

# **NATIONAL COALITION FOR ADVOCATING ADOLESCENT CONCERNS**

## **SUBMISSIONS TO THE MWCD:**

### **IN THE CONTEXT OF EARLY MARRIAGE AND AGE OF CONSENT**

We are a coalition of 19 organisations from across the country, that work with adolescents from the standpoint of law, sexual abuse and restorative justice, collectivisation and empowerment, public health, sexual and reproductive health information and services, as well as education and life skills – in urban, rural and tribal contexts.<sup>1</sup> Given our collective experience with adolescents from marginalised populations, community work, research, policy engagement, we present our learnings in relation to harmful impact of laws, and potential harm of laws in relation to child marriage and child sexual offences.

As a cross-sectoral coalition addressing adolescent concerns, we present evidence in relation to the unintended and harmful impact of child protection laws as they pertain to adolescents. It is learnt that the Ministry of Women and Child Development is proposing to amend the Prohibition of Child Marriage Act, 2006 (PCMA). While the full scope of the proposed amendments remains unknown, media reports suggest that child marriage is sought to be made void ab initio, with increased punishments for solemnising such marriages. We urge the MWCD to organise consultations with stakeholders working with adolescent girls and children, and consider evidence on adolescent realities in formulating policy.

We urge the MWCD to address the complex realities of abuse, vulnerability, evolving capacities and developmental needs of adolescents– intersectionally and with sensitivity, rather than separately and punitively. Accordingly, these submissions speak to intersecting concerns relating to the PCMA and the POCSO.

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<sup>1</sup> National Coalition for Advocating Adolescent Concerns held its inception meeting on 12<sup>th</sup> December 2019, followed by the first public meeting on 13<sup>th</sup> December 2019. The Coalition members are: Aarambh, ANANDI, Butterflies India, CEHAT, Counsel to Secure Justice, Enfold, HAQ, Hidden Pockets, Leher, Maharukh Adenwalla, MASUM, MJAS, Nirantar, Partners for Law in Development, Praajak Development Society, Sahiyar Stree Sagathan, Sruti Disability Rights Centre, The YP Foundation, Vishakha. The full list of members attached at the end of the document.

## CHILD MARRIAGE: PREVALENCE, CAUSES, TRENDS:

As per fourth National Family Health Survey, early marriage has been declining over time. Marriage before the legal age of 18 years is 27% for women aged 20-24, compared with 46% for women aged 45-49. Similarly, marriage before the legal age of 21 years has dropped from 29% for men aged 45-49 to 20% for men aged 25-29. The median age at first marriage for women aged 20-49, increased from 17.2 years in 2005-2006 to 19 years in 2015-2016. For men aged 25-49, the median age at first marriage increased by almost two years between 2005-2006 and 2015-2016 (at 22.6 and 24.5 years, respectively).<sup>2</sup>

The phenomenon of underage marriages in India can be more accurately described as early marriage. Nonetheless, in view of the country's population density, the declining percentage of underage marriage makes for the largest population of under-age brides in the world. UNICEF estimates the figure at 15,509,000.<sup>3</sup>

While female enrolment in education levels have gone up, economic security and safety remains fragile, making marriage a compulsory for economic survival of girls. Although an increase in girls' enrolment in education is evidenced<sup>4</sup> there is little by way of employment opportunities for women. With the participation of women in the labour and workforce being low<sup>5</sup>, the prospect of economic security is fragile for women. Additionally, safety of girls remains a grave concern across contexts in India, with most cases of sexual assault unreported. The NCRB data on reported cases indicates that highest number of victims of sexual violence to be girls between the ages of 12-18 years.<sup>6</sup> The lack of safety for girls, taboos attached to female sexuality, and lack of employment opportunities, make marriage compulsory for girls.

Data, studies and policy reports confirm that child marriage occurs within contexts of poverty, poor quality education, lack of economic opportunities, and material disadvantage; exacerbated by conflict, forced migration and lack of safety for girls. Patriarchal social norms, the compulsory nature of marriage and taboos attached to female sexuality outside of marriage drive child and early marriage within contexts of distress and poverty. While marriage of girls under 14 years shows decline, early marriage of girls between 15-19 years is on the rise. There is no single trend that defines underage marriages – as it comprises of forced and arranged marriages, marriages with bride-price within extreme poverty, as means

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<sup>2</sup> National Family Health Survey, 2015-16, P. 156

<sup>3</sup> UNICEF, *The State of World's Children*, UNICEF Global Databases (2007).

