

**HAQ: CENTRE FOR CHILD RIGHTS' SUBMISSION TO THE PARLIAMENTARY STANDING  
COMMITTEE ON EDUCATION, WOMEN, CHILDREN, YOUTH & SPORTS ON THE  
PROHIBITION OF CHILD MARRIAGE AMENDMENT BILL, 2021  
February 05, 2022**

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On June 04, 2020, the Ministry of Women and Child Development officially notified the setting up of a ten-member Niti Ayog Task Force under the chairmanship of Ms. Jaya Jaitly to examine matters on the age of motherhood, imperatives of lowering Maternal Mortality Rate, improvement of nutritional levels and related issues.<sup>1</sup> Based on the recommendations submitted by the Task Force, the Prohibition of Child Marriage (Amendment) Bill, 2021 was introduced in the Lok Sabha on 20<sup>th</sup> December 2021.<sup>2</sup>

The Bill proposes:

- To increase the marriageable age for girls from 18 years to 21 years
- The provisions of the law will have an overriding effect on contrary provisions provided under personal laws or any other law, including any custom or usage or practice governing the parties. Accordingly, it suggests changes in the Indian Christian Marriage Act, 1872; The Parsi Marriage and Divorce Act, 1936; The Special Marriage Act, 1954; The Hindu Marriage Act, 1955; The Hindu Minority and Guardianship Act, 1956; The Hindu Adoptions and Maintenance Act, 1956; and The Foreign Marriage Act, 1969
- The time period to annul the marriage available to either party to a child marriage will be increased from 2 years to 5 years
- The majority of the changes proposed in the Bill will come into force 2 years after receiving the assent of the President

The Government received a lot of criticism from the opposition for the hurried introduction of the Bill by mentioning it in the Supplementary list of business without due consultations with states and other stakeholders. In December 2021, the proposed Bill was sent to the Parliamentary Standing Committee for further discussion.

#### **HAQ's position on the Bill**

HAQ: Centre for Child Rights (HAQ) appreciates the *objectives* of the Bill but does not endorse the proposed amendments on the following grounds:

##### **A. Increasing the age of marriage for girls is not an answer to reducing/preventing child marriages**

It is important to reiterate that bringing in legislative amendments to address a complex socio-cultural issue like child marriage is a typical band-aid solution. In a country where child marriages continue to enjoy such wide social acceptance, we need to understand and target the root causes that perpetuate it. Research shows that the prevalence of this tradition is not due to the lack of awareness about the legal validity or legitimacy of this practice but deeper social prejudice<sup>3</sup>. Besides poverty, the perceived low status of girls is the main factor responsible for child marriage. Even today, girls are viewed as a

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<sup>1</sup> <https://pib.gov.in/PressReleasePage.aspx?PRID=1629832>

<sup>2</sup> [https://prsindia.org/files/bills\\_acts/bills\\_parliament/2021/The%20Prohibition%20of%20Child%20Marriage%20\(Amendment\)%20Bill,%202021.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2021/The%20Prohibition%20of%20Child%20Marriage%20(Amendment)%20Bill,%202021.pdf)

<sup>3</sup> <https://www.girlsnotbrides.org/articles/sex-and-sensibility-breaking-through-indias-patriarchal-bias/>

financial burden to the family and are married off early so that parents have to pay the lower cost of dowry. A married woman is also perceived to be safer against offences than an unmarried girl. The patriarchal mindset that pervades the society views them as inferior to boys/men, thus excluding them from equal opportunities.

It is not clear how increasing the legal age of girls to marry solve the above issues- especially for girls in the rural areas, belonging to marginalised communities, poor households, having multiple vulnerabilities, who do not have educational and vocational opportunities or enjoy decision-making capacity? Any law that does not take into account the various intersectionality within the targeted group is exclusionary and unfair. Raising the legal age of marriage will only criminalise and not prevent child marriages. In the absence of enabling and equal opportunities -like access to education, quality healthcare and job opportunities, girls will continue to be in the vicious cycle of intergenerational poverty contributing to their early marriage.

