

In the run up to the adoption of SDGs, the report by the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda to the UN Secretary General (UNSG) in 2013 recommended the inclusion of a goal to “Empower Girls and Women and Achieve Gender Equality” in the post-2015 development agenda, which could be achieved by ending child marriage. The Open Working Group on SDGs, a group of 70 Member States from the UN’s five regional groups, proposed a target to end child, early and forced marriage in 2014.<sup>48</sup> Later in the year, 176 member organisations of Girls Not Brides: The Global Partnership to End Child Marriage from 46 different countries co-signed a letter to the UNSG stressing upon a stronger target on child, early and forced marriage in the final set of SDGs.

The UNGA adopted the SDGs in September 2015 as a part of the resolution, “Transforming our world: the 2030 Agenda for Sustainable Development”. Target 5.3 of the SDG on Gender Equality aims to “eliminate all harmful practices, such as child, early and forced marriage”.

International legal treaties, primarily the UN resolutions, set the global norms and legal obligations of the State parties. The latter must put in place the policy and legal framework and take all necessary measures to ensure that practices such as child marriage do not occur. But it is easier said than done because the issues such as child marriage which are situated in the socio-cultural traditions have ramifications for the domestic politics, which the political establishments do not wish to disturb.

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<sup>47</sup> The States presenting the resolution were: Argentina, Australia, Austria, Armenia, Albania, Algeria, Andorra, Angola, Belgium, Benin, Bolivia, Bosnia, Botswana, Brazil, Bulgaria, Burkina Faso, Cambodia, Chad, Congo, Cuba, Czech Republic, Canada, Chile, Costa Rica, Croatia, Cyprus, Denmark, Djibouti, DRC, Egypt, El Salvador, Eritrea, Estonia, Ecuador, Ethiopia, Equatorial Guinea, Finland, France, Georgia, Germany, Greece, Guatemala, Ghana, Guinea, Haiti, Hungary, Honduras, Iceland, Italy, Ireland, Ivory Coast, Jamaica, Japan, Jordan, Kenya, Korea, Kyrgyzstan, Latvia, Liechtenstein, Lebanon, Lithuania, Luxembourg, Madagascar, Malta, Moldova, Monaco, Morocco, Mozambique, Maldives, Montenegro, Namibia, Netherlands, Norway, New Zealand, Nicaragua, Palestine, Panama, Paraguay, Peru, Poland, Portugal, Romania, Rwanda, Senegal, Serbia, Singapore, South Sudan, Sierra Leone, Slovakia, Slovenia, Somalia, Spain, Sweden, Switzerland, Tajikistan, Timor-Leste, Togo, Tunisia, Thailand, Turkey, United Kingdom, Uganda, United States of America, Uruguay, Venezuela, Yemen, Zambia.

<sup>48</sup> Girls Not Brides members co-sign letter to Ban-Ki-Moon stressing that child marriage target must be included in Sustainable Development Goals. October 2, 2014. Retrieved from: <https://www.girlsnotbrides.org/girls-brides-members-co-sign-letter-ban-ki-moon-stressing-child-marriage-target-must-included-sustainable-development-goals/>



### 3. Child marriage discourse in India

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The policy and programmatic interventions to eliminate the practice of child marriage have evolved over time in India. The phenomenon was and continues to be viewed as a 'cultural' or 'social' practice, many more dimensions to the issue now figure in the discussions on how it can be eliminated. Social norms and behaviours seeking to 'protect' the girls, less dowry, and a means of legitimisation of sexual behaviour among adolescents, have been identified as barriers and bottlenecks.

Child marriage received attention in policy making due to the imperative of controlling population, way before the reproductive and child health shaped the narrative. The popular discontent against coercive family planning during national emergency from 1975 and 1977 had necessitated the change in strategy for population control. Accordingly, the CMRA was revised in 1978 to increase the age of marriage of girls to 18 years and of boys to 21 years.

#### 3.1 Socio-cultural and economic context

**Multitude of contributing norms and factors.** Child marriage or marriages before the bride and bridegroom have attained physical and mental maturity has been practiced for centuries in India. The practice is attributed to a complex matrix of religious traditions, social practices, economic factors and deeply rooted prejudices. Research shows that social norms and practices perpetuate the perception of inferiority of girls and women, which together with poverty are key drivers of the high prevalence of child marriage in India. Concerns regarding puberty, chastity and family honour, the phenomenon of gender based sex selection and inadequate opportunities for education are additional contributing factors. However, these factors alone do not explain the persistence of the practice.

The awareness of the importance of marriage and its responsibilities were absent in child marriages.<sup>49</sup> The trajectory of life from birth to death was characterised by suffering as a child-wife, as a child-mother and very often as a child-widow. Ostensibly girls were married at a young age since formal education was not an option and their mobility, usually dependent on their socio-economic status, was restricted. Marriage arguably secured their 'purity' and the popular belief was that the younger a girl the easier her adjustment to a new environment. Socialised for gendered roles, the child bride may have been enamoured by sweets, beautiful dresses, fireworks and for a few days to be the centre of attraction. After marriage, her ability to submit to the husband - in many instances much older, and older women in the household was critical and opting out was never an option.

There remains the practice of forcing children to get married as a cultural practice. As Carole O. Moschetti points out, "Multiculturalism, cultural relativism and sexual libertarianism have made it increasingly difficult to approach child marriage from a clear understanding of it as a harmful cultural practice".<sup>50</sup> Homogenisation of social behaviour and the resistance to sex education are altering the lives and lifestyles in many indigenous or tribal communities in India, which considered underage adolescents to experiment with sexuality, live together and marry out of choice perfectly acceptable.

Although child marriage is widely viewed as a 'cultural' or 'social' practice, newer dimensions have been added to it over the years. The issues related to adolescent sexuality and agency, which translate into under-age marriages have not received sufficient attention.

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<sup>49</sup> Kalaivani, R., 2015. Child Marriage Restraint Act (1929) – A Historical Review. International Journal of Humanities and Social Science Invention ISSN (Online): 2319 – 7722, ISSN (Print): 2319 – 7714 [www.ijhssi.org](http://www.ijhssi.org) Volume 4 Issue 1 || January. 2015 || PP.14-18. Retrieved from: [http://www.ijhssi.org/papers/v4\(1\)/Version-1/D04101014018.pdf](http://www.ijhssi.org/papers/v4(1)/Version-1/D04101014018.pdf)

<sup>50</sup> Moschetti, Carole Olive. 2005. Conjugal Wrongs Don't Make Rights: International Feminist Activism, Child Marriage and Sexual Relativism. University of Melbourne

**'Centricity' of marriage.** The institution of marriage is viewed as essential for girls and boys across social boundaries. Families, and even girls and boys themselves, overwhelmingly acknowledge the centrality of marriage to life. According to Nirantar, "this centrality of marriage is also accompanied by specific norms around marriage. These norms dictate what is and is not an "ideal" marriage. Because social norms require everyone to marry, and because marriage is governed by rigid rules".<sup>51</sup>

Some communities have accepted that child marriage is prohibited by law while some have recognised its ill-effects on girls, over the years. Hence, the practice is delayed at the request of the girls themselves or due to intervention by others. If the marriage has already taken place or is not delayed, the 'gauna' (sending a girl to the marital home) may be postponed.

**Protection of "honour".** Women's rights activists have for long attributed the problem to notions of patriarchy and masculinity in marriage, fertility and lineage. They argue that social norms have confined women to a reproductive role and seek to control them by insisting upon ritual purity through caste and religion, virginity and chastity. While men are vested with an identity based on the notion of "honour", which insists on having them prove their sexual prowess, women must prove fertility by mothering sons and demonstrating their faithfulness, men may have many partners to allay their anxiety over sexual weakness and to 'sire' sons.<sup>52</sup> This scenario gives rise to the desire to marry off girls in order to "protect" and "control" them. Indeed, marriage is seen as the transaction of honour from one family to another.<sup>53</sup>

A research by Praxis<sup>54</sup> found the fear of sexual harassment of unmarried girls to be an important concern among families and communities, which is enhanced by tradition and customs that encourage control over the sexuality of girls and prevent their interaction with males outside of marriage. It also generates fear that girls will choose their own partners (commonly known as "love marriage").

**Dowry and inheritance.** Apart from the desire of parents to 'protect' their daughters, the decision to marry them off is based on the perception that it will mean less dowry to be paid. Many hold the belief, fed by experience, that the demand for dowry increases with the age of the girl. Giving or receiving dowry may be a crime under the Dowry Prohibition Act, 1961, but the inheritance laws and practices have for long been unfavourable towards females. In fact for most families, dowry replaces the right of inheritance for women. Dowry is never for the girl or woman. It is what is given to the bridegroom and his family at the time of the wedding. And yet it is seen by her family as having received her share of the inheritance.

**Poverty and insecurity.** The oversight of their productive role or the notion that they do not contribute financially to the natal household is so rooted that their direct or indirect contribution is often overlooked. When they are viewed as a burden rather than an asset, they are the first ones to be dispensed with through child marriage, labour and trafficking when families experience major setbacks and income losses. The stresses and strains within the household exacerbate pre-existing risks of gender based violence against girls, curb their schooling and threaten their sexual and reproductive health.

Child marriage is decreasing but like many women's rights gains - such as reduced maternal mortality and increased primary school attendance rates - there is growing evidence around the world that shows climate change is threatening how long that will hold true.<sup>55</sup> It is being noticed that during crisis

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<sup>51</sup> Nirantar, 2015. Landscape Analysis of Early and Child Marriage. Retrieved from: <http://www.nirantar.net/uploads/files/EM%20Report%20-%20English.pdf>

<sup>52</sup> Abhijit Das. Presentation at the Cross Sectoral Dialogue.

<sup>53</sup> Ibid.

<sup>54</sup> "Marriage Can Wait, Our Rights Can't". A Study Exploring Causes, Impacts and Resistance in the Context of Early Marriage in Bihar and Jharkhand, Praxis, April 2002. Cited in Bishnoi, K. & Singh, N. *Adolescent empowerment. Window of opportunity for addressing gender based violence*. Breakthrough India. Unpublished draft.

<sup>55</sup> Abigail Higgins. Marriage of survival: Will climate change mean more child brides? Al Jazeera. February 19, 2020. Retrieved from:

situations (e.g., the effects of climate change) when parents feel that their survival is threatened, there is a push to get their daughter married off because they feel that they are not able to support them. The levels of child marriage are the highest in Sub-Saharan Africa and South Asia, where many are already struggling to survive the effects of climate change.<sup>56</sup>

**Primary education, socio-economic mobility and aspirations.** India has made considerable progress in improving access to elementary education but the available data indicates worrying drop-out rates at higher levels, which translate into increased vulnerability to child marriage and child labour.

The Teen Age Girls (TAG) Report of the Naandi Foundation<sup>57</sup> based on a survey of 74,000 girls (95.8 percent of whom were unmarried) in 2018, shows that 73.3 percent of the girls did not want to marry before the age of 21, by when they hoped to attain higher educational levels in order to earn well. The figure rose with age of the girls: 69.8 percent of girls aged 13-15 years and 76 percent of those aged 16-19 years stated that they wanted to marry at 21 years or later. Only 26.7 per cent of the girls said they would like to marry before the age of 20, 51 percent preferred marriage between 21-25 years, 10.2 percent between 26-30 years and 12.1 percent at or after 31 years.<sup>58</sup>

About 67.7 percent of rural girls and 86.3 percent of urban girls aspired to marry at age 21 or later. While 65.4 percent of girls in low wealth quintile households wanted to marry at age 21 years or later, 84.8 percent in high wealth quintile households did. Among states, while Bihar performed the worst with only 54.7 percent girls saying they would like to marry at age 21 or later, almost all girls in Sikkim wished to do so.<sup>59</sup>

Available data shows that while many girls pursue their education, many boys drop out of school. The data from NFHS-4 shows a fall in the net attendance ratio from 78 percent at primary level to 68 per cent in middle, secondary and higher secondary levels and the oft-cited reason was that the child was not interested in studies (44 percent of boys and 25 percent of girls).<sup>60</sup> The same is reflected in the following data from DISE.<sup>61</sup>

#### Average Annual Drop-Out Rate in School Education

##### A: All categories of students

Classes/ Year	Primary			Upper Primary			Secondary		
	Boys	Girls	Total	Boys	Girls	Total	Boys	Girls	Total
2011-12	5.89	5.34	5.62	2.13	3.20	2.65	NA	NA	NA
2012-13	4.68	4.67	4.67	2.3	4.01	3.13	14.5	14.5	14.54
2013-14	4.53	4.14	4.34	3.09	4.49	3.77	17.93	17.79	17.86
2014-15	4.36	3.88	4.13	3.49	4.6	4.03	17.2	16.9	17.06

<https://www.aljazeera.com/indepth/features/marriage-survival-climate-change-child-brides-200217132442036.html?fbclid=IwAR0lcsyUtr53uMCJw7UC7HliUeD2uNSvjpQITmWG-43PWFDFAyFL-EJzQY>

<sup>56</sup> Ibid.

