

**JOINT SUBMISSION TO THE OFFICE OF THE HIGH COMMISSIONER OF HUMAN RIGHTS ON  
CHILD, EARLY AND FORCED MARRIAGE**

This joint submission by organisations and individuals<sup>1</sup> in India on child, early and forced marriage to the OHCHR is prepared in response to the call by OHCHR in accordance with the Human Rights Council resolution A/HRC/RES/24/23 (2013) on preventing and eliminating child, early and forced marriage, with a particular focus on challenges, achievements, best practices and implementation gaps. While child, early and forced marriages affects both men and women, it has a disproportionate impact on girls and women. Child, early and forced marriage and in fact all marriages including the ones where neither party is legally a child is intrinsically linked to the sexual and reproductive choice and right to bodily autonomy especially of young girls. In contexts where this right to bodily autonomy and sexual and reproductive choices are severely restricted legally and socially, it is imperative to analyze the denial and control and the manifestation of this in the form of child, early and forced marriage. While discussions on the impact on the sexual and reproductive health of a young girl have been discussed at length, the impact of denial of this right to girls does not form a part of the equation. This submission is a contextual analysis of child, early and forced marriage in India and the obstacles for the prevention of the same.

**Politics and difference of opinion on understanding child, early and forced marriages**

Internationally many Treaties and their monitoring bodies have firmly established the age of culpability for any person is 18, i.e. until one reaches the age of 18, one is a child. By that argument any person below the age of 18 is a child and legally cannot consent. It is our submission that any discussion on sexual and reproductive health impact on young girls should not be discussed only in the context of marriage. While marriage is an issue especially where it takes place, as is the widespread practice, without the consent of young men and women, the assessment of harms should be looked within a continuum that starts prior to marriage and continues well after it. While there is a critical need to focus on early and forced marriages attention should be paid that demonization of the 'Global South' context is not the unintended result. Issues like the role of parental consent in exercising sexual agency and related SRH decisions such as abortion and contraceptive use and pregnancy among young unmarried girls is as much a reality as child marriage is in some societal contexts. A narrow focus on marriage as the only context in which young girls rights as well as harms needs to be understood will therefore not address the full range of issues that pertain to this age group. Further a very narrow targeted approach of "18" years and final goal should also not be utilized. While laws should be aspirational cultural contexts should be kept in mind for implementation and programs designed. And hence a wide spread issue like early and forced which has severe impacts on many aspects of an individual's life should also bear in mind the different and varied casual factors. All of them should be seen as a whole to prevent early and forced marriage.

**Statistics and research on child marriages in India**

The National Crime Records Bureau (NCRB), the agency under the Ministry of Home Affairs keeps records of incidence of all crimes in India. According to NCRB there were 169 Child

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<sup>1</sup> Anubha Rastogi, CREA, People's Action for People in Need.

Marriages in 2012<sup>2</sup>. However, surveys by Civil Society have shown that this number is grossly under reported. The draft National Plan of Action to Prevent Child Marriages in India<sup>3</sup> states the lack of accurate details is because most marriages are not registered and parents falsify the age of their children. These statistics and views of policy makers illustrate the limitations of a strategy that focuses disproportionately on age (ensuring marriages do not take place before 18) without addressing the broader socio-cultural and economic context within which child marriages take place in the first place.

The scale and complexity of the problem has been highlighted in a UNICEF<sup>4</sup> fact-sheet that estimates that nearly half (43%) of women aged 20 to 24 have been married before the age of 18. The fact sheet highlights the factors that create the conditions for high social acceptability of child marriage that is both deep-rooted and at the same time under-going profound shifts as a result of modernisation and globalisation and the opportunities and risks presented by these phenomena. Deep-rooted notions of honour linked to chastity of girls till they are married, dowry and the idea that the girls is 'paraya dhan' (someone else's property) continue to profoundly influence marriage practices including age at marriage.

Weak implementation of laws governing such practices such as the Dowry Prohibition Act, 1961 need to be addressed as much as the law that prohibits child marriage. Progressive social legislation such as Right to Education need to be implemented to ensure girls are being educated. View of girls as economic liability persist and have intensified in a world that is driven by material and consumerist aspirations and where the cost of marriage including dowry has risen and is increasingly a burden which poor as well as affluent families find ways to reduce and marrying girls early is one such strategy.

Research by ICRW in Haryana indicates that awareness of laws that prohibit child marriage is high but this does not act as a significant deterrence in ensuring girls are married after 18. Part of this is linked to the disconnect between family and community perception of when a girl is mature and what scientific evidence and law tells us.