An increase in the age of marriage for girls will not bring any shift in the mindset and behaviour of the society that continues to view women/girls as a commodity and dehumanise them as a child-bearing machine. Instances like the recent Sulli Deal<sup>4</sup> or Boys Locker Room controversy<sup>5</sup> sheds light on the fact that even in this century, women are considered the 'lesser being' in a patriarchal narrative and how their sexualisation has been prevalent in society for a long time and is directly related to the abuse and violence meted to them. Unsurprisingly, according to NFHS 5 data, 1.5% of women in the age group of 18-29 years have experienced sexual violence by age 18 and when compared to NFHS 4, the data remains unchanged in the last 5 years.<sup>6</sup>

In a societal hierarchy, where girls are already at the bottom, the pandemic leading to school closures, digital divide, and economic stress, have put them at a further disadvantageous position. Child rights organisations working on the ground reported<sup>7</sup> an alarming increase in child marriages in the state, especially in the rural areas. Distress calls to child safety helplines had increased manifold, with girls reaching out to state authorities fearing forceful marriage.<sup>8</sup> According to data from Childline, as many as 18,324 SOS calls about child marriage were made between April and October 2020. In comparison, the corresponding period last year saw 15,238 calls about child marriage.<sup>9</sup> 51 cases of child marriages, many from the Daund-Indapur-Baramati belt and the fringes of Pune, Chakan and Rajgurunagar, were reported in Dnyana Devi Childline between March 2020 and March 2021<sup>10</sup>. In Telangana, 1,355 cases of child marriage were averted from April, 2020 to March, 2021, a 27 per cent increase from 977 cases in February 2019 to March 2020<sup>11</sup>. According to a lancet article dated October 10,2020<sup>12</sup>, *"Before the pandemic, India, which accounts for one in three child marriages globally, had become a world leader in working to reduce child marriage, through education and awareness. But a harsh, long lockdown, which was implemented with just a few hours' notice, left millions of daily labourers and migrant*

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<sup>4</sup> <https://theswaddle.com/sulli-deals-exposed-the-common-roots-of-misogyny-and-islamophobia/>

<sup>5</sup> <https://www.indiatoday.in/india/story/bois-locker-room-10-things-you-need-to-know-about-scandal-that-has-rocked-indian-social-media-1674687-2020-05-05>

<sup>6</sup> [http://rchiips.org/nfhs/factsheet\\_NFHS-5.shtml](http://rchiips.org/nfhs/factsheet_NFHS-5.shtml)

<sup>7</sup> <https://www.dw.com/en/covid-india-sees-a-surge-in-underage-marriages/a-57992104>

<sup>8</sup> Ibid

<sup>9</sup> <https://theprint.in/india/how-2-up-girls-got-their-weddings-called-off-as-child-marriage-bids-see-rise-during-pandemic/572516/>

<sup>10</sup> <https://timesofindia.indiatimes.com/city/pune/more-child-marriages-rise-in-perversity-in-pandemic/articleshow/81656995.cms>

<sup>11</sup> <https://www.newindianexpress.com/states/teelangana/2021/apr/10/covid-pandemic-led-to-27-rise-in-child-marriages-2288264.html>

<sup>12</sup> <https://www.thelancet.com/action/showPdf?pii=S0140-6736%2820%2932112-7>

*workers without any work, pushing millions more into poverty. India's economy contracted by almost 24% last quarter and schools remain closed across the country as tens of thousands of new COVID-19 cases continue to be recorded daily. Millions of families have been forced to consider child marriage to alleviate poverty."*

As schools remained closed, children, especially girls, were forced to drop out of schools and pushed to the risk of early marriage, early pregnancy, trafficking, and violence.<sup>13</sup> A National Policy brief<sup>14</sup> by RTE Forum on the 'Gendered impact of Covid 19 on education of school-aged children in India' states that a survey across 5 states in India, revealed that despite having a phone at home, only 30% of children were able to access the phone any time they wanted to. Further segregation of the data on gender showed disparities concerning access to technological devices by girls wherein only 26% of girls could access the phone whenever they wanted to as against 37% of boys. It is important to note that early marriage is not the cause but the consequence of girls dropping out of schools and the pandemic have simply highlighted it. Girls drop out of schools due to various reasons – schools being distant and inaccessible, poor infrastructure, inadequate toilet facilities, absence of teachers<sup>15</sup> contributing to lower learning levels, girls engaged in domestic activities, financial constraints, lack of interest in education<sup>16</sup>- to name a few.

Therefore, increasing the age of marriage will not automatically translate to women acquiring higher education or joining the labour force in huge numbers unless the government shifts its focus to address the structural and institutional challenges that girls face in their daily lives.

As [Shireen Jejeebhoy](#) writes for the Indian Express<sup>17</sup>- "*One way is to invest far more in addressing issues of equity- measures that will enable the disadvantaged to complete their education, provide career counselling and encourage skilling and job placement, address safety issues of women in public places including public transportation, and change the perceptions of parents who are ultimately those who make marriage related decisions for a majority of women. Delays in the timing of marriage will then occur without the need for legislation*".