<sup>57</sup> Naandi Foundation, 2018. This was conducted by Naandi Foundation and Project Nanhi Kali in 70,000 households across 600 districts in 30 states of India were surveyed with the objective of understanding what it means to be a teen age girl in India today. About 74,000 girls (95.8 percent of whom were unmarried) were surveyed. Retrieved from: <https://www.nanhikali.org/pdf/TAG-Report.pdf>

<sup>58</sup> <https://www.indiaspend.com/7-in-10-teenage-indian-girls-want-to-graduate-3-in-4-have-career-plan-new-survey/>

<sup>59</sup> Ibid.

<sup>60</sup> NFHS-4. pg. 13. <http://rchiips.org/nfhs/NFHS-4Reports/India.pdf>

<sup>61</sup> See Shukla, Subir. Education as a Right in Enakshi Ganguly (ed). India's Children Continue to Challenge Our Conscience. 2019. pg. 214-215. Retrieved from: <https://www.haqcrc.org/publication/indias-children-continue-to-challenge-our-conscience/>

**B: Scheduled caste students**

Classes/ Year	Primary			Upper Primary			Secondary		
	Boys	Girls	Total	Boys	Girls	Total	Boys	Girls	Total
2013-14	4.42	3.85	4.14	3.75	5.04	4.38	18.96	18.32	18.66
2014-15	4.71	4.2	4.46	5.0	6.03	5.51	19.6	19.1	19.36

**C: Scheduled tribe students**

Classes/ Year	Primary			Upper Primary			Secondary		
	Boys	Girls	Total	Boys	Girls	Total	Boys	Girls	Total
2013-14	7.97	7.98	7.98	8.03	8.85	8.43	27.42	26.96	27.20
2014-15	7.02	6.84	6.93	8.48	8.71	8.59	24.9	24.4	24.68

Data source: National University of Educational Planning and Administration (NUEPA), New Delhi. Provisional figures.

Boys often drop out because they do not find schooling interesting or promising enough. The quality of education has a bearing on the perceived returns to education, and influences individual and household decisions regarding continuation in school. The ability of the poor to participate is particularly compromised as education at higher levels entails expenditure (especially as there are more private and aided secondary schools than government ones). If the boys are not in school, they could be assumed to be at work. The 68<sup>th</sup> National Sample Survey Office (NSSO) Report indicates that 31.1 percent of 15-19-year-old boys are engaged in work or seeking employment. With nearly half of tribal children in the age group 15-17 being in child labour,<sup>62</sup> their participation in formal education has been low.<sup>63</sup>

This has begun creating situations where the girls are better educated than boys they are expected to marry. As such marriages challenge the established patriarchal norms of superiority of husbands, girls with higher education may experience “adjustment” problems in the relationship and marital household and possibly domestic acrimony and violence. Growing demand for marriage with boys who earn more, possibly to calibrate the marital equation has also been observed.<sup>64</sup>

A report by Young Lives and the National Commission for Protection of Child Rights (NCPCR) in 2018 noted that around 39.4 percent of adolescent girls in the 15-18 age group did not attend any educational institution, and around 65 percent of them were either engaged in household activities, are dependents, or, are engaged in begging. It noted that “these social realities are also responsible for the poor performance of young girls on education and health indicators. This paradox jeopardises their voices, aspirations and agency with which they can develop their capacities, navigate their life-choices, negotiate violence-free spaces and in reality, contribute to meeting the SDGs.”<sup>65</sup>

<sup>62</sup> Rustagi, P., Mishra, S.K. & Mehta, B.S., 2011. *Scheduled Tribe children in India: Multiple deprivations and locational disadvantage* [IHD-UNICEF Working Paper Series on ‘Children of India: rights and opportunities]. New Delhi: IHD-UNICEF.

<sup>63</sup> Shukla, Subir. “Education as a Right” in Chapter on education. HAQ report. Pg 111. Retrieved from: <https://www.haqcrc.org/wp-content/uploads/2019/11/indias-children-continue-to-challenge-our-conscience.pdf>

<sup>64</sup> Indira Pancholi. Cross-sectoral dialogue.

<sup>65</sup> India Child Marriage and Teenage Pregnancy Report. Based on NFHS-4 (2015-16) <https://www.ncpcr.gov.in/showfile.php?lang=1&level=1&&sublinkid=1670&lid=1677>

When boys take on economic responsibilities, they are viewed as capable of assuming other adult responsibilities such as marriage. It is also expected that the wife would contribute to the household economy by performing routine chores or supplementing the family income through informal wage employment. Even if the boys are neither studying nor working, it is expected that responsibilities accruing from marriage will sort them out. The declining number of boys in higher classes in West Bengal has been attributed to the pressure on them to earn, which is linked with early/ child marriage. At the age of 11 years, roughly two out of 100 boys - as against one for girls, were working in urban areas in 2004-5 with the figure in rural areas being the same for boys and slightly higher for girls.<sup>66</sup>

The discussions on adolescent marriages have downplayed girls' evolving capacities, agency and aspirations to focus on sexual awareness and awakening. They may want different life experiences - be it through education, mobility, and if nothing else works, through marriage. A study by ANANDI<sup>67</sup> showed that girls who chose "marriage at an early age" ran away from a life of no choice to another with little choice. These girls had borne the burden of unpaid labour from an early age (12 years, according to the study) and shouldered the responsibility of the entire household, or worked in agricultural fields. Many had to drop out of school to shoulder responsibilities. They had neither the mobility nor access to friends or peers, and were vulnerable to trafficking and exploitation.

The life of these girls did not improve. The girls who eloped and those who were abducted ended up working in poor conditions. Due to lack of knowledge or access to contraceptives, 11 out of 29 respondents conceived within six months of elopement or abduction. They feared or faced stigma seeking contraceptives and were unable to access health services due to lack of identity documents in the hideouts. As they were deprived of sufficient food during their stay in hideouts, they were malnourished and ill-prepared for safe pregnancy. The desperate young couple also wished to use early pregnancy as a strategy to negotiate their return and acceptance by their families.



<b><i>Why are girls leaving homes? Mapping the mobility of young girls in this age-cohort</i></b>	
<b><i>Indicators from Mobility tool</i></b>	<b><i>Young girls (%)</i></b>
<i>Dropped out at the secondary school level</i>	41
<i>Dropped out at the upper primary level</i>	17
<i>Not allowed to visit their friends</i>	58.6
<i>Visited friends mostly in their hamlet</i>	31
<i>No access to sports and leisure apart from school</i>	70
<i>Never been to Cinema Hall</i>	80
<i>Did not access market alone</i>	82
<i>Source: Girls &amp; young women at the crossroad of law &amp; customary practices: Context of underage marriage in Gujarat. Presentation made by Pragnya Joshi and Seema Shah, ANANDI.</i>	

<sup>66</sup> Kundu, A., and Mohanan, P.C., "Demographic Transition, School Attendance, and Changing Activity Structure in Urban India" in Shiva Kumar, AK, Rustagi, Preet, Subrahmanian, Ramya. 2015. *India's children. Essays on social policy*. Oxford University Press.

<sup>67</sup> Pragnya Joshi and Seema Shah, ANANDI. Presentation on "Girls and young women at the crossroad of law and customary practices: Context of underage marriage in Gujarat" at the Cross Sectoral Dialogue.

Narrating the stories of several girls, Poonam Kathuria spoke about how parents invoke child marriage only when they disapprove of a 'relationship'. She reported that Koli Patels have decided that girls will no longer be allowed mobile phones. Children and young people were made to take a pledge that they would marry within the district.<sup>68</sup> Boys and girls themselves do not understand friendship and see it as a gateway to marriage.



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<sup>68</sup> Poonam Kathuria. Presentation on at the Cross-sectoral Dialogue.

### High incidence of child marriage among boys: The case of Gujarat

According to the 2011 Census, 12.51 per cent of the under 19s in Gujarat were married and included 7.2 per cent of males and 18.61 percent of females, in the age group in 2011.<sup>69</sup> About 5 percent married females and 2.3 per cent married males were below the age of 18 and 252,517 adolescents, including 98,417 males and 154,100 females, were married even before the age of 14. The 2011 Census also found that the child marriage rates for both girls and boys was higher in the urban areas than the rural areas, in Central Gujarat than in the Saurashtra region. Child marriages in girls were substantially higher than among boys (3.1 percent) and the rate spiked to more than 13 percent in the 15-17 years age group.

Underage marriages declined from 38.7 percent in NFHS-3 to 24.9 percent in NFHS-4. The marriage rate of 6.6 per cent in girls aged 10-17 years is well above the national average of 5.3 per cent. The prevalence of child marriage is also relatively high in non-SCs/STs (6.8 percent in girls and 3.2 percent in boys) and in STs (6.3 percent in girls and 3 per cent in boys) but is found to be relatively low in SCs (5.2 percent in girls and 2.5 percent in boys) according to the Census data.

Six districts in Gujarat were among the 70 districts with highest incidence of child marriage in India, and include urban centres such as Ahmedabad, Gandhinagar and Anand. Furthermore, seven of the 20 districts in India with the highest incidence of child marriage among urban boys were in Gujarat. They include: Ahmedabad (7.8 percent), Gandhinagar (7.4 per cent), Surat (6.8 percent), Kheda (6.7 per cent), Anand (6.4 percent), Valsad (6.3 percent) and Dahod (6 percent). Indeed, Anand, despite a decrease in population showed an increase in child marriage among boys.

#### Districts with high incidence of child marriage

	Ever Married Boys (%)			% Ever Married Girls (%)		
	2001	2011	Ratio	2001	2011	Ratio
Ahmedabad	4.89	4.66	1.0	2.27	4.57	2.0
Anand	2.73	4.55	1.7	3.15	4.15	1.3
Dahod	3.98	4.61	1.2	1.21	2.37	2.0
Kheda	5.93	6.24	1.1	4.83	5.08	1.1
Valsad	1.98	3.59	1.8	1.22	3.45	2.8
Gandhinagar	4.89	5.49	1.1	4.63	5.36	1.2

Data Source: Census 2001 and 2011

The marriage rate of girls aged 10-17 years ranging between 11.6 per cent in **Gandhinagar** and 3.6 per cent in **Junagadh**. Notwithstanding the decline in population between 2001 and 2011, **Gandhinagar** showed an increase in child marriages among girls and is among the top 20 districts in the country with one in four girls married before 18 years in rural and one in five in urban areas.

<sup>69</sup> National Census, 2011.

### 3.2 Historical context of policy and legislation

The historical context of child marriage is important for understanding its sociology and political economy, which has influenced policy till date.

It is often stated that social reform during the British rule was dictated by the imperative of civilising the savage and their barbaric practices.<sup>70</sup> According to Mary John, “public spectacles of violent death – as in the case of sati in the early 19th century, but also in major court cases such as Phulmoni’s death as the result of marital rape at the close of that century – have become definitive ingredients in a national narrative of women’s victimisation at the hands of Indian traditions, which in turn provided justification for intervention by the colonial state.”<sup>71</sup>



The colonial administrators in this mission were, however, reluctant to intervene in the institution of marriage *per se* because they feared discontent at a time when the freedom movement was beginning to gather momentum. They left the personal laws of different religious groups by and large untouched in order to avoid opposition, and difficulties in governance but sanctioned translations of Hindu and Muslim law while the courts covertly reformed religious personal laws.<sup>72</sup> Even when approached by Indian social reformers, the colonial administrators “limited their efforts to the sensational issues of early consummation and early pregnancy - the “immediate evils” of child marriage - rather than the long-range consequences for society.

The death of 11 year old Phulmoni Dasi in 1891, who if born today would be referred to as a victim of marital rape, brought the issue of child marriage and age of consent to the fore. It was not social reformers who brought this issue to the public gaze. Over 500 women doctors wrote a memorandum to the Viceroy asking him to stop marriage of girls younger than 14 years old. The age of consent was 10 years (IPC 375), and Phulmoni’s much older husband had not breached the age of consent.

The government went on to set a minimum age for consummation of marriage in 1891, skirting all other issues around child marriage.<sup>73</sup> Predictably, the public debate was about the age of consent rather than the practice of child marriage even though both issues are closely intertwined and interconnected.

The Age of Consent Act, 1891, raised the age of consent for sexual intercourse for all girls, married or unmarried, from 10 to 12 years in all jurisdictions, and its violation subject to criminal prosecution as rape. Nationalist leaders like Bal Gangadhar Tilak had opposed the Age of Consent Bill on the grounds that the colonial government should not have any role in regulating social customs or way of living, even supposing that the act of government was a beneficial and suitable measure.<sup>74</sup> However, social reformers like Ishwar Chandra Vidyasagar, Swami Dayanand Saraswati and Jyotiba Phule raised their voices against

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<sup>70</sup> Nirantar, 2015.