### **Root causes for child marriages**

In societies where gender equality and discrimination is deeply entrenched and affects the quality of life of girls and women throughout their life cycle child and early marriage is but one such phenomenon that negatively impacts on their lives. Unless fundamental issues related to autonomy, choice and equity are addressed, narrow focus on age at marriage will not help tackle the problem. Lack of bodily autonomy and ability to make decisions with regard to their lives results in girls being forced into work they have not chosen, either by their families or by employers. Many are forced into early marriage with boys or men they have never met or have had no influence in choosing—nearly half of India's women marry before the legal minimum age of 18 years<sup>5</sup>. Contraceptive services are absent in many parts of India, and it is men who generally have control over whether to use it. Many girls bear children at young ages and against their will—16% of girls aged 15–19 years have been

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<sup>2</sup> <http://ncrb.nic.in/CD-CII2012/cii-2012/Table%206.2.pdf>

<sup>3</sup> <http://wcd.nic.in/childwelfare/draftmarrige.pdf>

<sup>4</sup> [http://www.unicef.org/india/Child\\_Marriage\\_Fact\\_Sheet\\_Nov2011\\_final.pdf](http://www.unicef.org/india/Child_Marriage_Fact_Sheet_Nov2011_final.pdf)

<sup>5</sup> <http://www.icrw.org/files/images/Child-Marriage-Fact-Sheet-By-The-Numbers.pdf>

pregnant or had children. Adolescent girls who have little or no educational background are particularly vulnerable, and lack the resources and opportunities that would allow them to make informed choices. For instance, only 30% of the women with no formal educational background, between the ages of 15 and 49 years, have heard of HIV/AIDS. In areas where reproductive health services are available, social stigma often deters girls from using them. These issues need to be addressed and any resolution that addresses early, child and forced marriage needs to also be inclusive of all girls -married and unmarried - India alone this number is 24 million .

Unless these issues are addressed enactment of laws which make marriages under the age of 18 void would be either ineffective or further restrict women's reproductive and sexual choices. In India and other contexts this issue cannot be seen divorced from reality. The reality a legal framework and political and social conditions sanctioning lack of consent, agency and bodily autonomy of young girls and women. This coupled with cultural stereotypes and strict control of girl's sexuality and a violent backlash from the community and families on the girls for exercising their agency in choosing their own partner complicates the issue of child, early and forced marriages.

### **Laws directly or indirectly affecting Child Marriage**

India passed the Prohibition of Child Marriage Act (PCMA) in 2006. Child marriages are defined as any marriage under the age of 18 for women and 21 for men. The law deems that every child marriage solemnized is voidable and the option to do so is vested with the boy or girl married. The law states that any male adult who is above 18 years who "contracts" a child marriage can imprisoned for 2 years or fined. Further any person who is the parent, guardian or anyone in-charge of the child can be punished for two years imprisonment for failing to prevent the child marriage, when a child wishes to get married. The implication of this provision is that a young girl will have to file a complaint and be responsible for imprisoning her father, who in most cases is the sole earner of the family. Hence in many instances there is no value to the girl or boy (children) to use the law because it does not benefit the children/ young people themselves rather; it acts as a deterrent.

In India the personal laws for each religious community determine the laws for marriage, divorce, maintenance and succession. While the PCMA deals with the issue of age of marriage, it does not have an overriding effect on the personal laws<sup>6</sup>. Further, in case the PCMA has an overriding effect on the personal laws, the context is such that it will be deemed to disrespect the minority religions in the country.

At present the status of the implementation of the PCMA is not satisfactory as even the Child Marriage Prohibition Officers (CMPO) have not been appointed in a number of states. The law mandates these officers to prevent child marriages, and report the same in the districts they are appointed. However, they do not have support and often times they have to take on the whole village to prevent the marriage. Since their role is to prevent the marriage, they have neither resources nor power to follow up after a marriage has been prevented to help the family and couple deal with the stigma within the community for

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<sup>6</sup> *Preamble to the Constitution of India clearly defining the secular fabric of the constitution*

failing to get their daughter married. Without proper, complete and effective implementation of the law as is, steps to make the law more stringent and refusal to acknowledge marriages that take place in spite of the law will result in putting the girl at a greater disadvantage.

Another key implementation gap for prevention of child marriages is the fact of rehabilitation options or services for girls who are forced into marriage, minor or otherwise. Most of them do not exercise their right to void their marriages, because they do not have economic or social security. Returning to the natal home is very rarely an option, due to varied reasons including stigma, discrimination they face coupled with poverty and financial constraints which makes it impossible for their natal family to support them.

### **Obstacles for preventing child, early and forced marriages**

#### **Delinking marriage with sexuality**

One of the key concerns that need to be addressed is to de link marriage with sexual expression, exploration. Any woman and young girl in a cultural context like India where there is such rigid control on sexualities, sees marriage as the only option available to explore their sexualities and hence marriage (at any age) assumes a significance which plays out on the ground in many layered and complex ways. Child, Early and Forced Marriages are not an isolated incident or isolated violation. It is a continuum and a small part of continuum of violence on women and girls. Hence while addressing this; it is imperative to look at other laws and policies which have implications on these issues.

This coupled with rigid and suffocating control over women and girls to protect their “chastity” and “family honour” ensures that girls have no option to explore their sexuality. In many such cases, when girls are in a relationship with boys of different castes and communities, backlash from the community, at times through a violent and gruesome killing of the girls and partners. Many such cases arise when the young couple, though minors elope and marry each other. When any consensual sexual relationship between minors has the potential to lead to death or worse, the invoking of statutory rape against the young boy, marriage is the only option. While the submission is not that marriage is solution or that marriage is viable option at such a young age. But that when discussing preventing child marriage a myopic focus on the number “18” but at the broader root causes for such and a holistic understanding. It also has to be borne in mind that if interventions are rooted in reality and context, then the impact of the human rights violation will be same. The conditions after marriage are not starkly different whether a young girl marries at the age of 17 or 18.