However, a recent analysis<sup>18</sup> of the Union Budget 2022-23 by the HAQ finds that children in India received the lowest share of financial allocations made in the last 11 years. Despite the numerous challenges posed by the COVID-19 on school education, the overall budget for child education saw a decline this year. Similar trends were witnessed for Child Health and Child Development as well. The Ministry of Women and Child Development observed a reduced allocation of INR 18858.67 Crore, a significant reduction of 7.56 per cent against 2021-22, which is beyond explanation given the government's very vocal commitment to ending gender inequality.

## **B. The Law and the increased criminalization of adolescent's choices**

While there is no universally accepted definition of 'Adolescents', for statistical purposes, without prejudice to other definitions by Member States, the United Nations considers Adolescent Population as 10 - 19 years and Youth Population: 15 - 24 years.

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<sup>13</sup> <https://article-14.com/post/the-new-child-brides-of-india-s-covid-19-pandemic-60c969371e738>

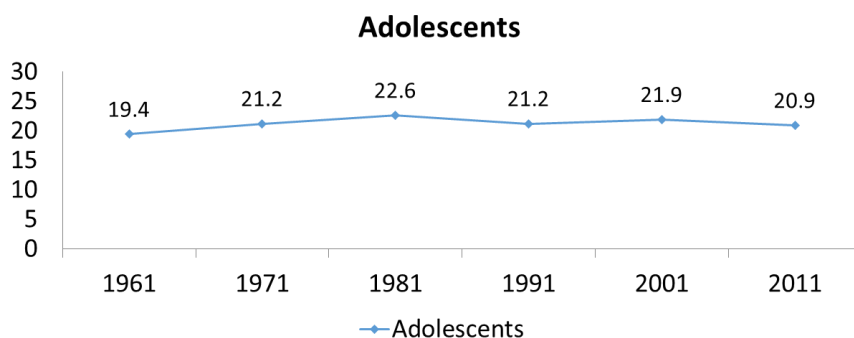
<sup>14</sup> <http://rteforumindia.org/wp-content/uploads/2021/03/National-Policy-Brief.pdf>

<sup>15</sup> <https://indiacsr.in/dropouts-in-school-education-a-national-challenge/>

<sup>16</sup> <https://indianexpress.com/article/opinion/columns/girls-school-drop-out-indian-education-nep-7474391/>

<sup>17</sup> <https://indianexpress.com/article/opinion/columns/raising-marriage-age-women-rights-7684264/>

<sup>18</sup> <https://www.haqrc.org/wp-content/uploads/2022/02/haq-BfC-2022-23-Analysis.pdf>



*Since 1971, the proportion of adolescent population has remained around 21%, though there is net decrease in adolescent population between 2001 and 2011 Census.*

The percentage of adolescent and youth population in 2011 (India and State-wise ranking) is as follows:

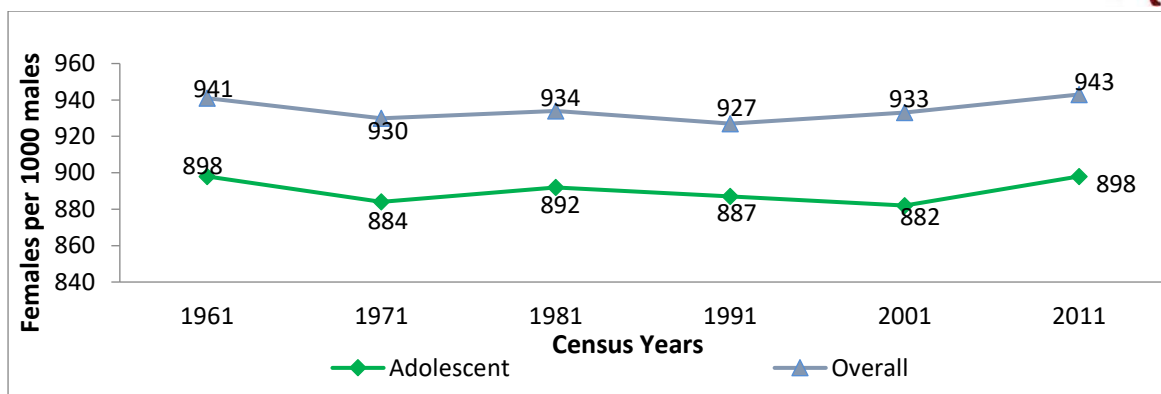
Rank	States	Adolescent Population	% to Total Population
	INDIA	253.2	100
1	Uttar Pradesh	48.9	19.3
2	Bihar	23.3	9.2
3	Maharashtra	21.3	8.4
4	West Bengal	18.2	7.2
5	Andhra Pradesh	16.2	6.4