<sup>71</sup> John, Mary. Feminist Perspectives on Family and Marriage: A Historical View. *Economic and Political Weekly* February 19, 2005. pg.712

<sup>72</sup> See Chandrachud, Abhinav, 2020. *The Rise and Fall of Colonial Secularism in India*. p xi, 176.

<sup>73</sup> Nirantar, 2015. *Landscape analysis of Early and Child Marriage*. pg 8. Retrieved from: <http://www.nirantar.net/uploads/files/EM%20Report%20-%20English.pdf>; van der Veer, Peter, 2001. *Imperial Encounters. Religion and Modernity in India and Britain*. Princeton University Press

<sup>74</sup> See Kosambi, Meera, 1991. “Girl Brides and Socio-Legal Change - Age of Consent Bill (1891) Controversy” in *Economic and Political Weekly*. Vol. 26, Issue No. 31-32, 03 Aug, 1991. pp. 1857-1868

child marriage, which ultimately led the colonial government to undertake legal measures to restrain the practice and enact a law.

### Chronology of events

<b><i>The Age of Consent Bill</i></b>	The debate following the Age of Consent Bill in the 1860s placed the issue of child marriage into the public domain. The age of consent was gradually increased from 10 years (IPC 375) in 1860, to 12 years in 1891, to 13 years in 1925, and finally to 16 years (IPC) in 1949 but the age of sexual consent within marriage was not well-articulated. The explanation in Section 375 of the IPC did not consider sexual intercourse by a man with his wife without her consent or will as rape if she was above 10 years old in 1860, which was later raised to above 15 years in 1949.
<b><i>Rukhmabai case</i></b>	In 1884, 20-year old Rukhmabai was taken to the Bombay High Court by her husband Dadaji Bhikaji after she refused to live with him. The marriage was never consummated as she had lived separately for nearly eight years after getting married to him at the age of 11 years. Eventually she lost the case but the trial was a precursor for the demand of a legislation banning child marriage. Rukhmabai and <u>Pandita</u> Ramabai, both from the Bombay Presidency, wrote extensively about this subject in their magazines and social reform organisations. <sup>75</sup>
<b>Articulation of demand for a law against child marriage</b>	The death of 11 year old Phulmoni Dasi after she was brutally raped by her 35 year old husband Hari Mohan Maitee in Bengal in 1889 was the trigger for the passage of a law against child marriage. Her husband was acquitted on charges of rape but held guilty for causing death inadvertently by a rash and negligent act but over 500 women doctors appealed to the Viceroy to stop marriage of girls younger than 14. The first law to address child marriage was, however, enacted only in 1929.
<b>Enactment of the first law to address child marriage</b>	The <i>Child Marriage Restraint Act (CMRA), 1929</i> , <sup>76</sup> was the first attempt to deter the solemnisation of such marriages legally by setting the minimum age of marriage for women as 15 and for men as 18. Enacted in the colonial era, it primarily sought to safeguard the health of the girl child, who could not withstand the stress and strains of married life and to avoid early deaths of such minor mothers.
<b>Amendments to revise the minimum age of marriage for girls and boys</b>	The CMRA underwent many amendments, primarily to define the biologically appropriate age at which a male could have legal sexual intercourse with his wife. The minimum age of marriage for girls was raised to 15 years in 1949, and later in 1978 to 18 years for girls and 21 years for boys.
<b>Introduction of legal clauses to declare child marriage null and void</b>	The <i>Prohibition of Child Marriage Act (PCMA), 2006</i> , pegged the minimum age of marriage at 18 years for girls and 21 years for boys and made child marriage voidable if not <i>void ab initio</i> or illegal. In other words, it prohibits child marriage but is to be deemed legal if it does take place with the option for the parties to approach court to have it declared null and void.

<sup>75</sup> Dadaji Bhikaji vs Rukhmabai on September 21, 1885. Equivalent citations: (1885) ILR 9 Bom 529 <https://indiankanoon.org/doc/623704/>

<sup>76</sup> It came to be known widely as the Sharda Act because it was introduced by Rai Saheb Harbilas Sharda.

<b>Raising of the age of sexual consent for boys and girls to 18 years</b>	The <i>Protection of Children from Sexual Offences (POCSO) Act, 2012</i> , raised the age of sexual consent for both boys and girls to 18 years.
	The Criminal Law (Amendment) Act, 2013, increased the age of consent to 18 years, which means that any sexual activity irrespective of presence of consent with a woman below the age of 18 will constitute statutory rape. This creates a problematic situation when boys below the age of 18 engage in consensual sex with minor girls.

### 3.3 Current legal framework

In 2013, Government of India stated regarding the law on child marriage:

“The Union Government has endeavoured to curb the practice in recent years through repealing Child Marriage Restraint Act of 1929 and bringing in a more progressive Prohibition of Child Marriage Act, 2006 that includes punitive measures against those who perform, permit and promote child marriage. Under this Act, child marriage is defined as the marriage of males below the age of 21 years, and females below 18 years. It also provides for annulment of a child marriage and gives a separated female the right to maintenance and residence from her husband if he is above 18 or in-laws if he is a minor until she is remarried. This Act came into effect in November 2007. The States are vested with powers to formulate rules for implementation of this legislation and carrying out the provisions.”<sup>77</sup>

There are several confusions that remain within the law that have resulted in a lot of debate both within experts as well as within the legal fraternity. It has also led to several contradictory interpretations by the courts.

**Status of child marriage: void and voidable.** Although the PCMA, 2006, prohibits child marriage in principle, it does not declare a child marriage null and void. It has a provision for making child marriage voidable. This is an area of debate with some experts advocating for all child marriages to be declared illegal and hence null and void, while others rooting for the continuation of it to be voidable.

The Government of India is also proposing to declare all child marriages automatically illegal and null and void *ab initio*. Karnataka is the first state in the country to declare child marriages null and void.

An amendment to the Prohibition of Child Marriage (Karnataka Amendment) Act, 2016, passed in April 2017 declared all marriages of minors to be void. It makes the husband of a



girl child liable for punishment for child marriage under the amended PCMA, for penetrative sexual assault or aggravated penetrative sexual assault under the POCSO Act, and for rape under the IPC if he is living together with the girl child in the same or shared household. The shift to outlaw child marriages as null and void *ab initio* is logical and helps to address the contradictions in various laws but its impact on children who are already married merits attention.

<sup>77</sup> <https://pib.gov.in/newsite/PrintRelease.aspx?relid=100741>

The PCMA however recognises the close linkage between child marriage and child trafficking. It is common knowledge among children's rights and women's rights organisations and activists that young girls are trafficked for and through marriage. While the PCMA treats all child marriages involving use of force or inducement or buying and selling or trafficking as null and void, the current set of human trafficking laws do not address these situations.

**Age and consent.** The debate and confusion of **age** that began in the 1860s when the debate around child marriage and age of sexual consent started, continues till today. The contradictions implicit in the age of marriage, the age of sexual consent, and the age of sexual consent within marriage till date are probably an outcome of the diffidence about open discussions and public debate towards arriving at a social consensus.

The laws in India - The Prohibition of Child Marriage Act, 2006 and its predecessor The Child Marriage Restraint Act, 1929 both define a 'child' as a girl below the age of 18 years and a boy below the age of 21 years, whereas other Acts such as The Indian Majority Act, 1875 and The Juvenile Justice (Care and Protection) Act, 2015 or even the Protection of Children from Sexual Offences Act, 2012 define children, both male and female, as persons up to the age of 18 years. It needs to be noted that the age of marriage is not the age of majority in Indian law, which permits the marriage of females after the age of 18 but requires males to be at least 21 years old.

The anomalies within the existing law render Indian child brides vulnerable to violence. The Indian Penal Code (IPC) sets the age of consent at 18 years but, by virtue of the Exception 2 Section 375, the husband of a married girl child aged 15 to 18 years can have non-consensual sexual intercourse with her and not attract a penalty under the IPC. The situation is further complicated by the Protection of Children from Sexual Offences (POCSO) Act, 2012, which sets the age of consent at 18 years and therefore criminalises all sexual activity below this age.

The Supreme Court order by Justices Madan B. Lokur and Deepak Gupta, dated October 11, 2017,<sup>78</sup> attempted to resolve this anomaly but created a tricky situation. Recognising every girl's right to bodily integrity, the order stated that sex with a minor, even if the minor is the wife, is a cognizable offence amounting to rape. It penalised rape within child marriage to bring about consistency with the definition of a child in the POCSO Act. Put simply, the child marriage if not stopped continues to be valid and legal but voidable whereas sex within it is an offence. This provision impacts the ability of girls to leave child marriage as they can only invalidate the marriage until 20 years of age while boys can void a marriage until 23 years of age.

The Law Commission report, "Proposal to Amend the Prohibition of Child Marriage Act, 2006 and Other Allied Laws," recommended that "the age of marriage for both boys and girls should be 18 years as there is no scientific reason why this should be different."<sup>79</sup> However, the Supreme Court of India not only rejected a PIL filed to bring down the age of marriage of boys but imposed a fine on the petitioner<sup>80</sup> and the Government of India has constituted a task force to examine the raising of the age of marriage for girls to 21.

**PCMA and other laws.** PCMA intersects with provisions of several laws, including the Indian Penal Code, other Special Laws as well as the Personal Laws, which are determined by religion. The confusion

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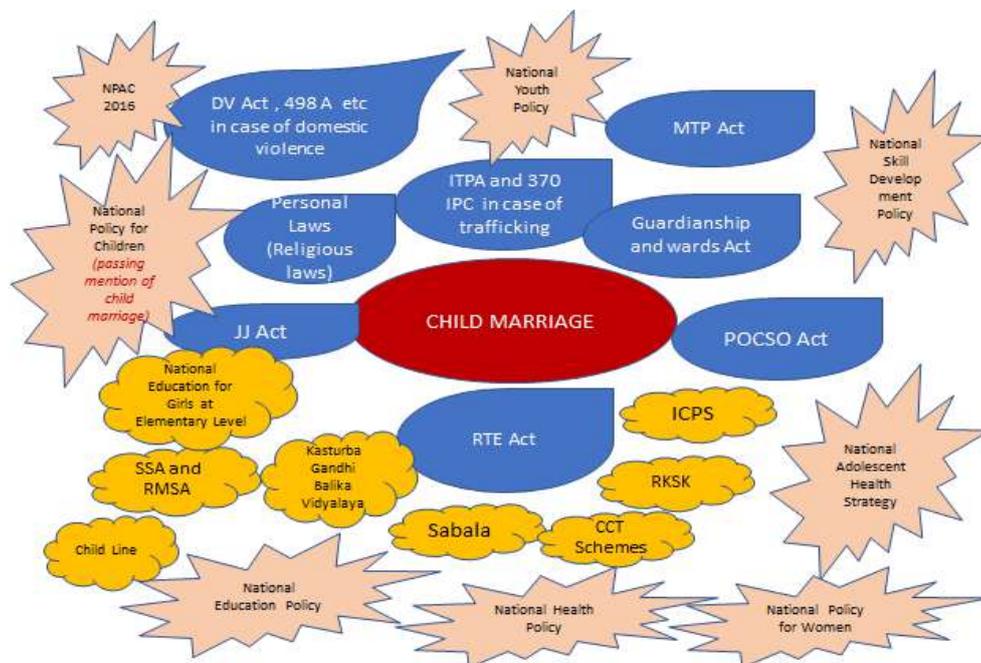
<sup>78</sup> Independent Thought v. Union of India, Supreme Court of India (2017)

<sup>79</sup> Law Commission of India. 205th Report On Proposal To Amend The Prohibition Of Child Marriage Act 2006 and Allied Laws

<sup>80</sup> "Supreme Court dismisses PIL seeking to lower marriageable age of men to 18 years". *The Scroll*. October 22, 2018.

<https://scroll.in/latest/899208/supreme-court-dismisses-pil-seeking-to-lower-marriageable-age-of-men-to-18-years>

regarding which law will prevail over the other has been addressed by the Supreme Court verdict of 2017, which clarified that the PCMA and POSCO Act have primacy over the IPC, and that rape of a child between the ages of 15 and 18 within marriage is a crime. Although this verdict has harmonised the law on age of consent, both within and outside marriage, marital rape above 18 years of age is still not recognised as a crime. By providing for a one year statute of limitation for reporting marital rape within child marriage, it compounds the existing barriers in accessing justice faced by adolescent girls and rape survivors. In effect, as marital rape is not criminalized after 18 years of age, there is no possibility of seeking legal remedies at a later stage.



However, the laws are not in harmony regarding their provisions. An anomaly of the legal framework of the PCMA is the inability to address forced child marriages as acts of domestic violence and to establish strong remedies for domestic violence within child marriage. The PCMA and the Protection of Women from Domestic Violence Act (PWDVA), 2005, do not refer to each other. Section 3 (a) of the PWDVA includes harm, or injury, or endangering a person’s health, safety, physical or mental well-being, or causing physical, sexual, verbal, emotional and economic abuse. This law provides for the removal from a violent situation and right to residence of the victim in her marital home.