While, the point of this submission is not to deny or contradict the international standard of age of consent for marriage, it is to highlight the context in India. That while it is important to prevent child and early marriages, it is equally important to prevent forced marriages. Many times young people marry early in order to escape the real or perceived threat of forced marriages.

## **Education**

Another key concern is that for many girls marriage is the only viable option for their future. Discussions with young girls in the field shows even their aspirations are limited by many factors, including lack of life skills/adolescent education. Interactions and continued consultations with the community in regions of Himachal Pradesh has revealed that most of the Child Marriages happen amongst the children and young people who are drop outs from schools. Education is a key preventive strategy but the education should be geared towards increasing aspirational and future prospects of girls and not be a mechanism to fulfil a target. While marriages hamper educational prospects of young girls, the kind of education provided should also be considered. Research by HOPE in Pondicherry in India has shown that over 69.3% of young people between the ages of 15 – 18 have received no life skills education in the country.<sup>7</sup>

There is also the further issue of marital prospects drastically reducing when girls are older, and taking into account the current gender role and stereotypes in society and the fact there are very few options for girls and women. While there is a lot written about education, the basic aspects of access to schools, school facilities, and essential facilities including toilets are lacking<sup>8</sup>. Education here does not mean literacy but a system that challenges young minds on patriarchal systems and provides real life options to girls and women. In India, Comprehensive Sexuality Education is banned in my states and the legal age of consent for sexual activity is 18<sup>9</sup>. Research has shown us the CSE not only delays sexual debut but at the same time aids in practicing safe sex. As a first step towards reducing or preventing early, child and forced marriages, it is essential to educated young people and their parents on sexuality education. The taboo and silence around sexuality and sexual expression outside marriage does not mean eradicate the same rather it inculcates a fear of sexuality and encourages this process to be underground. One of the most fundamental aspect for prevention of child, early and forced is to ensure that there is honest, accurate and non-judgmental information dissemination on sexual and reproductive health.

## **Registration of marriages and linking entitlement to registration**

Registration of marriages has been made compulsory by law<sup>10</sup> which has now resulted in entitlements and rights from marriages not being recognised in the absence of registration<sup>11</sup>. In a number of cases the woman/girl does not have access to documents related to the marriage and even her own educational degrees. In this scenario insisting on the existence of a document as a prerequisite for a valid marriage puts the woman at a greater disadvantage. While the move to make registration of marriages compulsory is

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<sup>7</sup> Study on status of children between the ages of 15 -18 years in Puducherry and Karaikal, by HOPE supported by CRY

<sup>8</sup> Ibid

<sup>9</sup> Protection of Children from Sexual Offences Act, 2012

<sup>10</sup> The Supreme Court of India in *Seema v Ashwani Kumar* (T.P.(C) 291 of 2006) vide order dated 14.02.2006 has held that all marriages should be compulsorily registered and that the States should make appropriate amendments to the existing legislations on registration of marriages.

<sup>11</sup> Ibid

beneficial, the insistence for registration certificate as a proof of marriage is not. By refusing to register a child marriage the system only refuses to acknowledge that which exists and has now been denuded of its rights.

**POCSO:**

As has been stated hereinbefore that in the cultural context sexual expression and exploration can take place only within marriage and a lot of young couples now choose to marry consensually so that they are not forced to marry non –consensually by their families. Due to a new law, any sexual activity before the age of 18 is now considered sexual assault and the only valid and legally acceptable manner in which adolescents can express themselves sexually is within the confines of marriage, albeit early.

**Recommendations to Government to prevent child, early and forced marriages**

- Convergence of laws and policies that interact and affect each other. Child, early and forced marriages cannot be looked at in isolation and there cannot be a blanket approach. The implementation should also be human rights based taking into consideration the circumstances and context. A target driven approach, based on a specific age limit should not be the goal of the programmes undertaken to prevent child, early and forced marriages.
- The law on child marriages should be geared towards **prevention** and not prohibition. It should necessarily be contextual and acknowledge the realities of lives and the negotiations of young people and their guardians in their limited circumstances.
- Child, early and forced marriages are also about forced marriages irrespective of the age of the parties concerned. Programmes to address to this have to look at a woman's life in totality and not concentrate only on the age of marriage of 18.
- A blanket approach is not tenable to prevent child, early and forced marriages. It has to be situated in the contexts and in the lived realities of people. The sexual and gender norms creating a normative behaviour for all young people, poverty, education and livelihood opportunities should be taken into account to address the same.
- A comprehensive consolidation of programmes, schemes – governmental and non-governmental that looks at the issue in totality.
- Comprehensive Sexuality Education should be mandatory for all schools and it should be non-judgmental and accurate not driven by vague values on religion, tradition and culture but factual and accurate.