\* Among the top five states accounting for maximum share of adolescent population in the country, Uttar Pradesh ranks first with 19.3% of total adolescents. Each of the other four states - Bihar, Maharashtra, West Bengal and Andhra Pradesh – account for less than 10% of the share of adolescent population of the country

Of the 252 million of the total adolescent population, 72% of the total adolescents in India resides in rural areas (181 million). And looking at the social composition i.e. the ones who end up bearing the burden of the law:

- 44 million adolescents belong to SC category, comprising 17% of the total adolescent population
- 23 million adolescents belong to ST category, comprising 9% of the total adolescents in the country

Based on Census data, the adolescent sex ratio in India has been low – with the lowest at 882 in 2001 to the highest at 898 in 2011. It is lower than child sex ratio - 919. This is attributed to sex selective abortions, female foeticide and infanticide. **The question is where are adolescent girls disappearing?**



Top five states/UTs	Adolescent Sex Ratio
Lakshadweep	1053
Arunachal Pradesh	983
Odisha	981
Meghalaya	979
Chhattisgarh	972

Bottom five states/UTs	Adolescent Sex Ratio
Haryana	805
Punjab	791
Dadra & N Haveli	775
Chandigarh	756
Daman & Diu	584

Trafficking of girls from the top five states to other states, including states like Haryana and Punjab among the bottom five could be a possible cause for disappearance of adolescent girls.

However, trafficking is not the only cause, as **teenage pregnancies** also takes a toll..

- According to UNICEF, pregnancy-related complications are the number one cause of death among girls between 15 and 19 years of age.<sup>19</sup>
- According to WHO, young adolescents (ages 10-14) face a higher risk of complications and death as a result of pregnancy than other women.<sup>20</sup>
- According to ORF, in India, teenage pregnancy is almost double in rural areas - 9.2%, as compared to urban areas - 5%.<sup>21</sup> Quoting a UN Report, the ORF Commentary dated 14 January, 2020 suggests that India bears economic losses of \$7.7 billion a year due to teenage pregnancies. An earlier estimate by health ministry suggested economic losses of teenage pregnancies at 12% of the gross domestic product (GDP).

According to a study published in the journal 'The Lancet' titled '*Suicide Mortality in India*', **56 per cent suicides among women while 40 per cent deaths in men occurred in the age group 15 to 29 years. Suicide is the third leading cause of death in the age group 15 to 24 years.** Suicide statistics from NCRB 2020 suggest that **4.4% suicides are due to 'Love Affairs' - 'Family Problems' (4,006), 'Love**

<sup>19</sup> <https://www.unicef.org/india/what-we-do/maternal-health>

<sup>20</sup> <https://www.who.int/news-room/fact-sheets/detail/maternal-mortality>

<sup>21</sup> <https://www.orfonline.org/research/theres-a-need-to-end-teenage-pregnancies-in-india-its-harming-the-national-economy-60307/>

**Affairs’ (1,337) and ‘Illness’ (1,327)** are reported as the main causes of suicides among children (below 18 years of age).

Suicides by Youth in Custody for Alleged Involvement in a Sexual Offence / Romantic Relationship India Torture Report, 2020									
Age Group	Rape	Molestation	POCSO Act	Kidnapping and Illegal Confinement of Minor Girls	Elopement with a Minor Girl	Elopement with a Girl	Missing Minor Girl	Enticing or taking away or detaining a married woman with criminal intent	Total
15-20 years				1		1			2
20-25 years	2	1	1	1	2		1	1	9
25-30 years			1						1
Age Not provided						1			1
<b>Total</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>1</b>		<b>13</b>

### Criminalising Adolescents for their Choices

According to the NFHS-5 factsheets, the percentage of women aged 20-24 who were married before 18 years (%) -

- Urban - 14.7%
- Rural - 27.0%
- **Total - 23.3% (It was 26.8% as per NFHS-4)**

Early marriage can be either forced or self-arranged with consent from parents or without their consent. The diversity of situations and particularity of facts should ideally be looked at on a case-to-case basis calls as a uniform ‘age centric’ response to diversity of situations, will not only violate rights, be contrary to existing jurisprudence but will inflict untold harm on young lives.