Even though of the Juvenile Justice (Care and Protection of Children) Act 2015 (JJA)<sup>81</sup> treats children at risk of child marriage as a child in need of care and protection (CNCP) and provides for protection of vulnerable or rescued children, it does not refer to the PWDVA and its remedies. The JJA may be used to remove a child in her best interest but the marriage remains valid and legal till steps are taken to declare it void.

**PCMA and Personal Laws.** In India, rights and obligations within the context of marriages are governed by dual legal systems—general laws that are applicable to the population as a whole versus religion based personal laws that only apply to certain communities. Historically, there has been confusion as to whether the PCMA has primacy over religion-based personal laws, which establish their own standards and procedures concerning solemnization and dissolution of marriage. The standards in personal laws often contradict those established in the PCMA, including lower ages of marriage, limits to girls’ rights to invalidate or leave child marriages, and recognising parental consent as sufficient for child marriage.<sup>82</sup>

<sup>81</sup> Section 2 (14) (xii) Juvenile Justice (Care and Protection of Children) Act.

<sup>82</sup> Centre for Reproductive Rights and The Centre for Law and Policy Research. 2018. Ending Impunity for Child Marriage in India: Normative And Implementation Gaps.

The tensions in the secular laws and religion specific personal laws result from contrary positions on the minimum age of marriage. While the former upholds chronological age, the latter gives primacy to puberty as a marker of sexual maturity.

In the absence of clarity in the law itself and the contradictions between the PCMA and the personal laws, the judiciary has been giving disparate orders. In 2005, two high courts in India allowed minor girls to marry after they acknowledged that they had eloped voluntarily with their beaus, leading the National Commission for Women to rush to the Supreme Court expressing fear that this would legitimise marriage of minors.

On July 24, 2013, a bench comprising Justices Khehar and Misra stated:

“How can we say all cases must fit the same formula? As long as there is no extraneous consideration, coercion, malice, misuse or assault, the High Courts were perfectly placed to pass these orders. The parties have remained together. The families have remained united. The two cases dealt by the high courts were not those where the girls were lured away or enticed? Can we pass an order annulling the marriage now? Have the girls who have now become adults given a statement contrary to what they had told the High Courts then?”<sup>83</sup>

In 2017, Justice Deepak Gupta stated:

“In my opinion, the PCMA is a secular Act applicable to all. It being a special Act dealing with children, the provisions of this Act will prevail over the provisions of both the Hindu Marriage Act and the Muslim Marriages and Divorce Act, in so far as children are concerned.”<sup>84</sup>

### 3.4 National policies and action plans

“Child marriage” appeared in passing in Towards Equality (TE), the report of the Committee on the Status of Women in India in 1974, which has been hailed as landmark for its perspective and insights on gender equality. The Mathura rape case thereafter, another important milestone in India’s women’s movement in 1968-79, also did not factor in age-related vulnerabilities. The age of Mathura was not an issue in the open letter to the Chief Justice of India from some eminent lawyers. She was in the 14-16 years age group, but was occasionally called a girl and never a minor.<sup>85</sup>

A comprehensive perspective on child marriage to guide policies and orchestrate their implementation has not evolved as yet. National policies have addressed the issue directly or indirectly through the prism of women’s rights, particularly in the context of the health of underage mothers and underweight babies that they would bear. It is not surprising that the policies have not been sufficiently focused upon as a child rights violation.

**The National Policy for Children (NPC), 2013**, does not mention child marriage specifically as a violation of children’s rights. The section on education and development refers to married children as a vulnerable category, a subset of out-of-school children, who need to be tracked, rescued and rehabilitated and ensured access to their right to education. However, the National Strategy Document on Prevention of Child Marriage, also prepared by MWCD in 2013, outlined law enforcement, access to quality education

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<https://reproductiverights.org/sites/default/files/documents/Ending-Impunity-for-Child-Marriage-India-WebUpdate-0218.pdf>

<sup>83</sup> Dhananjay Mahapatra. Tough to fix marriage age for girls, Supreme Court says. The Times of India. July 25, 2013. Retrieved from:

[https://timesofindia.indiatimes.com/india/Tough-to-fix-marriage-age-for-girls-Supreme-Court-says/articleshow\\_b2/21320456.cms](https://timesofindia.indiatimes.com/india/Tough-to-fix-marriage-age-for-girls-Supreme-Court-says/articleshow_b2/21320456.cms)

<sup>84</sup> Independent Thought v. Union of India & Anr., W.P.(C) 382 of 2013, S.C.C. India, para. 19 (Justice Deepak Gupta), October 11, 2017.

<sup>85</sup> <https://pldindia.org/wp-content/uploads/2013/03/Open-Letter-to-CJI-in-the-Mathura-Rape-Case.pdf>

and other opportunities, changing mind-sets and social norms, empowerment of adolescents, knowledge and data, and developing monitorable indicators as strategic areas for action.<sup>86</sup>

The MWCD had also announced that it was in the process of finalising a National Plan of Action on Child Marriage.<sup>87</sup> A draft Plan of Action was discussed in a regional consultation in Lucknow on July 8, 2013, and a national consultation in New Delhi on July 18, 2013, but it has not been finalised till date. Reportedly, the discussions in the government favour changing the law to make child marriage void *ab initio*. In other words, legal but voidable nature of child marriage could be changed through law to make it automatically illegal. There are different but valid points of view on the likely impact of the proposed measure. It may halt the practice or it may create complications due to the complex interface between socio-cultural norms and beliefs and legal provisions.

**The National Plan of Action for Children (NPAC), 2016**, is more forthcoming than the National Policy for Children on the issue of child marriage by identifying child marriage with social attitudes and practices that discriminate against the girl child, and considers prevention of early marriage of girls as a means of creating a protective environment for children. It has set the ambitious target of preventing child marriage and promoting the protection of girl child by 2021 or before.

#### Reference to child marriage in the NPAC, 2016

##### Key Priority Area

1.2. Secure the right of the girl child to life, survival, health and nutrition

Sub-objective 1.2: Securing the right of the girl child to life, survival, health and nutrition

##### Corresponding strategies

Advocacy to change attitude and practices discriminatory towards the girl child (including female infanticide, child marriage, and other discriminatory practices).

##### Key Priority Area 3: Protection

Sub-objective 3.1: Create a caring, protective and safe environment for all children to reduce their vulnerability in all situations and to keep them safe at all places.

##### Corresponding strategies

3.1.1: Support development of community-based management and prevention system to address child labour, child migration, trafficking, child marriage, and all forms of abuse, exploitation and violence against children.

3.1.3. Prevent early marriage of girls

The national indicator framework for the SDGs, proposed by MOSPI and adopted by NITI Aayog, has specified two targets to drive action.

5.3.1: Proportion of cases reported under the Prohibition of Child Marriage Act (early marriage of children below 18 years of age) to total crime against children.

5.3.2: Proportion of women aged 20-24 years who were married or in a union before age 18.

A major critique of the national policies is that they tend to mirror the international discourse. For example, the definition of 'productive' in the context of adolescent girls is also telling - "The module developed for training adolescent girls will include issues pertaining to home maintenance, budgeting, saving, running the household, gender sensitivity, schooling of children, etc. Adolescent Groups will be advised on these issues to orient them to become more productive members of society (GOI 2010). Such framing implies that the girls should stick to their gendered reproductive roles as 'carers'.

<sup>86</sup> <http://vikaspedia.in/social-welfare/women-and-child-development/strategy-child-marriage>

<sup>87</sup> <https://pib.gov.in/newsite/PrintRelease.aspx?relid=100741>

State action against child marriage has been excessively focused on enacting legislation. Experience however shows that laws do not have all the answers and have limited utility in influencing deep rooted social norms and behaviour. Considering India missed the earlier targets set in the National Policy for Empowerment of Women and the National Plan of Action for Children, 2005, for the elimination of child marriages by 2010, there is a need to review strategies beyond law for achieving better results.

India has committed to eliminate child, early and forced marriage by 2030 in line with target 5.3 of the Sustainable Development Goals. The government did not provide an update on progress towards this target during its Voluntary National Review at the 2017 High Level Political Forum.<sup>88</sup>

Monitoring of the implementation of policies is an ongoing complaint of civil society organisations, who have not been able to engage in a serious and meaningful discussion on the achievements and impediments to progress. Arguably the policies have been framed in a manner that monitoring and evaluation is not possible due to lack of systemic, process and outcome indicators.

### 3.5 Programmes and interventions

National programmes such as *Beti Bachao, Beti Padhao*<sup>89</sup> seek to raise the social and educational status of the girl child in order to curb sex selection practices through public messaging, expecting that people would be motivated to overcome their antiquated beliefs and support their daughters wholeheartedly. In the absence of a comprehensive and well-resourced package of interventions that complement the messages, such programmes tend to have limited value in addressing structural issues.

Conditional cash transfer programmes (CCT) have gained currency as a result of intersection between a policy environment of structural transformation with weakening of existing social security measures and glaring gender-based inequalities experienced by girls and women in their lives. They adopt a *targeted beneficiary approach* through the provision of cash benefits with compliance through a set of conditionalities to mitigate poverty in the short run and make long term investments in human capital, especially in the girl child.

In the last three decades, the government has initiated multiple national and state sponsored CCT programmes with the direct or indirect aim of delaying marriage among girls.<sup>90</sup> The first such programme was launched by the Government of Haryana - *Apni Beti Apna Dhan* (ABAD), or “Our Daughter, Our Wealth” in 1994 to change how the families and communities viewed girls – as a burden to be married off, not an asset.<sup>91</sup> For every daughter that was born, a family that enrolled in the programme would receive approximately ₹400, on the condition that they remained unmarried until the age of 18. The impact, they hoped, would be three-fold: increased value of girls, improved educational attainment, and delayed marriage.

ABAD, which operated between 1994 to 1998, is one of the first CCTs targeting girls, implemented systematically by an Indian state. ABAD is also unique among all large-scale CCT interventions in India, in

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<sup>88</sup> <https://www.girlsnotbrides.org/child-marriage/india/>

<sup>89</sup> <https://wcd.nic.in/sites/default/files/BBBP2522015ENG.pdf>

<sup>90</sup> Sekhar, T.V., 2010. Cited in Nanda, P., Datta, N., & Das, P., 2014. *Impact on Marriage: Program Assessment of Conditional Cash Transfers*. ICRW. Retrieved from: <https://www.icrw.org/publications/impact-on-marriage-program-assessment-of-conditional-cash-transfers/>

<sup>91</sup> <https://www.girlsnotbrides.org/economic-incentives-enough-prevent-child-marriage-findings-haryana-india/>

that beneficiaries faced a protracted 18-year period before receiving any cash transfer, as the conditionality was explicitly based on delayed marriage.<sup>92</sup>

The MWCD's *Dhanalakshmi*, a conditional cash transfer scheme for girl child was operational from 2008 to 2013 on a pilot basis to provide a set of staggered financial incentives for families to encourage them to retain the girl child, educate her and prevent child marriage and also help to cover certain medical expenses. The scheme was discontinued as several state governments had come up with more attractive schemes.

*Balika Samridhi Yojana* seeks to change negative family and community attitudes towards the girl child at birth and towards her mother, improve enrolment and retention of girl children in schools, raise the age at marriage of girls, and assist the girl to undertake income generating activities. It covers girls from BPL families in both rural and urban areas in all districts in India. They are entitled to a post-birth grant amount and annual scholarships for each successfully completed year of schooling. On attaining 18 years of age, and on production of a certificate from the Gram Panchayat/Municipality that she is unmarried on her 18th birthday, she is eligible to withdraw the amount with interest from the post office or bank account in her name.

The central and several state government CCTs for the girl child have similar schemes with different names. These include: *Sukanya Samridhi Yojana*, the *Ladli* scheme in Delhi and Haryana, *Ladli Laxmi* scheme in Madhya Pradesh. In West Bengal, *Kanyashree* and *Rupashree* schemes are linked to continuation in school and age of marriage. The *Kanyashree* scheme in West Bengal seeks to keep girls in school and delay their marriage while the *Rupashree* provides for marriage assistance to girls from poor families after they turn 18.

A study of three CCT schemes, viz., *Kalyan Lakshmi* and *Shaadi Mubarak* introduced in 2014 in Telangana and *Chandranna Pelli Kanuka* introduced in Andhra Pradesh in 2018, found the linkage of monetary assistance to the age of bride in public consciousness but with some regional variations in the impact.