<sup>4</sup> Gender Parity Index indicates the increasing level of female participation at all levels of enrolment in education. See Educational Statistics at a Glance: Department of School Education and Literacy Statistics Division, MHRD (2018)

<sup>5</sup> The labour force participation rate for women in regular labour is set at 17.5%, at a drop of 22% from figures of 2011-12. See National Statistical Office, Periodic Labour Survey Force (2017-18), *Labour Force* 3(3) available at:

[http://mospi.nic.in/sites/default/files/publication\\_reports/Annual%20Report%2C%20PLFS%202017-18\\_31052019.pdf?download=1](http://mospi.nic.in/sites/default/files/publication_reports/Annual%20Report%2C%20PLFS%202017-18_31052019.pdf?download=1).

<sup>6</sup> Age profile of victims under POCSO are as follows - below 6 years is 693; between 6-12 years is 2305; between 12-16 years is 8669; and between 16-18 years is 10,410. See NCRB-Crime in India, 2018

to procure unpaid farm labour or for trafficking; early marriage itself is rarely a choice – even when self-arranged, as it may be necessitated by pressures of livelihood, migration patterns.<sup>7</sup> Additionally, there are a growing number of elopements or self-arranged marriages by couples which are against parental wishes. For many in resource poor settings, marriage is an outcome of the pressures of early adulthood on adolescents, burdened as they are with responsibilities of housework and income generation.<sup>8</sup>

Formulating policies pertaining to child and early marriage within this complex scenario calls for nuanced rather than flattened or uniformly punitive responses. Any discussion on law reform requires understanding two aspects – how the existing law operates and impacts underage parties to marriage, a large number of which are girls; and whether and in what way, does the law address the root causes of underage marriage.

## IMPACT OF LAWS ON GIRLS

### **A. PCMA INACCESSIBLE TO GIRLS AVOIDING FORCED MARRIAGE, THOUGH ACCESSIBLE TO PARENTS PROSECUTING ELOPEMENTS**

The PCMA stipulates minimum ages of marriage, mandates prevention, and provides remedies for stopping impending underage marriages and punishing solemnization of same. It recognizes the decision of the minor party to marriage, on whether or not to nullify it. Accordingly, underage marriages are treated as valid, though voidable at the option of the minor party to the marriage – within two years of attaining majority. Yet, the law in practice is used largely for assertion of parental authority, not for girls avoiding forced marriage.

1. An analysis of 83 verdicts (Constitutional, civil and criminal cases from several states) in which PCMA is invoked (from 2008-17) by Partners for Law in Development, shows that 65% of all the cases involve parents using the law against choice marriages by their daughters. The 35% of the cases that do not pertain to elopements involve declaration of nullity by a parent when dowry or domestic abuse besets the daughter's marriage, or when a marriage arranged by one parent lacked concurrence of the other parent; or when boys married as minors, sought nullification of marriage. The CMPO initiated cases are negligible. In effect, the

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<sup>7</sup> MASUM (Mahila Sarvangeen Utkarsh Mandal) in Pune, an organisation working in the villages around Pune in Maharashtra, reports diverse factors influence early marriage. It is neither a choice nor purely driven by custom, but often the result of labour, livelihood and migration patterns. Typically, in the sugarcane regions of Maharashtra, a married couple (man and a woman) are hired as workers, since the nature of work involves tasks that are combine what is stereotypically female and male. Consequently, when a couple with a teenage daughter migrates for sugarcane contract jobs, they view marrying the girl as a safer option than leaving her behind in the village. Skewed sex ratios and soaring land prices result in high demand for the limited number of girls. Brides are sought from poorer villages, sometimes breaking caste hierarchies. Faced with the prospect of arranged and forced marriage by parents, the girls might elope prior to that – which further pushes down the age at which girls get married. With rising aspirations among girls, there is a desire to marry boys who have both land and jobs but are not farmers, resulting in boys sometimes getting a job only till they get married.