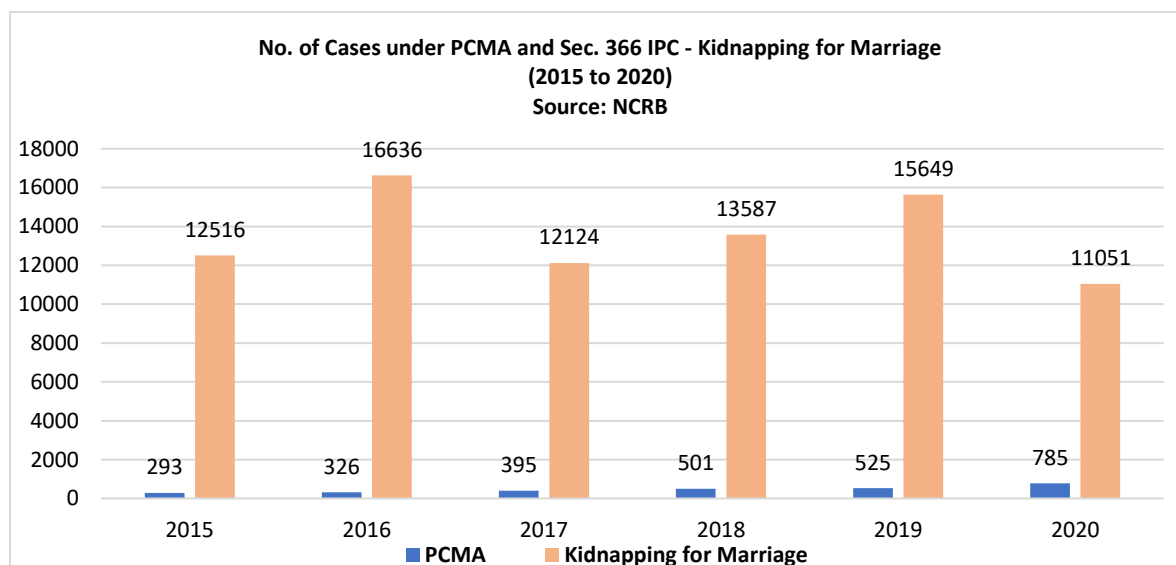
Where still 23% of the girls marry before the age of 18 years, the compliance and implementation of Prohibition of Child Marriage Act, 2006 (PCMA) needs be reassessed. The intent behind enactment of PCMA was to prevent child marriage, however it is rarely implemented for child marriage prosecution. Data shows that the punitive criminal law is mostly used against girls who marry against the wishes of their parents rather than protecting girls from forced marriage.

*An analysis of case law from 2008-17 shows use of a combination of habeas corpus action, criminal prosecution and nullification of marriage largely by parents against daughters who elope/ or marry against parental wishes, often to evade forced marriage, domestic abuse and housework, and parental wrath on discovery of relationship.*<sup>22</sup>

There is a disparity in the prosecutions under PCMA and the criminal law provisions which are used against elopements (Section 366 of Indian Penal Code (IPC) – Kidnapping and Abduction of Women to compel her for marriage). In 2015, 61% of total victims of kidnapping of minors for marriage were in the 16 to 18 years age group. In 2016, this came down to 57%. 2017 onwards NCRB stopped providing age and gender data for victims of kidnapping by purpose of kidnapping. By raising the age of marriage

<sup>22</sup> Mehra M, Maheshwari S, Child Marriage Prosecutions in India (Partners for Law in Development, 2021); See also, Mehra M, Nandy A, Why Girls Run Away to Marry: Adolescent Realities and Socio-Legal Responses in India (Partners for Law in Development, 2019).

of girls, the number of prosecutions under Section 366 IPC will definitely increase and women will lose agency over their bodies.



### Crimes against Children – Some trends to ponder over:

#### In 2020...

- 11,051 cases were registered under kidnapping and abduction of minor girls to compel her for marriage, showing a decrease of 29% from 15,649 cases in 2019
- **Amongst all cases of kidnapping and abduction of children, kidnapping for marriage has always comprised the highest proportion (11051 cases). 785 cases of Child Marriage under Prohibition of Child Marriage Act, 2006**
- Under Prohibition of Child Marriage Act, 2006, Karnataka has registered the maximum number of cases (184 out of 785), followed by Assam (138) and West Bengal (98)
- **The maximum number of cases pending investigation from previous year was under Kidnapping and Abduction of children (44,400 out of 60,112)**
- **Maximum number of IPC cases sent to trial during the year 2020 were for Kidnapping and Abduction (18,350 out of 37,631) and maximum number of SLL cases sent to trial are from Section 4 & 6 of POCSO Act or (Section 4 & 6) r/w Section 376 IPC (26,508 out of 47,554)**
- **Maximum number of IPC cases pending trial from previous year are cases of Kidnapping and abduction (98,880 out of 2,03,285) and maximum number of SLL cases pending trial are under Section 4 & 6 of POCSO Act or Section 4 & 6 POCSO r/w Section 376 IPC (78,043 out of 1,49,838)**

## **New laws not the answer – leads to increased criminalization**

The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) as well as the IPC criminalises any form of sexual activity involving adolescents regardless of consent<sup>23</sup>. As opposed to the child labour law (permitting adolescents above 14 years to work) and juvenile justice law (transfer system – allowing children from the age of 16 - 18 years who have alleged to have committed heinous crimes, to be tried as adults), where there is some form of graded application of the law (basis biological & psychological assessment) for adolescents to adult category, the POCSO Act treats all children & adolescence from the age 0 - 18 years uniformly disregarding their agency over their own bodies.