They have raised awareness about the detrimental consequences of child marriage and need to educate girls in relatively prosperous regions but served financial assistance as the key motivator for poor families in drought-prone districts. Many families have accepted them as a poverty alleviation measure rather than one seeking to correct gender inequality. Some poor families perceive the money received through CCTs as a contribution towards marriage expenses rather than a measure to curb early marriage. The promise of money appears on the surface to increase the value of women, the negative fallouts include a reinforcement of dowry and increase in the marriage expenses borne by the bride's family.<sup>93</sup>



These schemes address the symptoms rather than the root causes of gender inequality and discrimination. They acknowledge, in accordance with social norms, the essentiality of marriage in a girl's life as a means of 'settling down'. In order to address their shortcomings, Dr. Vidhya suggests CCT as one of the slew of initiatives to combat child marriage and greater synergy among programmes, especially

<sup>92</sup> Nanda, P., Datta, N., & Das, P., 2014. *Impact on Marriage: Program Assessment of Conditional Cash Transfers*. ICRW. Retrieved from: <https://www.icrw.org/publications/impact-on-marriage-program-assessment-of-conditional-cash-transfers/>

<sup>93</sup> Dr U. Vidhya, Tata Institute of Social Sciences. Presentation at the Cross-Sectoral Dialogue.

those strengthening linkages between livelihood opportunities and girls' education. Demonstration of the benefits of girls' employment could motivate the families to support their education.<sup>94</sup>



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<sup>94</sup> *ibid.*

## 4. Key challenges to addressing child marriage

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### 4.1 Piecemeal approach to the problem

Prevention initiatives have repeatedly highlighted child marriage as a multi-dimensional, highly protracted human rights issue but the approach can at best be termed piecemeal. The inconsistencies in the legal framework, discussed earlier, could be attributed to weak political commitment as well as the inability and unwillingness to challenge the patriarchal moorings of the practice. It is not surprising that most of the interventions have addressed girls.

According to women's rights advocates, child marriage is actually not so much of a social problem or an evil as it is made out to be if girls and women are sufficiently empowered and exercise their choice in the decision. While child rights advocates concur with the notion of empowerment and consent, they consider the legal age to be an important requirement for securing legal safeguards. Both sets of concerns are valid and need to be calibrated. Child marriage is caused by the same causes that perpetuate it - and although it may be an entry point to an initiative on the ground, it cannot be addressed without tackling issues of patriarchy, sexuality and gender inequality.<sup>95</sup>

As the understanding of the notion of adolescence has largely been constructed with reference to girls, most solutions to social problems such as child marriage have involved interventions that encourage conversations, peer engagement and life skills among them.

### 4.2 Marriage as an institution

A school of thought that seeks to steer the attention away from the issue of child and early marriage and questions marriage as an institution is gaining traction. Abhijit Das argues in favour of interrogation of the cultural frame of patriarchy, masculinity, fertility and lineage within the institution of marriage, instead of identifying child marriage alone as the major problem.

Mary E John<sup>96</sup> suggests that a more structural understanding of marriage as a compulsory institution in contemporary India should replace the approaches towards early and child marriage, which seek to influence social norms that uphold child marriage or highlight the agency of girls and their choices. In this context, the term "compulsory" is not to be confused with application of force. It points to the association of the institution of marriage with women's economic security. Not only do 98 percent of Indian women view marriage as a lifelong commitment and few seek divorce, 95 percent of marriages across classes and castes are in the nature of what one might call an intergenerational contract, that is, marriage where daughters (and sons) consent to the role that parents and others play in the selection of a spouse. This is true in both rural and urban contexts, in middle class and in wealthy households.<sup>97</sup>

Families and parents believe it is their primary duty to "settle" daughters and sons even if it entails the demand and payment of dowry, especially as marriage in India has performed multiple functions. It provides social meaning and status, it is the only respectable institution for having sex and producing children. The greatest stigma in India is reserved for girls who have children while being unmarried, it is much greater than have sex while unmarried. Unmarried mothers have no place in society.

Early and child marriage in India (which is quite prevalent though declining) must be understood in this larger structural context. The Indian marriage market is quite complex and hierarchical, where in wealthier and higher castes near the top of the hierarchy women marry at somewhat higher ages (in their

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<sup>95</sup> Renu Khanna. Presentation in the Cross Sectoral Dialogue.

<sup>96</sup> Mary E John. Presentation in the Cross Sectoral Dialogue.

<sup>97</sup> *ibid.*

early to mid-twenties, usually with large dowries) while those lower down, mostly poorer, with little to offer, and with lower levels of education, marry at correspondingly younger ages, some below 18 years. Their husbands are also correspondingly poorer, and in some instances may be even less well educated than their wives. The structure itself is quite firmly set to continue because employment opportunities for women in both urban and rural India have been declining from already low levels in the last decades, thus making marriage even more compulsory than ever.

With expanding levels of educational access (with the gap between boys and girls in educational attainment narrowing considerably) the average age of marriage in India has been slowly creeping upwards over the years, and the corresponding proportion of underage marriage is declining. Most underage marriage today happens between the ages of 15-17 years and could be called late adolescent marriage, as compared to the past (when more girls were being married right around puberty).

Among these some are "self-arranged" (occasionally being acceptable to the families as in West Bengal) but the majority are undertaken by parents/relatives with some consent or not of the girl. It is therefore not enough to simply refer to the agency of girls, or of social norms in the abstract. We need to make real change happen by providing the kind of empowerment to girls through education and meaningful employment opportunities that will actually translate into a position of some autonomy in relation to both their families and their possible sexual encounters.

Meena Gopal reiterated the need to examine child marriage within the larger context of the institution of marriage. According to her, the positioning of marriage as an institution must be examined, especially its gendered nature. It is patrilocal and structured to control labour and sexuality of women, with both community power dynamics as well as that of the State being deeply entrenched. Child marriage is only a manifestation of the same.



A study by Tata Institute of Social Sciences, co-authored by Meena Gopal, observes:

“consent’ is largely about the physical body and not the personhood of women. Twentieth-century legal reforms reflect the manifestation of bodily control through the population-stabilization measures of family planning policies targeted at controlling women’s fertility. It was in the late twentieth century that the discourse shifted, not only to the recognition of women’s and girl’s reproductive and sexual rights, but more specifically, to the need for women’s empowerment for the development of nations and to control their populations”.<sup>98</sup>

## 4.3 Disempowerment of children and women

### 4.3.1 Tussle between gender bias and neutrality

An argument against child marriage is that higher age of marriage increases the agency and capacity of girls to control their lives. However, the increase in minimum age of marriage has not necessarily guaranteed greater autonomy, safety or better development outcomes for women. Indeed, child marriage is just one of the many problems that confront the girls today.<sup>99</sup> The focus may have shifted from pre-pubertal marriages during the colonial period to adolescent marriages but the underlying causes and

<sup>98</sup> Gopal, M., Jagdeeshan, M., Dutt, A., Chatterjee, M., Sharma, R., Roy, D., Rani, N., Mukherjee, A., 2016. *Addressing Early and Child Marriage in India: A Participatory Study on Mapping Outcomes*. An AJWS-TISS Initiative. Retrieved from: <https://iliflc.com/wp-content/uploads/2018/02/ECM24Jan2017-reduced.pdf>

<sup>99</sup> Dr Abhijit Das. Presentation at the Cross Sectoral Dialogue.

manifestations have not changed. The discrimination in the legal age – 18 years for females and 21 years for males has been critiqued on the grounds of gender neutrality. The POCSO Act is gender neutral – can a minor husband file a complaint as a victim if sex with minor is an offence?

### 4.3.2 Anomalies in the ages of consent to sexual relationships and marriage

The legal framework is particularly confusing regarding the age of consent. In 2012, India increased the age of consent from 16 to 18 years – a move that disregards international law and biology, and arguably infantilizes all persons from 0-18 into compulsory abstinence, who suddenly assume maturity as they turn 18 and, in the case of women, become legally eligible to marry.

International law recognises capacities as evolving in children, who are sexually curious and active puberty onwards. Sexual consent flows from a recognition of adolescent sexuality, while a minimum age of marriage is predicated on legal capacity to contract, take up employment, manage finances and so on. To conflate the two, as the Indian law does, is principally flawed and harmful to young persons.

In effect, 18 years as the age of consent increases the prospects of criminalisation of young people. There is abundant evidence of the harm in terms of the growing criminalisation of young boys from poor and marginalised backgrounds; and the barriers this poses to girls accessing sexual health services, abortion and childbirth.<sup>100</sup>

The laws, as they stand, do not allow for any consensual adolescent sexuality, including between two adolescents, and therefore stigmatize adolescent sexuality. Since laws do not allow for consensual adolescent sexuality, this prohibition may encourage parents or adolescents themselves to marry early to avoid the risk of legal and social sanction for sexual activity. These gaps and weaknesses have led to a situation where the POCSO Act is typically invoked by parents to control adolescent sexuality rather than by married girls themselves to seek legal remedies for sexual violence.

A study by ANANDI of the cases of abduction and kidnapping of girls filed in Dahod, Panchmahal and Morbi districts of Gujarat found that most of the abductees were aged 16-18 years and had been ‘abducted’ mostly around festivals. Holi and Navratri and fairs and celebrations like Bhagoria, Gol Gadhedo, Chuli Fairs, provide spaces for mingling for young people, especially preceding the marriage season and when migrants return home for the sowing season. Most complainants were the parents (fathers) of the girls.<sup>101</sup>

The study shows that although these cases were registered as kidnapping and abduction, the girls had asserted their ‘choice’ by ‘allowing’ themselves to be abducted. The reasons cited by girls to leave home included: an opportunity to run away from a situation which severely restricted their mobility.

The POCSO Act makes reporting of any sexual activity with a minor, mandatory and the failure to report, a cognizable offence. Thus, a pregnancy resulting from a child marriage has to be reported to the police by medical practitioners. There are further complications if a minor girl needs an abortion. Mandatory reporting contradicts the confidentiality clause in the MTP Act, which allows registered providers to terminate pregnancies of minors resulting from sexual abuse or otherwise, and maintain confidentiality.

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<sup>100</sup> Madhu Mehra, cited in “Modi govt considers lowering marriage age for males: Can Indian men handle it at 18?”

The Print. October 30, 2019. Retrieved from: <https://theprint.in/talk-point/modi-govt-considers-lowering-marriage-age-for-males-can-indian-men-handle-it-at-18/313366/>

<sup>101</sup> Pragnya Joshi and Seema Shah, ANANDI. Presentation on “Girls and young women at the crossroad of law and customary practices: Context of underage marriage in Gujarat” at the Cross Sectoral Dialogue.

## 4.4 Intimate partner violence and child and early marriage

Various studies have shown that intimate partner violence is unacceptably high. About one-third of ever married women in India reported physical spousal violence in NFHS-4. Much of the marital abuse that women suffer occurs likely in the first few years of marriage. Given the early average age at marriage, a great deal of this violence is likely to be experienced by married adolescents, who may be more powerless than older married women to defend themselves.<sup>102</sup>

### **Marriage as a legal ploy to escape criminal charges of sexual assault<sup>103</sup>**

Deepak Garg was accused of raping his neighbour Rani (name changed), who was only 15 years old, in 2014. He exerted tremendous pressure to make her agree to his proposal of marriage, which he used to secure bail for himself. A Delhi court granted him an interim bail for seven days and converted it into a regular bail after the two got married.

Rani was threatened, abused and tortured by her husband and his family within days of the ill-conceived marriage. She and her mother took their plight to the Sessions Court and later to the High Court, where their pleas for cancellation of the bail were rejected for lacking merit. As the marriage had taken place, she was asked to seek appropriate remedy with regard to her allegations as per the matrimonial laws. They are still knocking at the doors of the court for justice.

## 4.5 Lack of clarity regarding the role of institutions

The lack of calibration between various laws creates problematic situations for the law enforcement and social welfare agencies. A telling scenario is created by the PCMA, the PWDVA and the JJA, which have not harmonised the processes and procedures sufficiently. While legal remedies are available to a married child victim of domestic violence, the agencies need to figure out if it should be the Special Juvenile Police Units (SJPU) under the JJA or Mahila Thana Police which should lead. Should they be kept in shelter homes for girls or adult women? From among the National Human Rights Institutions should it be the National/State Commissions for Women or the National/State Commissions for Protection of Child Rights that are required to step in?

Although social and state institutions have an important role in addressing issues such as child marriage, mind-sets and the inability to interpret law in the best interest of the child and navigate through the complexities of various laws, have proved to be serious impediments.

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<sup>102</sup> See Solotaroff, J. L., and Rohini Prabha Pande, R.P., 2014. Violence against Women and Girls: Lessons from South Asia. South Asia Development Forum. Washington, DC: World Bank. doi:10.1596/978-1-4648-0171-6.

<sup>103</sup> Richa Banka. 2 years on, minor forced to marry rapist awaits justice. April 10, 2017. DNA. Retrieved from: <https://www.dnaindia.com/delhi/report-2-years-on-minor-forced-to-marry-rapist-awaits-justice-2392593>

## 5. Lessons from some initiatives to eradicate child marriage

### 5.1 Preventive strategies

The ICRW had identified the following five evidence based strategies to delay or prevent child marriage in 2013: (i) Empower girls with information, skills and support networks; (ii) Provide economic support and incentives to girls and their families; (iii) Educate parents; (iv) Enhance girls' access to a high quality education; and (v) Encourage supportive laws and policies. These strategies, which address some of the structural issues that undermine gender equity, continue to be relevant for the next generation of development programmes to make elimination of child marriage a priority.<sup>104</sup>

The study by TISS-AJWS also suggests a multipronged strategy to address the root causes of child marriage while comprehensively broadening girls' educational attainment, skill development for livelihood options, and general empowerment and sense of agency through women's and girls' collectives<sup>105</sup>. Such collectives enable the free and frank discussions on issues of health, sexuality, and rights. But the study also emphasises the need to include providing supportive and protective resources for girls who are married or women who were married when they were young, including girls and women experiencing coercion or violence or those who are threatened with violence.