<sup>8</sup> See *Why Girls Run Away to Marry: Adolescent Realities and Socio Legal Responses in India* (Partners for Law in Development, 2019)

PCMA is primarily used by parents against their daughters' agency rather than to help girls resist underage or forced marriages. Although the cause of action in law arises from 'age' – in practice the law is primarily used to combat 'daughter's choice' and to a lesser extent, navigate 'breakdown' of marriage.

2. The CMPO or the Child Marriage Prohibition Office is tasked under the law to raise awareness, in preventing an underage marriage from being performed, and in assisting minor girls in nullifying their marriage. Yet, negligible number of cases is brought by the CMPOs to courts.
3. Grassroots organizations are most likely to help girls prevent or escape a forced marriage. PLD's field study, *Grassroots Experiences of Using the PCMA (2019)*<sup>9</sup> shows that girls seeking to prevent or escape a forced marriage approach grassroots organizations more successfully – either directly or through ChildLine, rather than through the police or the CMPO. They tend to use the law informally to negotiate rather than instate formal legal action. Not only is legal action difficult, and state mechanisms subject to influence of local interests and power structures, using the law is likely to invite risk of backlash against social workers and for girls. The informal use of law in many cases, enables mediation, long term support to girl, withdrawal of financial penalties by community leaders/ the *biradari*. Legal action on the other hand, temporarily stops or delays marriage.

#### **B. AGE OF CONSENT BEING THE SAME AS MINIMUM AGE OF MARRIAGE, ALLOWS PCMA TO BE USED WITH IPC AND POCSO TO CRIMINALIZE ELOPEMENTS AND CONSENTING ADOLESCENTS FROM POOR AND MARGINALIZED POPULATIONS**

The issue of age of sexual consent is inextricably connected with that of the minimum age of marriage, in terms of its legal history and contemporary usage. Any discussion on child marriage must include its overlap with the age of consent. Prior to enacting a law on the minimum age of marriage, the law sought to protect young girls from sexual exploitation and abuse by stipulating an age of consent, below which all such activity amounted to statutory rape. When the Indian Penal Code was enacted in 1860, the age of consent in India was fixed at 10 years for girls with no legislation on minimum age of marriage. It was not until the death of Phulmoni Das, a 10 year-old, who died in 1889 as a result of forced sex by her 30 year-old husband, that age of consent emerged as a concern. Phulmoni's death did not amount to an offence in law, as she had attained the age of consent. The ensuing outrage led to an increase in age of consent to 12 years in 1891, and later again to 14 years, as part of social reform around child marriage (inextricably linked to child widows). It was not until 1929, that the Child Marriage Restraint Act (or Sarda Act) was passed, setting a minimum age of marriage, as distinct from the age of consent or 'statutory rape.' From 1978-2012, the

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<sup>9</sup> See Grassroots Experiences of Using the Prohibition of Child Marriage Act, 2006 (Partners for Law in Development, 2019) at <https://bit.ly/37J957b>

age of consent remained lower than the minimum age of marriage.

In 2012 with the enactment of POCSO, the age of consent increased from 16 to 18 years, bringing it on par the capacity to sexual consent and marriage for girls. In doing thus, the law collapses capacities for two very vastly different acts –in terms of the social, personal and economic implications. Evidence from various studies mentioned below, testify to the widespread use of POCSO by the girls’ parents against consenting and eloping couples.