Since the enactment of the POCSO Act, there is a steady increase in the cases reported. One of the reasons for the mounting rate could be the fact that children who are in their late adolescence (16 - 18 years) and at a stage of exploring their sexuality get into the act of consensual sex and invariably come under the legal framework.

Some relevant findings from the '*Implementation of the POCSO Act, Goals, Gaps and Challenges: Study of Cases of Special Courts in Delhi and Mumbai (2012-2015)*'<sup>24</sup>

- In **82.5% cases the accused/ offender was known to the child**. Neighbours formed the largest category of 'known' accused / offenders (28%), followed by **romantic relationships (26%)**, and relatives (25%).
- Most sexual offences by 'known' accused / offender were of a serious nature involving penetration or physical contact.
- **Maximum acquittals where the accused/offender was 'known' to the child are cases of romantic relationship (39%)**, followed by cases where the accused/offender is a neighbour (25%), and cases where the accused/offender is a relative (19%). **Most common reason for acquittal in such cases was the child and other material witnesses turning hostile**. Only 24% of the disposed of cases ended in a conviction.
- **94% cases of romantic relationships from Delhi (72 out of 74 cases) and 75% from Mumbai (3 out of 4 cases) ended in acquittal.**
- **In 94% of these cases the girls were aged 16-18 years.**
- Interviews with Judicial Officers in Delhi suggest anywhere between **70% to 80% cases under the POCSO Act are cases of love affair/elopement/love marriage, involving children in the age bracket of 15-18 years.**
- **In most such cases the girl's family insists on filing a case.**

A recent study of 19,783 POCSO cases from 3 States – Assam, Delhi & Haryana<sup>25</sup> shows that **cases of aggravated penetrative sexual assault (APSA) (Section 6) read with Section 363/366/366A of IPC was**

<sup>23</sup> "Before the implementation of this act, the legal age of consent to engage in sexual activity was restricted only to the girls, under the Indian Penal Code (IPC), 1860. Initially 10 years, it was raised to 12 in 1891, 14 in 1925, and 16 in 1940. It continued to be the same till the execution of the Criminal Law (Amendment) Act, 2013, followed by the nationwide outrage in the background of the fiendish gang rape case of Nirbhaya that took place on December 16, 2012, in New Delhi. Being a gender-neutral legislation, the POCSO Act, 2012, set the age of consent as 18 years for both boys and girls" Source - <https://journals.sagepub.com/doi/pdf/10.1177/0253717620957507>

<sup>24</sup> FACSE, HAQ: Centre for Child Rights (2017), Implementation of the POCSO Act: Goals, Gaps and Challenges – Study of Cases of Special Courts in Delhi and Mumbai (2012-15) available at - <https://haqcr.org/wp-content/uploads/2018/02/implementation-of-the-pocso-act-delhi-mumbai-study-final.pdf>

<sup>25</sup> HAQ: Centre for Child Rights and CivicDataLab (2021), Unpacking Judicial Data to Track Implementation of the POCSO Act in Assam, Delhi & Haryana (2012 to April 2020), available at - <https://www.haqcr.org/new-at-haq/upacking-judicial-data-implementation-of-pocso-act-report>



about 37% of the total cases of APSA and the total cases of penetrative sexual assault (PSA) (Section 4) was 39% of the total cases of PSA. This shows a high % of cases of rape are reported clubbed with kidnapping, abduction for marriage.