However, KG Santhya from the Population Council flagged the risk of raised aspirations of girls when these are not realised. When the girls feel empowered, and they are ready to 'step up', a supportive and protective environment is required to help them to realise their aspirations. Otherwise their vulnerability to violence is likely to increase.



### 5.2 Life skills education for adolescent empowerment

Various NGOs conduct life skills education programmes, which seek to inform and empower adolescents to deal with issues such as physical changes during adolescence. By bringing together adolescent girls into groups and providing them with platforms to bond, they encourage them to have conversations on their experiences and social expectations. Girls then graduate to questioning repressive norms, which have contributed to their poor health and nutrition status, impeded education and compelled them to marry early.

The platforms made available to them (e.g., theatre groups, football teams, tech centres, English classes) help them socialise, pursue their interests and explore newer vistas. Life skills education for self-awareness among adolescents for bringing down the number of child marriages helps the girls nurture dreams and exercise their agency in pursuit of their aspirations. These platforms have emerged as safe

<sup>104</sup> ICRW and Girls Not Brides. *Solutions to end child marriage. Summary of the evidence*. Retrieved from: <https://www.icrw.org/publications/solutions-to-end-child-marriage-2/>

<sup>105</sup> Gopal, M., et al, 2016. *Addressing Early and Child Marriage in India: A Participatory Study on Mapping Outcomes*.

spaces for girls who try to resist child marriages by virtue of the sense of solidarity fostered among the members.

### **National award for bravery to girls who resisted child marriage**

Three girls from Purulia who after resisting their family's pressure of entering into early marriage became role models in the campaign against child marriage in the country. Sunita Mahato (13), Rekha Kalindi (13) and Afsana Khatun (14), born in the family of bidi rollers and hawkers in one of the most backward districts of Bengal, received the National Bravery Award for Children on Republic Day in 2009. These girls were child labourers before getting enrolled in a school. The education helped them to muster courage to protest against their families' wish to get them married, and later became part of 35-member girls' group called Child Activist Initiative (CAI), which encouraged other girls to resist child marriage. No one asked these girls to campaign against child marriage. They themselves grouped together and went around villages counselling girls to resist child marriage.<sup>106</sup>

Most of such programmes are with girls than with boys. Increasingly, it is being recognised that unless the aspirations of the adolescent boys are also addressed, and they are sensitised and encouraged to be gender sensitive, change is not possible.

## **5.3. Conditional cash transfers (CCTs)**

Monetarily incentivising milestones in a girl child's life has been seen as a measure to address systemic discrimination. CCT is a state intervention that transfers a fixed amount to families for achieving specified human capital targets.

The CCT schemes of *Kanyashree*, *Rupashree*, Shaadi Mubarak and so on, often known colloquially as “*dahej* schemes”, are designed to encourage girls to marry at 18 years. Many studies have pointed out the problems with these schemes. They reinforce the centrality of marriage and the burden of getting the daughters married off at 18 years rather than encouraging girls to study further.<sup>107</sup> The CCTs need to be delinked from age at marriage, and given for continuing education of girls – completing graduation, post-graduation, enrolling for skills training, and so on.

## **5.4 Social mobilisation and parental engagement**

### **5.4.1 Public education initiatives**

Experiences of organisations like MJAS, Jabala and others show that engagements with the local communities and local governance systems over the years have fostered young leadership, who are slowly taking up issues that matter to them. Small changes are evident at the local level - girls when forced to marry seek support and the local communities do not always turn a blind eye. The focus of public education is not just on child marriage but on child protection as a whole, the rights of girls and boys to education and employment opportunities thereafter.

<sup>106</sup> Shiv Sahay Singh. Purulia's anti-child marriage girls to get National Bravery Awards. Indian Express. December 25, 2009. Retrieved from:

<http://archive.indianexpress.com/news/purulia-s-antichild-marriage-girls-to-get-national-bravery-awards/558961/1>

<sup>107</sup> Nanda, P; Das, P; Datta, N; Lamba, S; Pradhan, E; & Warner, A., 2016. *Making Change with Cash? Impact of a Conditional Cash Transfer Program on Girls' Education and Age of Marriage in India*. ICRW. Also see U. Vindhya; Ray, N.; & Ponniah, U., 2019. *Conditional Cash Transfer Schemes and Child marriages in Andhra Pradesh and Telangana: An Exploratory Study*. Mumbai: School of Gender Studies, TISS

## 5.4.2 Engagement with men on gender and masculinities

Explaining why working with men is imperative if the cultural frame is to change, Abhijit Das cited the example of an intervention in Madhya Pradesh between 2012 and 2014. Engagement with men led to an increase in the age of marriage and girls' school attendance and retention, and positive changes in perceptions towards gender discrimination, masculinity and sexuality. He proposed the following theory of change based on the work undertaken with men for changing the cultural frame leading to changes in the gender dynamics and power relations in the institution of marriage.

### A Theory of Change

Recognising that working with men is essential for understanding the gendered social norms as coercion and control of women, Dr Abhijit Das offers a theory of change. It seeks to engage with men for changing the cultural frame leading to altered power relations between men and women in the institution of marriage, which would automatically also address child marriage.

- Understand the 'privileges' men enjoy and the compulsions of hegemonic masculinity, such as "honour" and sexual anxieties
- Experience the 'benefits' of equality and respect for more fulfilling relationships (new experience)
- Change the notion of "honour" as control of the girl child to shared "aspiration" for a new future with freedoms (new consciousness)
- Individual and collective action for change (agency) in the family, community and in institutions – multi-dimensional change

This process also acknowledges the intersection of gender power with other social hierarchies, such as caste, class, religion, urban-rural, .... and value 'equality' (reflection on power)

Presentation by Abhijit Das at the Cross Sectoral Dialogue

## 5.5 Quality education

Existing research shows that in villages with high schools, there are much lower rates of early marriage. On the other hand, early marriages are more prevalent where the quality of schooling is poor, ending at the level of elementary education, and girls are at home with no other work than to help with domestic chores. Good quality education for girls, which inculcates confidence and problem solving skills, with an assurance to families of good jobs will go a long way in reducing the incidence of early marriages.

## 5.6 Use of Law

There is much greater consciousness of the CMPA, 2006, over the years but its application remains uneven. Few cases have been registered using this law. The NCRB data shows 326 cases in 2016, 395 in 2017 and 501 in 2018.<sup>108</sup> Field experience shows that the law is not being used for prosecution but as a threat and often for negotiation for delaying marriages.

Shakuntala Pamecha said that she and her organisation had begun working on child marriage in Rajasthan in 1998. At that time no one knew the law. Now everyone knows the law. They find ways to circumvent it. One of the ways they do that is by resorting to traditional practices like '*nata pratha*', which

<sup>108</sup> Government of India, National Crime Records Bureau, 2018. *Crime In India*. Table 1.3

does not need the solemnisation of a marriage. “Law alone is not enough”, she said. “Protection of the girl and responsibility of getting her ‘settled’ is all that the parents care about. These are the issues we have to tackle on the ground.”

Several organisations (including HAQ, Jabala and MJAS) use the law as a preventive measure, to convince families or create pressure on dominant groups in the community to prevent early marriage. They are however cautious of the over-reliance on state mechanisms, especially the police, to address the practice. Even while ‘using the law’ greater stress is laid on engaging with community members, panchayat officials, marriage service providers, Child Welfare Committees, Juvenile Justice Boards, and other modes of collective action to make communities sensitive to the needs of young persons, especially women and girls.



## 6. Key points for further reflection and action

### 6.1 Should elimination of child marriage be a priority on the policy agenda?

Many scholars and activists aver that the interest in putting an end to child marriage is both misplaced and misleading because international interest and pressure led to advocacy for the inclusion of “elimination of child marriage” in the global and national policy agenda as well as the SDGs<sup>109</sup> and in any case the age of marriage has been decreasing steadily. Concerned about the translation of the decrease in child marriage (inversely an increase in age of marriage for girls) into empowerment, increased agency and better opportunities, they question if policy and programming is providing girls with spaces to exercise their agency and make decisions regarding their own lives.

The number of married children in India may be amongst the highest in the world but it is also home to the second largest population in the world with about 66 percent living in rural areas, and a huge mass of poor and vulnerable. India does not have the highest rate of child marriage in the world as it is made out to be by international advocacy groups and improvement in the depth of child marriage (marrying at very young ages as children) can be claimed with some justification. The registration of marriage is increasing and early or adolescent pregnancy and maternal mortality rates are coming down even though the progress is uneven across the country.

The focus on the age of marriage, legislation and reproductive health of women has been a colonial legacy, which has for long diverted attention from the role of women’s empowerment, issues of consent and choice.<sup>110</sup>

Questions about the institution of marriage certainly need to be raised because structural factors across generations have regulated marriage as a market but the interface between the increasing age of marriage and education levels is changing social dynamics. The practice of dowry has shown no sign of abating and there are considerable anecdotal accounts that the rates are going up with changes in the nature of transactions. It needs to be noted that India is not the only country where this kind of marriage market persists.

### 6.2 How should the early and child marriage issue be framed?

#### **Protection versus Protectionism**

Child marriage is a way of protecting their daughters for many parents. Many NGOs have experienced during interventions in such a setting the importance of demonstrating to the communities how child marriage may in fact leave the girls unprotected. An ongoing dialogue is required to clarify the difference between protection and protectionism while acknowledging the agency of children in exercising their rights and facilitating the choices and decisions children and young people make at different points and within different worldviews.

HAQ: Centre for Child Rights, Jabala and MJAS. Towards Ending Child Marriage (Handout)

Early and child marriage creates a number of negative consequences for young adults and their families but the development sector is currently focused on only two of the primary impacts: on education, as girls are forced to drop out of school; and reproductive health of young women, especially linked to early pregnancy.<sup>111</sup> These valid concerns must be addressed but other impacts related to gender relations, sexuality and livelihood security also deserve attention.

<sup>109</sup> Mary John. Cross-sectoral dialogue.

<sup>110</sup> Nirantar, 2015. *Landscape Analysis on Early and Child Marriage in India*

<sup>111</sup> Nirantar, 2015. *Landscape Analysis on Early and Child Marriage in India*

## 7. Conclusion and recommendations<sup>112</sup>

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The age of marriage has shifted from infants and young children to adolescents in most of India even though the instances of very young children being married are reported. Less acknowledged is the significant increase in the number of self-arranged child marriages, especially in late adolescence. Clearly, the shift in trends and patterns in the child marriage phenomenon requires the recognition of the concept of evolving capacities of children and the importance of age-appropriate interventions.

The phenomenon of child marriage must be located in the larger context of the institution of marriage, which continues to be characterized by its imperative, universal nature. There is very little 'choice' that it allows. It remains patriarchal and patrilocal. The very institution of marriage too must be interrogated and issues of consent, choice, autonomy, and agency brought into the discussions around it.

A serious challenge is posed by the conflicting positions - child marriage is a way to control sexuality of young people and a way of assertion of their sexuality 'legally' by young people who opt to elope and marry. Disapproving parents use CIPA to penalise the boy and book him for rape under the POCSO Act, and use intimidation and violence to control the girl. The increase in such cases has brought to the fore the need to revive the conversation of age of consent. Simultaneously, sexuality education and conversations on responsible sexual behaviour are essential for discouraging young persons from getting married on their own.

Since the girls are often the victim in most of the under-age marriages, the policies and interventions for addressing child marriage must emphasise the empowerment of adolescent girls with education forming the core. They should enhance the agency and aspirations of girls, provide them with the knowledge and skills required to plan and navigate their futures, and in addition to delaying marriage lead to positive outcomes in various realms including poverty, hunger, health and wellbeing, violence, labour force participation and economic growth.

An enabling environment needs to be secured simultaneously to enable girls to realise their aspirations. Making education for girls free all the way to higher education, especially from marginalised backgrounds, higher investments in secondary and higher secondary levels of schooling in rural areas, and preference in government jobs, can contribute significantly to the goals of capable and productive women.

Implementation of programmes on the ground to prevent child marriage have clearly shown that they need to be comprehensive and multi-dimensional. Interventions also have to target boys and men so that they are gender sensitive and also recognise the implications of underage marriage.

Duty bearers and service providers have to be addressed. Parents, teachers and community leaders need to be taken in confidence. Instead consider policies that would directly help girls stay in school and give their parents hope of jobs after leaving school or college.

