

## The Early Marriages in Conflict with Law & Society

### The case of young girls in Gujarat



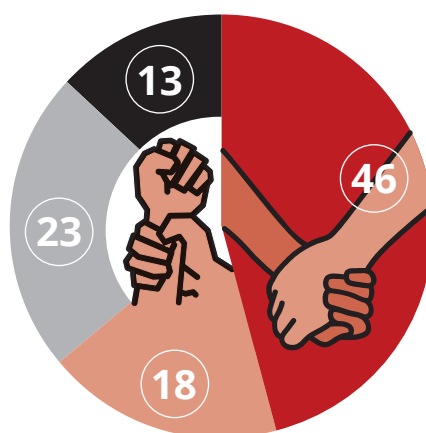
**I**N the backdrop of increasing violence against and cases of abduction and kidnapping of young girls, ANANDI<sup>1</sup> has undertaken this exploratory study. The research provides a detailed analysis of 731 First Information Reports (FIR) relating to cases of Kidnapping and Abduction involving young girls during 2014-16 filed the respective police station of districts of Dahod, Panchmahal, and Morbi of Gujarat. Further, the research takes into account of the 29 in-depth personal interviews with young girls – survivor of abduction or as having exercised their agency of leaving their homes to be with their chosen partners without parental consent.

#### *Criminalising the choice of young girls in choosing partners*

Over two-thirds of the survivors cited in the FIRs aged below 18. While the survivor's parents were the complainants in 77% cases, only 20% FIRs were registered by the survivor herself. The mention of the residential address of the accused of the "abduction" in 91.52% of FIRs indicates a priori knowledge of the person who the girl opted to go with.

Nearly 46% of the FIRs cited marriage as the reason for kidnapping (**Figure 1**), 23% pointed to marriage along with sexual exploitation as the purpose, 18% mentioned sexual exploitation as the motive of abduction, while 13% had no clear motive. In 86.59% of the FIRs, the accused was charged under Section 366 of the Indian Penal Code (IPC), i.e. Kidnapping and Abduction of a

**Figure 1: Distribution for the Purpose of Abduction mentioned in the 731 FIRs**



- Marriage
- Sexual Exploitation
- Both Marriage and Sexual Exploitation
- No clear reason mentioned in FIR

Girl to Compel Marriage. The possibility is that the FIRs could be used by the parents to ascertain the effect of the daughter marrying the person of her choice. The evidence corroborated from the 29 case studies supports this hypothesis.

Of the 29 case studies taken up, a majority of girls (25) left home by choice, while 4 girls were forcefully abducted. In five of the 29 cases, there was no FIR registered, while 23 were registered under the IPC Section 366, and one case filed under Section 323 of IPC for voluntarily causing hurt. In 20 of the 24 FIRs, the survivors had left home by choice; however, the FIR mentioned abduction charges as per the guidelines of the Supreme Court on missing children. In 3 of 5 unregistered complaints, the parents severed all ties with the girls after they chose to live with a partner of their choice. In two cases, parents compelled the girls to withdraw from the relation with the partners of their choice (**Table 1**).

Protection of Children from Sexual Offence Act (POCSO), 2012 and the Supreme Court's guidelines on Special Oppressional Procedures for Missing Children focus on 'protection' from harm,

**Table 1: Classification of case studies**

<b>Agency of the survivors</b>	<b>Survivors left home by Choice</b> 25	<b>Forceful Abduction</b> 04	<b>Total Cases-studies</b> 29
<b>Legal Measures</b>	<b>FIR registered</b> 24	<b>FIR not Registered</b> 05	<b>Total Case studies</b> 29
<b>Section 366</b>	23	NA	

Source: Field research done by ANANDI (2017).

and violation against the person under 18 years, undermining the right of choice, agency, changing capacities and developmental stages. An investigation of these cases emphasises on handing over to the legal guardians the custody of the young girls, albeit without an inquiry into the circumstances that led the minor to run away.

