

WHAT'S AGE GOT TO DO WITH IT?



Why recent debates on raising the legal age of marriage in India are important for young people, advocates, policymakers, and funders everywhere.

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KEY TAKEAWAYS FROM A VIRTUAL DIALOGUE HELD ON 16 DECEMBER 2020

In June 2020, the Indian government established a Task Force to review the minimum legal age of marriage for girls. One proposal under consideration is to increase the minimum age of marriage for girls from 18 to 21. This has spurred an energetic mobilization by a wide cross-section of advocates for women's rights, youth rights, and child rights — revealing considerable concern and skepticism about the proposed change.

Why would increasing the age of marriage for girls spark resistance? What lessons does the civil society mobilization in India have for advocates and decision makers in other contexts?

Speakers from India and elsewhere led a dynamic conversation.

Here are key takeaways from the discussion:

1. Part of the government's stated rationale is that raising the minimum age of marriage will improve girls' education and health, including reducing maternal mortality and improving nutrition. But **raising the age of marriage is an arbitrary move if the actual barriers to good health and education for girls are not addressed.** [Investments are needed](#) in the systems and infrastructure that will enable girls to access quality health care, schooling, and livelihoods, along with freedom to make their own decisions about marriage.

2. **Early and child marriage is a deeply patriarchal practice**, one in which age is not the only consideration. Strictures around marriage are created and enforced to [regulate young people's sexuality](#). In India, laws, regulations, and norms control not just when people marry, but also whom they marry—with legal and social repercussions for those wanting to marry outside of their caste, class, or religion. Raising the age of marriage while tightening other controls related to it is not about giving young people freedom and means to create a better life—it is quite the opposite.

The Child, Early & Forced Marriage & Unions and Sexuality Working Group convened this online dialogue with an international audience because the issues raised in India surface fundamental questions about what an effective and rights-based response to child, early and forced marriage and unions looks like wherever the practice occurs. It is our hope that the discussion provokes reflection among the range of stakeholders involved in child marriage response at national and global levels.

3. The existing law prohibiting marriages under 18 has not been effective, as there are still millions of underage marriages every year in India. Raising the age is therefore merely moving goalposts, not enabling fundamental changes. Moreover, [research](#) shows that in India, **child marriage laws and related laws are most often used to punish young people, not protect them**. The laws are often used by parents to prosecute their daughters and their romantic partners for eloping and/or marrying someone the parents disapprove of.
4. In India ([as in other countries](#)), **the age of consent has been raised to 18** to align with the current minimum age of marriage for girls. This makes sex illegal for young people under 18. What's more, in India consensual sex [is treated by law as child sexual abuse](#) if at least one of the partners is under 18. This means that if a young couple has consensual sex, in or outside of marriage, the boyfriend or husband can go to prison for up to 20 years. Parents have used this law to break up relationships they disapprove of – landing boys in jail and girls in poorly equipped shelter homes. Raising the minimum age of marriage will allow more time for these prosecutions, especially if the age of consent is raised along with it. Such laws infantilize young people, stigmatize and punish their sexuality, and push their marriages and relationships underground.
5. To reduce maternal mortality, uphold young people's rights, and honor their demands in India and beyond, governments must **invest in sexual and reproductive health and rights (SRHR) information and services for all young people**. In India, as in many other places, young people—unmarried girls in particular—face stigma and discrimination when trying to access SRHR services, including contraception. In India, doctors are mandated by law to report underage sex, further deterring young people from accessing services. SRHR services should be affordable, accessible, and ready to meet the specific needs of young people in all their diversity.
6. **The issues being raised by civil society actors in India are not unique to India**. Around the world, responses to child, early forced marriage and unions (CEFMU) – and other rights violations such as female genital mutilation and gender-based violence – are [often a deflection of the root causes](#) of these complex issues, which are all deeply patriarchal practices rooted in gender and sexual hierarchy and control. When age becomes the focus, rather than effectively addressing the social and economic factors and patriarchal practices underpinning CEFMU, attention and resources are diverted away from gender-transformative responses and the needed structural changes related to education, health, and livelihoods that would enable adolescents to exercise agency over their lives. Furthermore, CEFMU is happening before the age of 18 in countries with laws outlawing it; there is no concrete evidence that laws help reduce child marriage.
7. **Comprehensive sexuality education (CSE) is fundamental to young people's SRHR**, in India and everywhere. CSE combines accurate, complete, and scientific information about sex and sexuality, and it addresses social factors such as gender, power, patriarchy, discrimination, and consent to support young people to make informed, empowered choices about relationships. CSE is also an avenue for addressing the social norms around gender and sexuality that perpetuate early and child marriage. CSE can be a space to [engage men and boys](#) about their role in patriarchy and gender inequality, and how they can play a role in challenging harmful gender norms. Governments around the world must ensure CSE is available and accessible to all young people.
8. In India, research has shown that girls are not dropping out of school as a result of child marriage, but rather are leaving school and then marrying due to low quality schooling with no link to decent livelihoods. Investments are needed to deliver **quality, free, compulsory, and gender-transformative education**, skill-building and vocational opportunities, including education on legal and human rights, to young people up to 21 years of age.
9. Young people in India [are demanding a seat](#) at the table when laws and policies affect them. **No one is better equipped to advise on solutions than those who personally face challenges**. Government (in India and everywhere) also needs to listen to civil society, including grassroots organizations who are working in communities where the impacts of laws are most felt. Otherwise, laws are created that are detached from the lived realities of young people and can cause more harm than good.
10. Laws are not irrelevant, but they need to be different. Too often laws empower the State over citizens, when it should be the other way around. **Child marriage laws should have girls' rights at the center** and be clear about who is obliged to uphold their rights, respect adolescents' evolving capacities and protect their rights to express their sexuality without fear of criminal consequences.

11. International laws, agreements, and frameworks intending to protect young people have key flaws and gaps. For example, **many international laws lump young children and adolescents into one category, without regard for young people’s evolving capacities** (as articulated in the [Convention on the Rights of the Child](#)). The terms ‘child’, ‘early’ and ‘forced’ marriage tend to be used interchangeably to describe anyone who marries or enters a union under the age of 18, without regard to context and without respect for adolescents’ circumstances, autonomy, and choices. More attention is needed to the position, wants, and needs of adolescents and young people entering marriage and unions under the age of 18 as part of any discourse or action to address the issue.

12. The **Sustainable Development Goals’** target on eliminating child, early and forced marriage and unions is welcome, but its **age-centric focus** can inspire age-centric national and programmatic responses and measures of success. This can come at the expense of investing in initiatives and indicators rooted in the empowerment of girls and young people.

13. National governments, as well as international actors – **funders, UN agencies, and international NGOs, among others – must move away from reductionist, protectionist approaches and make concrete efforts to address gender inequality as the driving force of CEFMU**. They must invest in increasing girls’ and young people’s access to health, education, resources, and livelihood opportunities; center their voices, perspectives, and priorities in decision making; and partner with young people to transform the patriarchal gender norms that diminish girls’ and women’s status in society. Unless we address root causes, we will be caught in an unproductive cycle of creating laws and policies that do not solve the problems we aim to remedy.

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*The Working Group comprises several national and international organizations working with and for adolescent girls to advance their rights and opportunities. We develop resources and engage in advocacy to draw attention to the under-addressed issue of how patriarchal control of adolescent girls’ and young women’s sexuality acts as a driver of child, early and forced marriage and unions.