Among others, awareness of law needs to be promoted. When there is awareness of law, which the girls can use to negotiate the continuation of education and delaying marriage, combined with the availability of support services for them (accessible and affordable education, health services, supportive family and communities, opportunities for employment after education) that marriages are either stopped or delayed. The programmes and schemes must reflect the ambition of young peoples' empowerment. The cash transfer schemes need to be designed for enabling young people to be independent.

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<sup>112</sup> In addition to the recommendations made at the Cross Sectoral Dialogue, this section also draws upon the Memorandum submitted by CSOs to the Task Force set up by the Government of India to examine the age of motherhood and related issues through the Gazette notification of the Ministry of Women and Child Development (Women Welfare Division) on June 4, 2020.



## Annexure I. UN Resolutions addressing child marriage

Title/Year	Content
The Girl Child <b>66/140 of December 19, 2011</b>	It mentioned child marriage as a harmful attitudes and practice
Intensification of efforts to eliminate all forms of violence against women 67/144 of December 20, 2012	Recognised child and forced marriages as violence against women and stressed on the need for “Ensuring also that the appropriate legislative, administrative, social and educational measures are in place to eliminate the occurrence of child and forced marriages and to provide information regarding the harm associated with these marriages”
Human Rights Council Resolution 68/148 of December 18, 2013, on Child, Early And Forced Marriage (CEFM)	The first ever resolution on CEFM at the Human Rights Council, co-sponsored by over 100 countries and was adopted unanimously, called for its elimination to be considered in the post-2015 development agenda. It recognised CEFM as a human rights violation that “prevents individuals from living their lives free from all forms of violence” and negatively impacts the “right to education, and the highest attainable standard of health, including sexual and reproductive health.”
UN Resolution 69/XX of November 14, 2014, on Child, Early And Forced Marriage adopted at the 69th Session. <sup>113</sup>	The Governments of Canada and Zambia introduced the resolution, which was adopted on 21 November 21, 2014, with the broad-based, cross-regional co-sponsorship of 116 countries. It built on the previous year’s procedural resolutions in the General Assembly and Human Rights Council, which called for reports and further consideration of the issue.
2015 Resolution To End Child, Early And Forced Marriage	It recognises child marriage as a violation of human rights “that prevents individuals from living their lives free from all forms of violence” and that has “wide ranging and adverse consequences on the enjoyment of human rights, such as the right to education, the right to the highest attainable standard of health, including sexual and reproductive health”. It also recognises child marriage as a “barrier to sustainable development” that “helps to perpetuate the cycle of poverty”.
UNGA Second Resolution 71/175 of 2016 on Child, early and forced marriage adopted at the 71 <sup>st</sup> Session.	<p>This resolution by the UNGA recognised CEFM as a harmful abuse of human rights that is rooted in gender inequality, and set out the roles and responsibilities of Member States in working towards a world free of CEFM at all levels.</p> <p>It stated that child marriage is often due to social expectations from girls and “deep-rooted gender inequalities and stereotypes, harmful practices, perceptions and customs and discriminatory norms”. It identified child marriage as a perpetrator of other violations which disproportionately affect women and girls, and acknowledged that it is exacerbated by several contexts including poverty, insecurity, and lack of education. In a first by the UN, it recognised the incidence and risk of child marriage in</p>

<sup>113</sup> [UN Resolution on Child, Early and Forced Marriage](#)

	armed conflict and <a href="#">humanitarian emergencies</a> .
72/154 of December 19, 2017 The Girl Child	<p>Recognized chronic poverty as one of the biggest obstacles to meeting the needs and promoting and protecting the rights of the child, including the girl child, and that girls living in poverty are more likely to be married as children.</p> <p>Deeply concerned that despite its widespread practice, CEFM is still underreported, recognizing that this requires further attention and that child, early and forced marriage exposes the girl child to greater risk of HIV and sexually transmitted infections, often leads to premature sexual relations, early pregnancy and early childbearing and increases the risk of obstetric fistula and high levels of maternal mortality and morbidity, and furthermore entails complications during pregnancy and childbirth, which often lead to disability, stillbirth and maternal death, particularly for young women and girls, which require appropriate prenatal and postnatal health-care services for mothers, including in the area of skilled birth attendance and emergency obstetric care, and noting with concern that this reduces girls' opportunities to complete their education, gain comprehensive knowledge, participate in the community or develop employable skills and is likely to have a long-term adverse impact on their physical and mental health and well-being, their employment opportunities and their quality of life and that of their children, and violates and/or impairs the full enjoyment of their human rights,</p>
Resolution 73/153 of December 17, 2018	<p>It highlighted three key areas:</p> <ul style="list-style-type: none"> <li>● CEFM is a 'harmful practice that violates, abuses or impairs human rights', and gender inequality is a root cause of CEFM. It is a 'barrier to the empowerment of all women and girls'. It also highlights poverty, insecurity, early pregnancy and lack of education as factors behind CEFM.</li> <li>● Humanitarian emergencies and situations of forced displacement can increase the incidence and risk of CEFM. This requires increased attention.</li> <li>● CEFM, 'remains a serious threat to multiple aspects of the physical and physiological health of women and girls'. Examples include sexual and reproductive health, early pregnancy, and HIV &amp; AIDS.</li> </ul> <p>It made important gains, including new language, on several areas:</p> <ul style="list-style-type: none"> <li>● Emphasis on <b><i>the rights of married girls</i></b> for the first time.</li> <li>● The need to support women and girls subjected to CEFM, as well as their children. This underscores the 'importance of removing structural barriers that prevent their access to services that respond to their specific needs.'</li> <li>● The important role of families, communities and religious, traditional and community leaders in transforming negative social norms and confronting gender inequality.</li> <li>● Acknowledgement of <b><i>informal unions</i></b> (i.e., those which are not formalized, registered or recognized by a religious or state</li> </ul>

	<p>authority) within the practice of CEFM</p> <p>It also called for specific action from governments and the international community, including a comprehensive report on progress made to end CEFM before the end of the 74th session of the General Assembly by the UN Secretary General, improvements in the collection and use of data by governments and the international community to better understand and respond to CEFM, and invitation to the Commission on the Status of the Women to consider CEFM at its 64<sup>th</sup> session in 2020, to coincide with the 25<sup>th</sup> anniversary of the Fourth World Conference on Women.</p>
<p>A/HRC/41/L.8/Rev.1 July 10, 2019 Consequences of child, early and forced marriage</p>	<p>This resolution builds on progress made in the <a href="#">2017 CEFM resolution</a> and the <a href="#">2015 CEFM resolution</a>, but has also highlighted:</p> <p><b>Support for girls and women who have been married as children:</b> The governments should ‘ensure that married and/or pregnant adolescents and young mothers, as well as single mothers, can continue and complete their education’.</p> <p><b>Questioned the criminalisation of child marriage:</b> The criminalisation of child marriage is ‘insufficient when introduced without complementary measures and support programmes, and may instead contribute to the marginalisation of, and the loss of livelihoods for, the families affected, and have the unintended effect of increasing the practice of informal unions or unregistered marriages’.</p> <p><b>Widened the nature of child marriage:</b> It recommended that child marriage policies and programmes should also address informal unions, cohabitation or other arrangements that are not usually recognised by religious or state authority</p> <p><b>Request for follow-up by the UN</b></p> <ol style="list-style-type: none"> <li>I. The Office of the UN High Commissioner for Human Rights (OHCHR) should organise two regional workshops to discuss progress, gaps and challenges in addressing child marriage, organised. A written report on the outcomes of the workshops should be presented at the 47th session of the Human Rights Council. Civil society organisations are encouraged to work with their governments and national OHCHR offices to participate in these meetings.</li> <li>II. The OHCHR should provide a written report on progress, gaps and challenges in addressing child marriage to the Human Rights Council at its 47th session, and an oral update to the Council at its 44th session. Civil society will be encouraged to input through an online consultation.</li> </ol>

## Annexure II. The Committee on the Rights of the Child’s General Comments

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General Comment No. 3 (2003) by the Committee on the Rights of the Child on HIV/AIDS and the rights of the child<sup>114</sup> acknowledged sexuality of children and the importance of access to information and life-skills education and information.

“...State obligation to realize the right to life, survival and development also highlights the need to give careful attention to sexuality as well as to the behaviours and lifestyles of children, even if they do not conform with what society determines to be acceptable under prevailing cultural norms for a particular age group. In this regard, the female child is often subject to harmful traditional practices, such as early and/or forced marriage, which violate her rights and make her more vulnerable to HIV infection, including because such practices often interrupt access to education and information. Effective prevention programmes are only those that acknowledge the realities of the lives of adolescents, while addressing sexuality by ensuring equal access to appropriate information, life skills, and preventive measures.”

General comment No. 4 (2003) on adolescent health and development in the context of the CRC<sup>115</sup> went a step further to frame the access to appropriate information as a right of adolescents.

“The right of adolescents to access appropriate information is crucial if States parties are to promote cost- effective measures, including through laws, policies and programmes, with regard to numerous health- related situations, including those covered in articles 24 and 33 such as family planning, prevention of accidents, protection from harmful traditional practices, including early marriages and female genital mutilation, and the abuse of alcohol, tobacco and other harmful substances.”

General comment No. 13 (2011) on *The right of the child to freedom from all forms of violence*<sup>116</sup> classified forced marriage and early marriage as harmful practices while discussing the enormous and unacceptable human, social and economic costs of denying children’s rights to protection.

“Direct costs may include medical care, legal and social welfare services and alternative care. Indirect costs may include possible lasting injury or disability, psychological costs or other impacts on a victim’s quality of life, disruption or discontinuation of education, and productivity losses in the future life of the child.... The social costs arising from a demographic imbalance due to the discriminatory elimination of girls before birth are high and have potential implications for increased violence against girls including abduction, early and forced marriage, trafficking for sexual purposes and sexual violence.”

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[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f3&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f3&Lang=en)

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[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f4&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f4&Lang=en)

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[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fG%2f13&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fG%2f13&Lang=en)

## Annexure III. Indian laws related to child marriage

Laws	Minimum age for marriage/ age of consent	Status of marriage	Pregnancies arising from child marriage	Key provisions
The Prohibition of Child Marriage Act (PCMA), 2006	Minimum age of marriage is 18 years for girls and 21 years for boys	<p>Under Section 3(1), child marriages are legally voidable at the option of the party who was a child at the time of the marriage within two years of their attaining the age of marriageability. This provides women and girls the option to seek a decree of nullity at any time until the age of 20 years.</p> <p>Child marriage are illegal and must be prohibited. But It deems the marriage to be legal if it cannot be prevented and provides for rendering voidable such marriages. All child marriages involving the use of force, or inducement, or buying and selling, or trafficking are to be treated as null and void.</p> <p>Section 12 lays down three situations when child marriages are void ab initio:</p> <p>(i) when the girl is “enticed out of the keeping of the lawful guardian”;</p> <p>(ii) when marriage is through compulsion or deceitful means or for the purpose of trafficking; and</p> <p>(iii) where a marriage is solemnized despite a court injunction against the solemnization of marriage.</p>	<p>The legal status for all children born from child marriages is recognised “for all purposes”</p> <p>District courts issuing decrees of nullity shall make appropriate orders for their custody and maintenance.</p>	The State to undertake prevention activities, provides for injunctions to stop such marriages from occurring, allows prosecution against those who promote and conduct child marriage and makes available differentiated remedies and reliefs for under-aged parties.
Indian Penal Code				Section 366 on forced marriage establishes the kidnapping or

				<p>abduction of a woman to compel her to marry and the use of any method of compulsion as a punishable offence.<sup>56</sup> Section 496 establishes that going through a marriage ceremony with fraudulent intent as a punishable offense.</p> <p>Section 370, amended in 2013, addresses human trafficking for the purposes of sexual exploitation, slavery, and servitude.</p>
Protection of Children from Sexual Offences (POCSO) Act, 2012				<p>Mandatory reporting by medical practitioners, among others, of any sexual activity with a minor (including pregnancy resulting from child marriage) to the police. The failure to report is a cognizable offence.</p>
The Juvenile Justice (Care and Protection of Children) Act, 2015				
The Protection of Women from Domestic Violence Act, 2005				
Immoral Traffic (Prevention) Act, 1956		No statement on the status of child marriages for human trafficking purposes.		