**Age-specific vulnerabilities of girls and intersectionality with social categories**

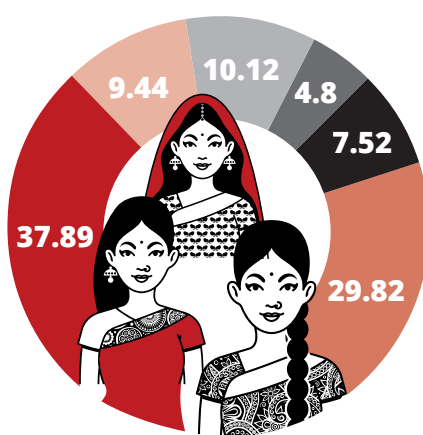
An analysis of 731 police records indicated that *missing* girls (forceful abduction or leaving the homes by choice without knowledge of their guardians) were in the age group 14-18 (Figure 2). This age-specific vulnerability had a positive correlation with social marginalisation. Of the 731 survivors, 46% hailed from Scheduled Tribes, 39% from Other Backward Classes while 3% of survivors were from general castes. The socio-economic marginalisation has a bearing on this phenomenon of *missing* young persons often deepening the vulnerability of the runaways in select districts.

The case studies and Focussed Group Discussions (FGDs) with the young girls indicates that it is

around 14 years of age that the mobility of girls begins to face strict surveillance and restrictions from the family and community alike.

Coinciding the age of consent, with legally approved age of marriage, which is 18 years the law, undermines the principle of

**Figure 2: Age wise distribution of survivors of abduction mentioned in FIRs**



- 12 > years
- 12.1 - 14 years
- 14.1 - 16 years
- 16.1 - 18 years
- 18.1 years < years
- Not mentioned

‘evolving capacities’, for adolescent girls. Any explorations of their choice are brought under the category of crime against them, which leaves no room to exercise their agency.

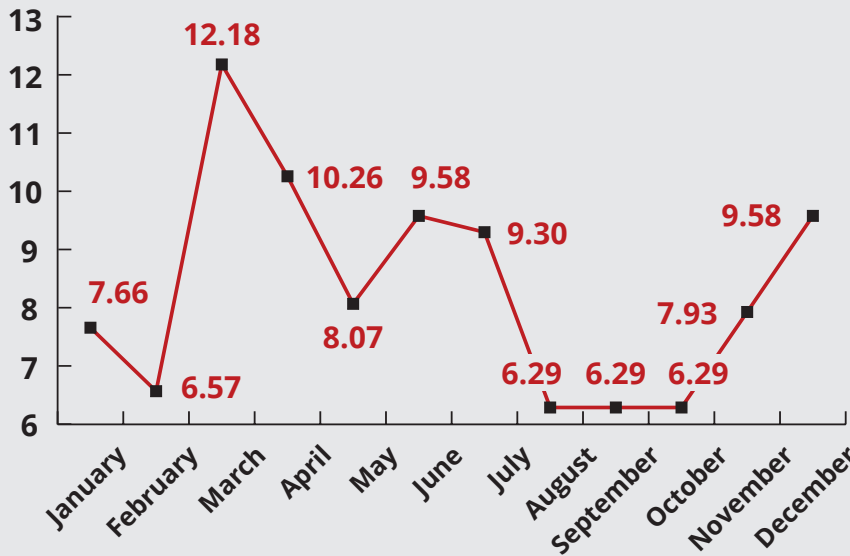
**Seasonality of Early and Child marriages**

In 22.44% of the FIRs, the timing of the abductions were registered in February and March, months closer to *Holi* & *Akha Teej* which marks the commencement of the marriage season. The scrutiny of the occurrence of these abductions should be in the context of the socio-cultural practices of the region (Figure 3).