1. A study of 2788 cases under POCSO across 5 states,<sup>10</sup> by the Centre for Child and the Law, in National Law University of India, Bangalore (CCL-NLSIU, 2018), revealed that romantic cases i.e., cases in which the prosecutrix admitted to a relationship with the accused constituted 21.2 percent in Andhra Pradesh, 15.6 percent in Assam, 23 percent in Delhi, 21.8 percent in Karnataka (in 3 districts), and 20.5 percent in Maharashtra.
2. A study by Area Networking and Development Initiatives, (ANANDI) in Gujarat, revealed 731 police cases in tribal areas of Dahod, Panchmahal, and Morbi districts in 2017 alone, show that reports of missing girls aged between 14 to 18 years – are registered as abduction cases. Of these, 46% were for reasons of marriage, with the girls’ parents as complainants.
3. A study of cases in special courts from 2012-2015, carried out by UNICEF, Forum Against Child Sexual Exploitation (FACSE) and HAQ Centre for Child Rights,<sup>11</sup> showed that from a total data of 224 cases in Delhi, 79 cases (35%) related to ‘romantic relationship’ in the 16-18 age group, and out of these 74 cases (94%) ended in acquittal. The romantic cases formed 39% of the total acquittal cases (190). This shows that the inflated number of case prosecuted since 2012, is on account of the increase in age of consent, which has criminalised consensual relations. A substantial amount of court time is being spent on cases involving a romantic relationship, which eventually result in acquittal on account of the child turning hostile and/ or the prosecution being otherwise unable to prove the offence of ‘penetrative sexual assault’ or ‘sexual assault’.
4. Aarambh India (Prerna) in Mumbai worked on 260 cases under POCSO of which about 25% cases were consensual; of this category of consensual cases, 45% of the victims were in the age group of 16-18 years and 71% of the alleged accused was between 16-23 years. Not only did this reveal that consensual relations between peers is criminalised – raising questions about why a law on child sexual abuse is being used to criminalise adolescent sexuality. Additionally, it also brings out the discriminatory implementation of POCSO, which although gender neutral

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<sup>10</sup> *Implementation of the POCSO Act, 2012 by the Special Courts: Challenges and Issues* Centre for Child and the Law-NLSIU’s Studies on the Working of Special Courts in Five States (2018); <https://bit.ly/2vuJw1>

<sup>11</sup> *Implementation of the POCSO Act: Goals, Gaps and Challenges – Study of Cases of Special Courts in Delhi and Mumbai (2012-15)* at pg. 101 and 106. UNICEF, FACSE, HAQ (2017)

in its protection, criminalises underage boys for consensual acts, labelling them as children in conflict with the law – even as it treats girls involved as being children in need of care and protection.

5. PLD's socio-legal study based on interviews with 15 girls from Jaipur, Delhi and Mumbai, called *Why Girls Run Away to Marry* (2019),<sup>12</sup> brings out contexts of social isolation, deprivation, domestic abuse, burdensome house work and moral policing that lead to elopements by girls in resource poor settings. It brings out the use of criminal law, to prosecute boyfriends/ husbands and place girls in custody of shelter homes.
6. These studies, demonstrate that age of consent and minimum age of marriage operate simultaneously to magnify the punitive action against consenting adolescents, including those in non-coercive and non-exploitative relations. Not only does POCSO serve as tool of parental and state retribution, it also clogs the criminal justice system that was designed to redress sexual abuse and exploitation. In equating consenting sexuality with abuse, the POCSO reinforces social stigma that encourages notions of guilt and shame in young persons in relation to their sexuality, disabling the reporting of abuse or, as the section below shows, accessing safe and confidential sexual and reproductive health information and services.

### **C. MANDATORY REPORTING UNDER POCSO: INDIRECTLY VIOLATES SEXUAL AND REPRODUCTIVE HEALTH OF ADOLESCENT GIRLS**

Not only does POCSO deny adolescent sexuality, it denies confidential and safe access to sexual and reproductive health information and services. POCSO requires mandatory reporting of sexual activity involving an adolescent, regardless of whether it was consensual or abusive, and regardless of the wishes of the adolescent involved. This severely impacts the sexual and reproductive health rights and well-being – with girls being compelled to register FIRs against their boyfriend/ husbands, against their will as a precondition to accessing abortion and other sexual and reproductive health services, as the evidence below indicates.