Medical Termination of Pregnancy (MTP) Act, 1971				Registered providers can terminate pregnancies of minors resulting from sexual abuse but must maintain <b>confidentiality</b> .
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## Annexure IV. Agenda of the cross sectoral dialogue on child marriage

Cross sectoral dialogue on child marriage  
Organised by HAQ: Centre for Child Rights and Sahaj  
Venue: India International Centre, 40 Max Mueller Marg, New Delhi 110003  
September 27-28, 2019

SESSION	TIME	TOPIC	PANEL
	10:00 - 10:15	Welcome and Introductions	Bharti Ali, HAQ
Session 1	10:15 - 11:15	Findings of Evaluation of project on Prevention of Child Marriage implemented by HAQ-JABALA-MJAS in West Bengal and Rajasthan	Speakers: Renu Khanna, SAHAJ Biplob Mondal, Jabala Karuna Philips, MJAS Enakshi Ganguly, HAQ Aparna Uppaluri, Ford Foundation Chair: Vanita Nayak Mukherjee
Session 2	11:30 - 12:30	The global and national commitments for ending child marriages aligned with the historical context	Speakers: Nilangi Sardeshpande, SAHAJ Shipra Jha, GNB Dr Mary John, CWDS Chair: Subhalakshmi Nandi
Session 3	12:30 - 13:30	<b>Emerging Issues</b> 1. Elopement. The right to choose, suicides, violence and unnatural deaths	Speakers: Poonam Kathuria, SWATI Saumya Maheshwari, PLD Urvashi Gandhi, Breakthrough Chair: Sneha Mishra, Aaina
Session 4	14:15- 15:00	<b>FILM by Rukmini Sen</b>	Discussant K.G. Santhya, Population Council
Session 5	15:00 - 16:00	<b>Emerging Issues</b> 2. Legal dimensions. Laws related to the issue (POCSO, PCMA, MTP, PWDVA, Dowry etc.)	Speakers: Bharti Ali, HAQ Seema Shah and Deepa, ANANDI Shakuntala Pamecha, RJVS Chair: Dipa Nag Chowdhary
Session 6	16:15 - 17:15	<b>Different perspectives and approaches for prevention of child marriages</b> Feminist Perspective, Child Protection, SRHR, etc.	Speakers: Indira Pancholi, HAQ Archana Dwivedi, Nirantar Dr Abhijit Das, CHSJ Karuna Bishnoi Chair: Enakshi Ganguly, HAQ
Session 7	09:30- 10:30	<b>Critique of government schemes to address child marriages</b> Kanyashree, Rupashree, ICPS, Sumangali, Sukanya Samridhhi and other state schemes)	Speakers: Vindhya Undurti, TISS Biplob Mondal, Jabala Chair: Renu Khanna, SAHAJ

Session 8	11:00 - 12:30	<b>Identifying concerns and issues for action and strategising for collective actions</b>	Speakers: Dipta Bhog Meena Gopal, TISS Arpita Banerjee, CINI Anubha Rastogi Chair: Dr Mary E. John, CWDS
Session 9	12:30 - 13:00	Way forward and concluding Remarks	Speakers: Praneeta Kapur, AJWS Renu Khanna, SAHAJ Chair: Bharti Ali, HAQ
		VOTE OF THANKS	Dr Nilangi Sardeshpande, SAHAJ

## Annexure V. List of participants

	Name of Participant	Organisation
1.	Aarti Pandya	Independent
2.	Dr Abhijit Das	Director, Centre for Health and Social Justice (CHSJ)
3.	Amita Pitre	Oxfam India
4.	Anubha Rastogi	Lawyer
5.	Aparna Uppaluri	Ford Foundation
6.	Archana Dwivedi	Nirantar
7.	Arpita Banerjee	Child In Need Institute (CINI)
8.	Bhanu Chauhan	SAHAJ
9.	Bharti Ali	HAQ: Centre for Child Rights
10.	Biplob Mondal	Jabala Action Research Organisation
11.	Bohit Sharma	HAQ: Centre for Child Rights
12.	Deepa	ANANDI
13.	Dipa Nag Chowdhury	Independent
14.	Dipta Bhog	Independent
15.	Enakshi Ganguly	HAQ: Centre for Child Rights
16.	Hemal Shah	SAHAJ
17.	Indira Pancholi	HAQ: Centre for Child Rights
18.	K.G. Santhya	Population Council
19.	Kamayani Chauhan	HAQ: Centre for Child Rights
20.	Karuna Bishnoi	Independent
21.	Karuna Philip	Mahila Jan Adhikar Samiti
22.	Katherine D. Joy	HAQ: Centre for Child Rights
23.	Kavita Mangnani	HAQ: Centre for Child Rights
24.	Kumar Shailabh	HAQ: Centre for Child Rights
25.	Kushnoor Bano	HAQ: Centre for Child Rights
26.	Manisha Rani	HAQ: Centre for Child Rights
27.	Manushi Parikh	SAHAJ
28.	Dr Mary E. John	Centre for Women's Development Studies (CWDS)

29.	Md. Gaffar Khan	HAQ: Centre for Child Rights
30.	Dr Meena Gopal	Tata Institute of Social Sciences (TISS), Mumbai
31.	Dr Nilangi Sardeshpande	SAHAJ
32.	Nurul Hoque	Sarifa Begum Foundation
33.	Padma Joshi	Mahila Jan Adhikar Samiti
34.	Poonam Kathuria	Society for Women's Action and training Initiative (SWATI)
35.	Pramod Pradan	Child Rights and You
36.	Praneeta Kapur	American Jewish World Services (AJWS)
37.	Preeti Singh	HAQ: Centre for Child Rights
38.	Pritha Chatterjee	Breakthrough
39.	Rama Vedula	American Jewish World Services (AJWS)
40.	Ravi Verma	International Centre for Research on Women (ICRW)
41.	Renu Khanna	SAHAJ
42.	Rimjhim Jain	Centre for Health and Social Justice (CHSJ)
43.	Satyanarayan Ramanaik	Karnataka Health Promotion Trust (KHPT)
44.	Saumya Maheshwari	Partners for Law in Development (PLD)
45.	Seema Shah	ANANDI
46.	Shakuntala Pamecha	Rajsamand Jan Vikas Sangthan
47.	Shipra Jha	Girls Not Brides
48.	Shreyans Raniwala	HAQ: Centre for Child Rights
49.	Shubhendu Bhattacharjee	Child Rights and You
50.	Shweta Verma	Child Rights and You
51.	Sneha Mishra	Aaina, Bhubaneswar
52.	Soha Moitra	Child Rights and You
53.	Somdatta Mandal	HAQ: Centre for Child Rights
54.	Subhalakshmi Nandi	International Centre for Research on Women (ICRW)
55.	Tarcitius Baa	HAQ: Centre for Child Rights
56.	Tarun Anthony	HCL Foundation
57.	Tek Chand	HAQ: Centre for Child Rights
58.	Timisha Dadhich	HAQ: Centre for Child Rights
59.	Urvashi Gandhi	Breakthrough

60.	Vanita Nayak Mukherjee	Independent
61.	Vindhya Undurti	Tata Institute of Social Sciences (TISS)

## Bibliography

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Colleen Murray Gastón; Christina Misunas & Claudia Cappa, 2019. Child marriage among boys: a global overview of available data, *Vulnerable Children and Youth Studies*, 14:3, 219-228, Retrieved from: <https://doi.org/10.1080/17450128.2019.1566584>

Girls Not Brides, 2016. *Lessons Learned from National Initiatives to End Child Marriage*. Retrieved from: [https://www.girlsnotbrides.org/wp-content/uploads/2017/02/GNB-Lessons\\_learned\\_national\\_initiatives-2016.pdf](https://www.girlsnotbrides.org/wp-content/uploads/2017/02/GNB-Lessons_learned_national_initiatives-2016.pdf)

Gopal, Meena; Jagdeeshan, Madhu; Mohona, Chatterjee; Dutt, Anamika; Roy, Debolina; Sharma, Ridhima; Mukherjee, Anushyama; Rani, Nisha; Kaur, Bhavneet; Baruah, Debangana, 2016. *Addressing Early and Child Marriage in India: A Participatory Study on Mapping Outcomes*. An Advanced Centre for Women's Studies, Tata Institute of Social Sciences Initiative. Retrieved from: <https://jiliflc.com/wp-content/uploads/2018/02/ECM24Jan2017-reduced.pdf>

Government of India, Ministry of Statistics and Programme Implementation, 2019. *Women and Men in India (A statistical compilation of Gender related Indicators in India) 2018*. 20<sup>th</sup> Issue. Social Statistics Division, Central Statistics Office. Retrieved from: [http://www.mospi.gov.in/sites/default/files/publication\\_reports/Women%20and%20Men%20%20in%20India%202018.pdf](http://www.mospi.gov.in/sites/default/files/publication_reports/Women%20and%20Men%20%20in%20India%202018.pdf)

Government of India, National Crime Records Bureau, 2018. *Crime In India*.

HAQ Centre for Child Rights, 2018. *Towards ending child marriage*. Retrieved from: <https://haqcrc.org/wp-content/uploads/2018/07/haq-towards-ending-child-marriage-2018.pdf>

International Institute for Population Sciences (IIPS) and ICF. 2017. National Family Health Survey (NFHS-4), 2015-16: India. Mumbai: IIPS. Retrieved from: <http://rchiips.org/NFHS/NFHS-4Reports/India.pdf>

ICRW and Girls Not Brides. *Solutions to end child marriage. Summary of the evidence*. Retrieved from: <https://www.icrw.org/publications/solutions-to-end-child-marriage-2/>

Nanda Priya, Gautam Abhishek, Verma Ravi, Khanna Aarushi, Khan Nizamuddin, Brahme Dhanashri, Boyle Shobhana and Kumar Sanjay, 2014. "Study on Masculinity, Intimate Partner Violence and Son Preference in India". New Delhi: ICRW. [https://www.icrw.org/wp-content/uploads/2016/10/Masculinity-Book\\_Inside\\_final\\_6th-Nov.pdf](https://www.icrw.org/wp-content/uploads/2016/10/Masculinity-Book_Inside_final_6th-Nov.pdf)

Nanda, Priya; Gautam, Abhishek; Verma, Ravi; Khanna, Aarushi; Khan, Nizamuddin; Brahme Dhanashri, Boyle Shobhana and Kumar Sanjay, 2014. *Study on Masculinity, Intimate Partner Violence and Son Preference in India*. New Delhi: ICRW. Retrieved from: [https://www.icrw.org/wp-content/uploads/2016/10/Masculinity-Book\\_Inside\\_final\\_6th-Nov.pdf](https://www.icrw.org/wp-content/uploads/2016/10/Masculinity-Book_Inside_final_6th-Nov.pdf)

Nanda, Priya; Das, P; Datta, N; Lamba, S; Pradhan, E; & Warner, A., 2016. *Making Change with Cash? Impact of a Conditional Cash Transfer Program on Girls' Education and Age of Marriage in India*. New Delhi: ICRW.

Undurti, Vindhya; Ray, Nilanjana; & Ponniah, Ujithra, 2019. *Conditional Cash Transfer Schemes and Child marriages in Andhra Pradesh and Telangana: An Exploratory Study*. Hyderabad: School of Gender Studies, TISS

Nirantar Trust, 2015. *Landscape Analysis on Early and Child Marriage in India*. Retrieved from: <http://www.nirantar.net/uploads/files/EM%20Report%20-%20English.pdf>

Sakshi, 1996. *Gender and the Judges: A Judicial Perspective*. New Delhi: Sakshi.  
Srinivasan, Padmavathi; Khan, Nizamuddin; Verma, Ravi; Giusti, Dora; Theis, Joachim & Chakraborty, Supriti, 2015. *District-level study on child marriage in India: What do we know about the prevalence, trends and patterns?* New Delhi: ICRW. Retrieved from: <https://n2r4h9b5.stackpathcdn.com/wp-content/uploads/2016/10/District-level-study-on-Child-Marriage-in-India.pdf>

Solotaroff, Jennifer L., and Rohini Prabha Pande. 2014. *Violence against Women and Girls: Lessons from South Asia*. South Asia Development Forum. Washington, DC: World Bank. doi:10.1596/978-1-4648-0171-6. License: Creative Commons Attribution CC BY 3.0 IGO

UNFPA and UNICEF, 2016. *Final Mapping of Child Marriage Initiatives*. Retrieved from: <https://asiapacific.unfpa.org/sites/default/files/pub-pdf/FINALMapping%20of%20Child%20Marriage%20Initiatives%20in%20South%20Asia%281%29.pdf>

UNICEF, 2011. Adolescence. An Age of Opportunity. *The State of the World's Children*. Retrieved from: [https://www.unicef.org/sowc2011/pdfs/SOWC-2011-Main-Report\\_EN\\_02092011.pdf](https://www.unicef.org/sowc2011/pdfs/SOWC-2011-Main-Report_EN_02092011.pdf)

UNICEF, 2005. *Early Marriage: A Harmful Traditional Practice*. UNICEF: New York.

United Nations. *Preventing and Eliminating Child, Early and Forced Marriage: Report of the Office of the United Nations High Commissioner for Human Rights*, GA Res 26/22, UN GAOR, 26<sup>th</sup> Session, Agenda Items 2 and 3, UN Doc A/HRC/26/22 (April 2, 2014).

van der Veer, Peter, 2001. *Imperial Encounters. Religion and Modernity in India and Britain*. New Jersey: Princeton University Press

Young Lives India and NCPCR, 2018. *India Child Marriage and Teenage Pregnancy Report*. Based on NFHS-4 (2015-16)