**Reasons for Adolescent and Young Girls Leaving Home**

During the FGDs, the girls revealed that their need for safe and trusted environments was compromised mostly due to the pressure of migration to earn a livelihood, They were unable to exercise life choices regarding education, relationships, mobility, or marriage, while the burden of care and domestic work restricted their mobility, friendship and usage of mobile phones. Of the 29 girls interviewed in-depth, 12 reported that anticipation of back-

**Figure 3: Month-wise Distribution of FIRs (in percentage) of Abduction in Dahod, Panchmahal, & Morbi (2014-1c)**



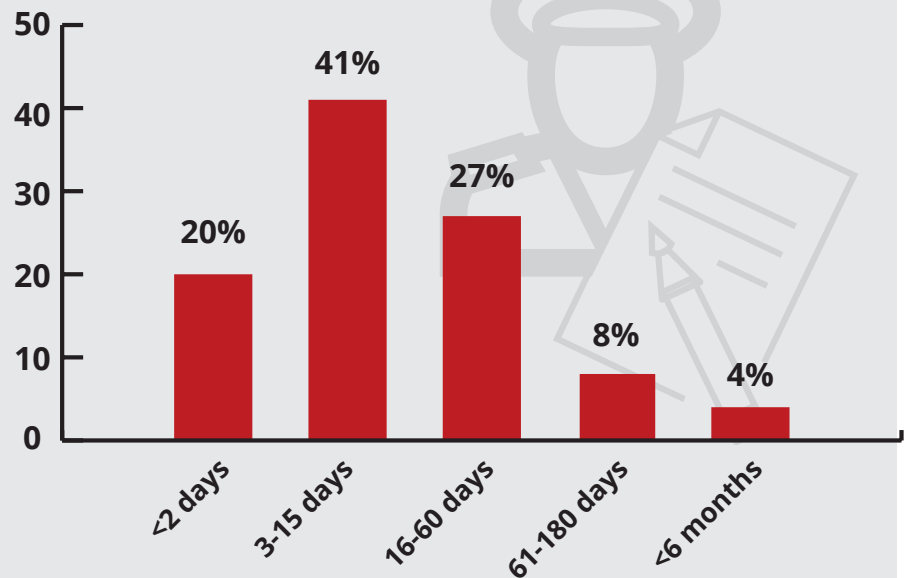
Traditionally in fairs organised around Holi (harvest festival), young people (including minors) are offered the opportunity and space to explore romantic partnerships and choose life partners. The modern law, however, stands in conflict with this tradition, as it emphasises on child protection agenda, often against the choice and agency of persons below 18. Further, the POCSO, 2012 acts as a defence for guardians to overrule the agency of young girls. In the area of study, Holi is followed by the season for solemnising marriages. The case studies reveal that most elopements that happened during this period were to escape the pressure of forced early marriage.

lash or violence by family members on learning about their romantic relationships was the main reason for leaving home. Disclosure of secretly maintained mobile phones led to hostility and violence.

The provision of POCSO, 2012 declaring the consent of any person below 18 as legally void, allowed guardians of young girls to misuse the very law meant to protect children from sexual abuse by registering a complaint against their daughter's partner of choice. Negating choice and agency of girl and criminalisation makes her further vulnerable to different forms of violence. The girls brought back from alliances of their choice, were often forced into marriage with high bride-price payee men. At home, their movements being restricted, they face stigmatisation and distrust from her parents. Out of the 29 girls, only two (6.9%) could continue with their education after being brought back home.

Data presented in **Figure 4** is the total of all the FIRs filed in Dahod, Panchmahal and Morbi for the period 2014-16. The time gap

**Figure 4: Difference between day of incidence and day of Registration of FIR**



between the occurrence of the kidnapping and abduction and the registration of the FIRs reflects a pattern with nearly 41% FIRs; the complainant had registered a formal FIR between 3-15 days of the incident. Dialogue with community leaders, police and other stakeholders revealed that this time gap is crucial for seeking the information about the concerned boy and critical negotiations to settle the matter by fixing customary penalty, known as *Davo*<sup>2</sup>. Apart from *Davo*, young girls in relationships bear a social, emotional and economic burden and insecurities. Girls reported that their engagement in insecure and vulnerable livelihood to repay the loans for paying *davo* and expenditure of court cases. The young couples take the brunt of social stigma, legal criminalisation and financial debts, often forcing them to engage in child labour.