State/UT	No. of Cases of APSA	Cases of APSA with Section 363/366/366A of IPC	Cases of APSA with Section 363/366/366A of IPC as Percentage of Total Cases of APSA
Assam	882	202	23%
Delhi	3529	1361	39%
Haryana	1696	668	39%
<b>Total</b>	<b>6108</b>	<b>2231</b>	<b>37%</b>

State/UT	No. of Cases of PSA	Cases of PSA with Section 363/366/366A of IPC	Cases of PSA with Section 363/366/366A of IPC as Percentage of Total Cases of PSA
Assam	3068	899	29%
Delhi	1309	615	47%
Haryana	1329	688	52%
<b>Total</b>	<b>5706</b>	<b>2202</b>	<b>39%</b>

#### **Criminalization of adolescent consensual relationships impacts the lives of both the girl and boy**

In many cases of romantic relationship, when the girl refuses to go back to her parents or in situations where the parents refuse to take the child back, often girls are placed in shelter homes and the accused languish in prisons as bail is not easy to come by. Among the cases where bail was granted before the charge sheet is filed, only 3% pertain to cases of romantic relationship. The reason for granting bail in these cases was that the “prosecutrix intends to marry the accused” or “having regard to marriage between the prosecutrix and the accused”. Once the charge sheet is filed, being granted bail becomes difficult atleast until the testimony of the victim / girl.

This shows how criminalization of adolescent consensual relationships affects both girls and boys – they are cut off from their education, livelihood opportunities leaving them disempowered.

*In its recommendations, National Commission for Protection of Child Rights (NCPCR) supported the “close in age” exemption and recommended for such considerations of (a) a consensual non-penetrative sexual act between two children above the age of 12 years sharing same age or two years of age gap difference and (b) consensual penetrative sexual acts between children above 14 years who are of the same age or sharing three years of age gap. However, even in the recent amendment done in 2019 to the act, this recommendation was not considered.<sup>26</sup> The Law Commission report and Verma Committee had also given similar suggestions as NCPCR.*

In the case of *Independent Thought v. Union of India*<sup>27</sup>, the Hon’ble Supreme Court read down Exception 2 of Section 375 of IPC to penalise marital rape against minor wives between the age of 15-18 years making all such sexual activity be treated as statutory rape regardless of consent (to fall under POCSO Act). These acts attract a high punishment with minimum of 10 years. Underage marriages

<sup>26</sup> Anchan V, Janardhana N, Kommu, JVS. POCSO act, 2012: Consensual sex as a matter of tug of war between developmental need and legal obligation for the adolescents in India. *Indian J Psychol Med.* 2021;43(2):158–162, available at - <https://journals.sagepub.com/doi/pdf/10.1177/0253717620957507>

<sup>27</sup> AIR 2017 SC 4904

without the consent of the parents (elopement cases) will be prosecuted by parents and no support or empowerment opportunities will be provided to the girls.

The law in a way targets criminalization of ‘love’ marriages which leaves the girls / underage mothers to face the society and cultural backlash and leaves them out of the benefits linked to marriage, if the age is increased to 21 years. Further, raising the age of marriage of girls will also attract extended use of Section 366 IPC on married couples of couples who engage in consensual sexual activity in that age group. The Supreme Court in many cases<sup>28</sup> has upheld the right of young women’s choice, in marriage or in ‘live-in’ relationship, which the current Bill disregards which will most likely encourage moral policing and motivated prosecutions affecting the rights to privacy, autonomy and choice.

### **Criminalizing adolescent consensual sexual behaviour affects the access of reproductive and sexual health services**

The POCSO Act under Section 19 requires health care providers to report cases of consensual sexual activity by a minor girl as ‘abuse’ to the police. This restricts the girls to get safe and confidential access to sexual and reproductive health services. This pushes girls to seek unsafe abortions or not disclose pregnancy until it is too late for an abortion to be permitted. Many girls may end up carry their pregnancy to full term because she was under the fear that her boyfriend / husband would be incarcerated in jail if she reaches out for any reproductive health services.

The stigmatizing of premarital sexuality makes the journey very different for girls—who go to great length to keep a relationship secret, have little to no capacity or access to safe sex information or abortion services and must choose between forced marriage, a break-up or a panic marriage to escape backlash within their natal home. The boyfriends who stand by their girlfriend and marry them will most likely face criminal prosecution at the behest of the girl’s parents to assuage “honour”.<sup>29</sup>

Recognizing the sexuality of adolescents, the CRC General Comment No. 20 on the implementation of the rights of the child during adolescence, stipulates that (i) confidential sexual health information and services be made available to young people, including abortion, irrespective of their marital status or parental consent; (ii) making available sexual education as well as reproductive health information and services for them; (iii) adolescent sexual activity not be criminalized; (iv) support to adolescent parents. The laws framed must be line with India’s obligations to the Conventions on the Rights of the Child (CRC).