1. Research undertaken by CEHAT (Centre for Enquiry into Health and Allied Themes), in Mumbai of the 728 cases they received in the course of working with three Municipal Hospitals in Mumbai. Of these cases, 90 were cases of elopement. In 89 cases, the girls were brought to the hospital by police for medico-legal examination for sexual assault. 60% of the girls who reported that they had eloped were 16-17 years old, and the remaining 40% were in the 13-15 year old bracket. Out of all the girls who eloped, 22% reported that they had married their partners in a temple or masjid after running away from home. Most of these were 17 years in age. About 51% of the adolescent girls brought to hospital for medico-legal examination refused for evidence collection after

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<sup>12</sup> See *Why Girls Run Away to Marry: Adolescent Realities and Socio Legal Responses in India* (Partners for Law in Development, 2019) at <https://bit.ly/32g9QUn>

knowing that it will criminalise their partner. The rest of the girls coerced to consent for evidence collection by their family members. However, all of these girls were pressurised to consent to evidence collection empathically stated that they went with their boyfriend of their own free will, without any coercion. In 5 cases where the girls refused for examination, police again brought them to the hospital for an examination due to pressure from family. In situations where girls approached public hospitals for seeking MTP for unwanted pregnancy, the hospitals compelled them to register case with police and FIR, by making abortion conditional upon reporting.<sup>13</sup>

2. According to Enfold Trust, the criminal justice system is stretched and unable to address child victims of sexual coercion, force and exploitation. Adolescents from vulnerable settings who are dependent on overloaded government healthcare services are unable to give sufficient attention to patients whether for pregnancy care or termination. The delays pursuant to reporting a case sometimes exceed the time period of 20 weeks within which a pregnancy is allowed in law. This forces the girl to either approach the courts or carry the pregnancy to full term.
3. News reports suggest that the fear of mandatory reporting and prosecution under POCSO, have made families in rural and tribal areas avoid taking daughters-in-law for institutional delivery for fear of getting reported under POCSO. This puts underage mothers at risk of maternal mortality and morbidity, defeating the objective of government schemes that seek addresses these serious concerns. More generally, mandatory reporting pushes girls to seek unsafe underground MTP services or resort to quacks, at great risk to their health and well-being.

#### **D. COMPREHENSIVE SEXUALITY EDUCATION: A NECESSARY PUBLIC HEALTH RESPONSE**

According to UNICEF, there are an estimated 120,000 children and adolescents aged 0-19 were living with HIV in India in 2017, the highest number in South Asia.<sup>14</sup> While the NACO does not have a distinct age category for adolescents in its estimates of people living with

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<sup>13</sup> See Understanding Dynamics of Sexual Violence: A Study of Case Records <http://www.cehat.org/uploads/files/Understanding%20Dynamics%20of%20Sexual%20Violence%20Study%20of%20Case%20Records.pdf>

<sup>14</sup> UNICEF, Children, HIV and AIDS: The world in 2030 (2018). available at <https://www.childrenandaids.org/children-hiv-and-aids-2030>, last accessed on 17.02.2020; South Asian Regional Snapshot available at <https://data.unicef.org/wp-content/uploads/2018/11/SA-regional-snapshot-2018.pdf>, last accessed on 17.02.2020

HIV, it estimates that India has had 22.67 (10.92-40.60) thousand HIV positive women who gave birth in 2017. (p. xxvii).<sup>15</sup>

Since 15-29 age groups comprises of 25% of India's population, NACO identifies young people as a vulnerable group, at high risk of contracting HIV. Most young people, according to NACO, become sexually active during adolescence. In the absence of right guidance and information at this stage they are more likely to have multi-partner unprotected sex with high risk behaviour groups. Particularly vulnerable are impoverished, unemployed, under-employed, mobile/migrant youth, adolescents in sex work, young injecting drug users and street children as they are faced with high risk behaviour in their everyday life.

This group as studies on law indicate are also most vulnerable to criminalisation, including for consensual relations – and are the least likely to have information on the risks of contracting HIV and means of protecting themselves from the infection. Young women are biologically more vulnerable to HIV infection than young men – a situation aggravated by their lack of access to information on HIV and even lesser power to exercise control over their sexual lives.