### **Co-relation with the Education of Young Girls**

ANANDI's research revealed a close association between the state of young girls being out of the school and them leaving homes with partners of their choice. Nearly 41% of girls in the study dropped out at the secondary school level. Five girls (17%) dropped out at the upper

primary level, due to the lack of secondary schools at an accessible distance from their villages.

Within two years of leaving school, they had left home. Most of the girls interviewed expressed that schools were the only place that, provided them with a break from the drudgery of domestic work.

### **Gaps in Health and Nutritional Services for Young Girls**

Of the 25 girls who chose to leave home with the person of their choice, 10 (40%) conceived within the first six months, while, 64% of them went through critical conditions during pregnancy. The girls interviewed for the case studies denied having any knowledge of contraceptives or even receiving any sex education. They also did not access health care services during pregnancy for fear of exposing their identity as a 'runaway' persons.

Early marriage, forced or by choice, puts the life options of the girls in serious jeopardy. A social mandate needs to be created for enhancing mobility, education and agency of girls to empower them to make informed choices that would provide them with opportunities to live life to its fullest.

## **RECOMMENDATIONS**



### **DEPARTMENT OF LAW AND JUSTICE**

- Treat runaway children with their partners without the permission or knowledge of guardians as 'children at risk' and develop special protocols for them.
- Decriminalise non-exploitative, non-coercive, consensual sex between peers/ persons of proximate ages by revisiting the provision of 18 years as a minimum age of sexual consent under the POCSO Act, and restoring it to 16 years.
- Critical abortion services for young girls must be seen as legal without referring them to 'medical board' evaluations.



### **POLICE**

- Publicise about the repository of missing children.
- Conduct training of investigating officials at ground level on Special Operating Procedures (SOPs) for Missing Children in the context of the abduction of minor girls to ensure better implementation.
- Form specialised investigative units for the 'children at risk' including the runaway couples. Sensitise police personnel in the trained units regarding the nature of vulnerabilities faced by the missing child after provisioning adequate budgets for the same.
- Create non-judgemental, supportive spaces for missing girls and later traced by police.
- Refer a retrieved missing girl and her parents first to the Child Welfare Committees, District Child Protection Unit and Childline for counselling and support as per the Directives for Missing Children & Children in Need of Care and Protection, Juvenile Justice Act.
- Referrals should also be made to Women's Organisations and Women's Support Cells at the district level. Members of the Women's Support Cells linked to police stations need to be trained to counsel and provide redressal for such vulnerable girls to ensure that they face further violence and indignity.



### HELPLINES

- Childline 1098 and women's helpline 181 should also publicise their services and support to vulnerable runaways. Develop special protocol for the same.
- Disseminate information about gender-just collectives as alternative violence redressal systems in schools and panchayat to constrict the runaway incidences of young adults after altercations with parents and create enabling environment for conversations about safe navigation of relationships.
- The helplines must provide alternative safe accommodation to the young adults in situations of altercations with their parents.
- Proactively ally with the DCPU and Child Welfare Committees to protect the rights of adolescents and young adults on priority.
- Set up protocols to respond to situations where girls experience violence from families because they exercised their agency.
- Maintain confidentiality and recognise the choice, agency and consent of this age cohort as part of ethical practices of respecting the rights of the adolescents and youth.
- Hold community dialogues regarding the pressure of underage marriage borne by young girls during the season of *Holi* and *Akha Teej*.
- Helplines must carry campaigns against customary practices like *davo*, which criminalise the agency of the adolescents and youth.



### DEPARTMENT OF WOMEN AND CHILD DEVELOPMENT

- Initiate programmes to develop capacities of young adults in negotiating consent with their families as well as peers based on informed knowledge.
- The vision statement of WCD may be rephrased as **To stay safe, secure and be assured that the capacities of a child are enabled and respected, in all settings and circumstances.**
- Department must train state agencies like police, child protection units, shelter homes, village level committees including school management committees and child protection committees, and women's collectives to cultivate ethical practices in counselling to ensure that confidentiality and individual rights of the young adult are respected and adhered.