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<sup>28</sup> Lata Singh [(2006) 5 SCC 475; Writ Petition (crl.) 208 of 2004]; Shafin Jahan vs. Asokan K.M., (2018) 16 SCC 368; Shayara Khatun @ Shaira Khatun And Another v. State Of U.P. And 3 Others (WRIT - C No. - 19795 of 2021) Allahabad HC; Pushpa Devi v. St. of Punjab (CRWP-6314-2021) P&H HC; Mafi and another v State of Haryana and other (CRWP No.691 of 2021) P&H HC

<sup>29</sup> Partner for Law in Development, Child Marriage Prosecutions in India, Case Law Analysis of Actors, Motives and Outcomes 2008 -2017, Number 3 Adolescent Sexuality and Early Marriage Series; pg no.49

### **CRC General Comment No. 20 – Some relevant points**

- While the CRC recognises the rights of all persons under 18 years, the implementation of rights should take account of **children’s development and their evolving capacities**. Approaches adopted to ensure the realisation of the rights of adolescents differ significantly from those adopted for younger children.
- CRC General Comment No. 20 highlights the importance of a **human rights-based approach that includes recognition and respect for the dignity and agency of adolescents; their empowerment, citizenship and active participation in their own lives; the promotion of optimum health, well-being and development; and a commitment to the promotion, protection and fulfilment of their human rights, without discrimination**.
- The Committee stresses that, when determining best interests, the **child’s views should be taken into account, consistent with their evolving capacities and taking into consideration the child’s characteristics**. States should ensure that **adolescents are involved in the development, implementation and monitoring of all relevant legislation, policies, services and programmes affecting their lives**, at school and at the community, local, national and international levels.
- The Committee emphasizes that **all adolescents have the right to have access to confidential medical counselling and advice without the consent of a parent or guardian, irrespective of age, if they so wish**. This is distinct from the right to give medical consent and should not be subject to any age limit.
- States parties should take into account the **need to balance protection and evolving capacities, and define an acceptable minimum age when determining the legal age for sexual consent**.
- States should **avoid criminalizing adolescents of similar ages for factually consensual and non-exploitative sexual activity**.
- Consideration should also be given to the **introduction of a legal presumption that adolescents are competent to seek and have access to preventive or time-sensitive sexual and reproductive health commodities and services**.
- The Committee recommends that States **introduce minimum legal age limits, consistent with the right to protection, the best interests principle and respect for the evolving capacities of adolescents**. For example, **age limits should recognize the right to make decisions in respect of health services or treatment, consent to adoption, change of name or applications to family courts**.

Rather than raise concerns about safe sex information, stigma-free access to contraception and abortion or ability of the girls to negotiate safe sex, pre-marital pregnancies turn into shame, grave enough to sometimes set aside caste or faith differences that otherwise might have made the match unacceptable.<sup>30</sup> It is pertinent to address taboos around sexual activity and the need for safe sex options, contraception and abortion as part of sexual and reproductive health information and services for adolescent girls.

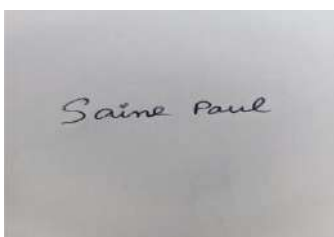
### **Recommendations**

1. The age of marriage for girls should remain at 18 years and the minimum age of men should be brought to 18 years in order to bring it on par with universal standards, constitutional law, and existing jurisprudence.
2. Investments focusing on girls’ education, health, nutrition, protection, creation of job opportunities, skill developments are non-negotiable. Quality education including age-appropriate comprehensive sexuality education for all children and adolescents.
3. Raise awareness about PCMA and other law which secure rights to women and girls.

<sup>30</sup> Ibid; pg no.47

4. Decriminalization of adolescent consensual and non-coercive sexual activity between peers (close in age partners).
5. Decriminalise consensual non-coercive marital sexual intercourse with wife of between 15 to 18 years.
6. The application of offence of kidnapping or abduction or inducing a woman to compel her to marriage under Sec 366 IPC to be made inapplicable for eloping couples where both girl and boy have jointly planned to be together.
7. Underage marriage to remain valid though voidable, at the option of the underage party to marriage.
8. Exception to be created under Section 19 of POCSO Act to include professional confidentiality be enacted for health care providers when adolescents seeking abortion or other sexual and reproductive health services. Similar exception for counsellors.

**We request the Hon'ble Chairperson of the Standing Committee to allow us to make an online oral presentation to the Committee members.**



*Urmi Chudgar*

For More Information Contact:

Saine Paul / Urmi Chudgar

**HAQ: Centre for Child Rights**

B 1 /2 Ground Floor Malviya Nagar

[saine@haqcrc.org](mailto:saine@haqcrc.org) / [urmi@haqcrc.org](mailto:urmi@haqcrc.org)