Severe lack of awareness on sexual and reproductive health amongst adolescents calls for an implementation of Comprehensive Sexuality Education (CSE) Program in schools. The Central government's efforts to implement an Adolescent Education Program in 2007 met with an initial backlash due to social conservatism from 13 states for an immediate ban on CSE. The ban is still held by at least 5 states across the country.<sup>16</sup> Moreover, the dichotomy between the POCSO and the Rashtriya Kishor Swasthya Karyakram (RKSK) programme needs to be addressed. While the adolescent friendly programme has envisaged a safe space for adolescents to enable health services, POCSO criminalized their sexual relations and mandates reporting which serves as an impediment.<sup>17</sup>

### **RECOMMENDATIONS** **(WITH SUPPORT FROM INTERNATIONAL STANDARDS):**

The PCMA and POCSO have been enacted with the express purpose of protecting the interests and rights of children, in relation to sexual abuse, including underage forced marriages. Yet, in practice, the two laws have become tools of parental retribution, moral policing against older adolescents - even as the investigation, prosecution for redressal of abuse remains fraught. It is of grave concern when legislations meant to protect against violations, coercion, exploitation and abuse of a vulnerable population, get weaponized

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<sup>15</sup> India HIV Estimations 2017, Technical Report by NACO and ICMR, MoHFW (2017). Available at [http://naco.gov.in/sites/default/files/HIV%20Estimations%202017%20Report\\_3.pdf](http://naco.gov.in/sites/default/files/HIV%20Estimations%202017%20Report_3.pdf), last accessed on 17.02.2020.

<sup>16</sup> Why India Needs Sex Education, Shai Venkatraman, Available at: <https://everylifecounts.ndtv.com/india-needs-sex-education-17422>

<sup>17</sup> See Understanding Dynamics of Sexual Violence: A Study of Case Records <http://www.cehat.org/uploads/files/Understanding%20Dynamics%20of%20Sexual%20Violence%20Study%20of%20Case%20Records.pdf>

against the beneficiary group. By discrediting agency and evolving capacities of adolescents, the legislations obstruct confidential, accurate and safe sexual and reproductive health information and services to young populations.

Article 5 of the CRC acknowledges differentiated and evolving capacities of those between 0-18 years, stipulating approaches that correspond with the development stages of the child. Accordingly, the CRC differentiates between physical, sexual, emotional and psychological development of adolescents, especially in relation to sexuality mandating that this group not be criminalized for the same, and are assured access to safe, quality and accurate information and services. Contrary to this key principle of CRC, the POCSO infantilizes older adolescents, denying recognition of their capacities and their sexuality, and obstructing access to information and services. In light of the above, we urge the Ministry to consider the following recommendations:

## **I. Regarding PCMA**

1. PCMA provides calibrated responses to three kinds of under-age marriages – those that are impending can be stopped; those that take place can be nullified at the initiative of the party who was a minor; and void ab initio where the marriage was the result of kidnapping, enticement, trafficking or violated an injunction order. Given the diversity of trends within underage marriage, including that of elopements; and the increasing age of marriage in India - a differentiated and nuanced approach will be in the best interest of the child, their evolving capacities, as well as the contextual realities.
2. Underage marriages in India are largely within resource poor communities, where the lack of opportunities pushes the adolescents into early adulthood – in terms of the responsibilities they assume including marriage. To accelerate any shift within this context requires investments into root causes so as to create meaningful opportunities and develop agency of girls.
3. For an amendment of PCMA to help girls, it should take into account how the law is currently being used, and as studies show, it is used by parents as a tool of moral policing and retribution against elopements – but scarcely against arranged and forced marriages. At the heart of law is the well-being of the ‘girl’, and yet the law is used to bolster parental and community controls over young persons.
4. The impact of making all underage marriages void has to be examined before introducing it. In Karnataka, not a single underage marriage has been reported or prosecuted – although the state law was amended to render all underage marriages void. News reports indicate the underage girls are still being married. What will the legal status of the girls, their children, their right to matrimonial property be, in the long run if the underage marriage lacked legal recognition? How will the law tackle abandonment and destitution of girls in void marriages, and respond to husbands who take advantage of the void status to re-marry?