### DEPARTMENT OF SOCIAL JUSTICE

- Campaigns for the prevention of child marriages should hold dialogues with parents and youth before the traditional marriage season along with negating the customary penalty.
- The child marriage prevention officer should be trained in counselling adults and youth to address social pressures that lead to early marriages.
- The state agencies must act stringently towards not just

stopping child marriages, but also widely publicising helplines as well as office and community spaces where the support services available for youth at risk of early marriage could be accessed.



### EDUCATION

- Schools and colleges must initiate programmes on comprehensive sex education and negotiating consent with family, community, and peers.
- Schools must hold counselling sessions for adolescents and young adults to navigate the pressures of marriage, especially around the season of *Holi* and *Akha Teej*. Further, the sessions on sex education and strengthening individual agency in voicing consent would prove fruitful.
- A massive drive to link young girls with KGBVS, Open-Schools and bridge courses at the village level.
- Investing in the development of safe and affordable public transport facilities would contribute considerably towards improving access to higher education of young girls.



### HEALTH

- No girl or woman should be denied access to health services on the ground of non-possession of identity documents.
- SABLA programmes and Kishori Shakti Scheme at the ANGANWADIs and Adolescent Friendly Health Clinics (AFHCs)

need to address issues related to consent, choice and mobility of young girls and hold counselling sessions with parents.

- Special efforts should be made to ensure that young women and girls get access to reproductive health services and maternity benefits regardless of their marital status or age.
- Guidelines for medical establishments must include quality, safety, confidentiality, and legal, sexual and reproductive health information and services in line with evolving capacities of adolescents and young adults, their sexual orientation and gender identity.



### CIVIL SOCIETY ORGANISATIONS AND WOMEN'S COLLECTIVES

- Women Collectives and Civil Society organisations working for enabling rights of youth and children should conduct advocacy campaigns, whereby the principles of enabling capacities of the youth and children are applied to reduce the criminalisation of agency and recognise choices of this age cohort (16-18 years).
- Women's Collectives should strengthen efforts to enhance the mobility of the young girls by creating a mandate to delegitimise practices that curtail their mobility
- Civil Society Organisations and Women's Collectives need to build a movement to address complexities of customary practices that penalise the agency of the youth in general and women in particular.
- Women's organisations need to strengthen their network to provide support including counselling young girls so that they and their partners can deal with consequences appropriately and can make use of the available institutional support arrangements without compromising their agency and choice.
- Women's collectives need to work towards reducing the vulnerability of young girls denied entry into their natal homes, thus depriving them of social and emotional support resulting in further distress.

#### Endnotes

1. ANANDI in leadership of women and young people focuses on the rights and entitlements of tribal, Dalit, de-notified tribes and other marginalised communities since 1995. [www.anandi-india.org](http://www.anandi-india.org)

2. Davo is a form of penalty received in cash and kind by the village elders "panch" through arbitration on behalf of the girl's parents. While the "panch" may gain more money and power in the process, paying davo is critical to the social sanction for their union, till then the girl is banished from her

natal family. Davo amount may range from Rs. 10,000 to Rs two lakh and acts as a move to deter youngsters from exercising their choice in marital alliances.



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ANANDI – Area Networking and Development Initiatives, a civil society organisation, has been actively engaged with sustainable livelihood, redressal of gender-based-violence, and rights and entitlements of women, youth, and children from tribal, Dalit, de-notified tribes and other marginalised communities in four districts of Gujarat since 1995.

ANANDI Technical Support Unit (ATSU) focuses on contributing to feminist knowledge building through research, curriculum building, and developing participatory training modules. It holds dialogues for policy advocacy and networking from a feminist human rights perspective.

ANANDI's vision is to bring rural women's concerns in the centre of all development processes so that all can live in a just, equitable and peaceful society.

Values of justice, freedom and fraternity guide the mission of promoting women and young leaders to work towards social justice, sustainable development and accountable governance.