5. According to the Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices [CEDAW/C/GC/31-CRC/C/GC/18] November 14, 2014, at para 20:  
*“Child marriage, also referred to as early marriage, is any marriage where at least one of the parties is under 18 years of age.. .....As a matter of respecting the child’s evolving capacities and autonomy in making decisions that affect her or his life, a marriage of a mature, capable child below 18 years of age may be allowed in exceptional circumstances, provided that the child is at least 16 years of age and that such decisions are made by a judge based on legitimate exceptional grounds defined by law and on the evidence of maturity, without deference to culture and tradition.”*
6. It is suggested that the amendment to PCMA be as follows:
  - a. Specify the kinds of marriages that are void and voidable;
  - b. Self-arranged marriages/ elopements involving one or both underage parties should remain voidable at the option of parties.
  - c. Increase the time frame within which a marriage can be nullified;
  - d. Create enabling environment and support services for underage married girls to exercise their right to nullify the marriage. The choice of nullification should remain with the underage party to the marriage.
  - e. Protect the economic, residential rights of the girl, as well as protection from domestic abuse from matrimonial as well as natal family;
  - f. Place the responsibility of provisioning education, health care and livelihood opportunities to girls on State and district administration.
  - g. For categories of marriages declared void, the responsibility must be placed on local government and administration to ensure that the girl is not rendered destitute and is provided meaningful training and livelihood opportunities.

## II. Regarding POCSO

1. Article 5 of CRC mandates that the principle of evolving capacities shall guide the state in delineating and differentiating between rights of the 0-18 population based on their development. It reads: *States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.*
2. The CRC mandates a treatment of adolescents that is commensurate with their evolving capacities, including in relation to sexuality. It abjures uniform and generic approaches for all persons between 0-18 years. *General Comment No. 20 to the CRC: Rights of the child during adolescence [CRC/C/GC/20], December 6, 2016 “Generic policies designed for children or young people often fail to address adolescents in all their diversity and are inadequate to guarantee the realization of their rights. The costs of inaction and failure are high: the foundations laid down during adolescence*

*in terms of emotional security, health, sexuality, education, skills, resilience and understanding of rights will have profound implications, not only for their individual optimum development, but also for present and future social and economic development.”*

3. Further General Comment No. 4 to the CRC: Adolescent Health and Development in the context of the Convention on the Rights of the Child [CRC/GC/2003/4] calls for minimum ages that correspond to the evolving capacities, age and maturity of adolescents – rather than a minimum age that corresponds to legal adulthood. To quote para 9: *“In the context of the rights of adolescents to health and development, States parties need to ensure that specific legal provisions are guaranteed under domestic law, including with regard to setting a minimum age for sexual consent, marriage and the possibility of medical treatment without parental consent. These minimum ages should be the same for boys and girls (article 2 of the Convention) and closely reflect the recognition of the status of human beings under 18 years of age as rights holders, in accordance with their evolving capacity, age and maturity.”*
4. Reinforcing the need for setting minimum ages that acknowledge evolving capacities of adolescents, the General Comment No. 20 (2016) to the CRC: Rights of the child during adolescence [CRC/C/GC/20] emphasises: *“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.”*
5. It is therefore recommended that:
  - a. Age of consent be reduced to acknowledge sexuality of adolescents and to decriminalise consenting non-coercive, non-exploitative sexual contact between those of proximate ages.
  - b. Introduce exceptions to mandatory reporting, to enable health care providers, counsellors, doctors and social workers to provide confidential medical and support services in line with their professional ethics and the well-being of the adolescent.
  - c. Introduce compulsory non-judgemental accurate comprehensive sexuality education and life skills as part of formal and non-formal education curricula for children and adolescents.

### **III. Regarding MTPA/ Sexual and Reproductive Health Rights**

1. It is suggested that:
  - a. Remove all limits for medical termination of pregnancy for vulnerable women including minors, survivors of rape and incest.
  - b. Make available safe, confidential medical termination of pregnancy and sexual and reproductive health services, including in relation to STI/ STD and HIV for adolescents, based on their informed consent.

- c. Make available, safe, legal and quality medical termination of pregnancy for all underage girls at their request, especially in the context of rape, incest and sexual exploitation.
- d. Ensure that the name and other particulars of a woman whose pregnancy has been terminated shall be kept confidential.

**In light of the above draft submissions, MWCD is called upon to organise a wider consultation with stakeholders.**

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