

## SAHELI SUBMISSION TO THE TASK FORCE SET UP TO EXAMINE AGE OF MOTHERHOOD AND RELATED ISSUES

This submission is from Saheli Women's Resource Centre. Set up in 1981 in New Delhi, India, **as an autonomous women's group, Saheli has been working on issues related to women's rights, equality and justice for almost 40 years.** Early struggles against oppression and violence within marriage, family and community led to campaigns against dowry, domestic violence, rape, sexual harassment, communalism, war and discrimination against women in the law. Our work on women's health includes long standing campaigns against coercive population control policies, hazardous contraceptives, sex-determination, the unethical sale of emergency contraceptives and vaccines against cervical cancer. Increasing conservatism, militarisation, globalisation and state repression are some of the other challenges we meet jointly with queer, Dalit, adivasi and democratic rights' groups, and other peoples' movements. **Saheli is grateful for the opportunity to present crucial issues of women's rights and child rights in relation to early marriage, reproductive health and rights with the Task Force.**

**At the outset, we would like to state that we stand by the Memorandum submitted by various Child Rights Groups and Women's Organisations** (Memorandum attached). In addition we would like to state the following:

- *"The Task Force has been constituted to examine the correlation of age of marriage and motherhood with (a) health, medical well-being and nutritional status of mother and neonate/infant/child, during pregnancy, birth and thereafter, (b) key parameters like Infant Mortality Rate (IMR), Maternal Mortality Rate (MMR), Total Fertility Rate (TFR), Sex Ratio at Birth (SRB), Child Sex Ratio (CSR) etc. and (c) any other relevant points pertaining to health and nutrition in this context."* While these are laudable objectives that need to be achieved but as per the news reports, increasing the age of marriage is being seen as an important legal route to achieve these goals. **But this is based on several assumptions:**

- 1. that the cause for lack of education among girls is early marriage;**
- 2. that increasing the age of marriage will automatically improve women's health status;**
- 3. that the age of motherhood will increase with the age of marriage, which in turn will improve MMR, SRB and CSR.**

***But we would like to assert that these assumptions are nothing but fallacies.***

**In our long years of work on women's health, we at Saheli have seen that the primary reasons for early marriages in India have been poverty, lack of access to education, especially higher education, and lack of safety in the public spaces.** High maternal mortality is not caused by early age pregnancies, but rather, malnutrition among women, repeated pregnancies triggered by high infant mortalities and the pressure to produce male children, lack of sexual autonomy, and of course, abysmal access to health and medical services, as well as information about sexual and reproductive health and rights. **If the long term objective the Task Force seeks is to empower women, it must**

**recommend a holistic approach for women's health, education and safety, rather than a cosmetic move of simply changing the legal age of marriage.**

**What are the practical implications of increasing the age of marriage to 21 years for women?**

- **While all Indian men and women have the legal right to vote at the age of 18 as well as the right to consent to sexual intercourse, the fact remains** that women are most often treated as minors, incapable of making their own decisions at least until they are married. So what does increasing the age of marriage in a such society mean – that they will now be treated as minors till they attain the age of 21? Would it not mean a further curbing of the sexual autonomy of young women by their parental families, with the aid of the law, the State machinery and a sexually repressive society? Can this be termed as a progressive intervention?

There are countless instances in which the family and police use the age of the young woman and her choice partner on the ground that she is a minor and lacks the ability to consent. At times, girls who have attained majority are falsely projected as minors to deny them the power to consent to marriage or sexual intercourse. Despite being aware that it is a marriage of choice and voluntary elopement, the police collude with the families to protect patriarchal interests and community honour. In most cases, the parents' word regarding the young woman's age is usually accepted by the police and the courts, and she is 'returned to the custody' of the family. In rare cases where girls vehemently refuse to return to familial custody, they are sent to state-run shelter homes, from where they are not even released on attaining majority. It is often the husband have to initiate legal proceedings for their release, and even then, the future remains uncertain. Who can forget the case of Hadiya, a 24 year old medical student who fought a doubled edged battle against converting to Islam and choosing to enter an inter-religious marriage – which brought the weight of the family, the Supreme Court and even the National Investigative Agency, down upon her! See for details <https://indianexpress.com/article/india/hadiya-case-a-timeline-5090710/>.

- **Clearly, a move that delegitimises relationships between young adults until they are 21, will deeply impact young people struggling within caste, class and religiously divided society that India is today.** A country where young couples who dare to disobey community dictates are severely punished; where honour killings are condoned by ministers and the police; where the price for choosing a partner may be death or public humiliation. (Prem Chowdhry, **Contentious Marriages, Eloping Couples: Gender, Caste and Patriarchy in Northern India** (2007); Lynn Welchman and Sara Hossain (eds.), **'Honour': Crimes, Paradigms, and Violence Against Women**, (2005)).

**It is a sad reality that the police and judiciary are as feudal and fundamentalist as the powerful communities in India.** In Saheli's 2007 study on religion, caste community and women's sexuality titled, TALKING MARRIAGE, CASTE AND COMMUNITY: VOICES FROM WITHIN, numerous women spoke of how the police, lawyers, magistrates, and even judges often tried to dissuade them from marriages of choice; with the young couple even threatened them with 'false' cases, because the officers in question were more sympathetic to parents, even those who the law to punish innocent boys and girls.

**In fact, as a study done by Rukmini S at *The Hindu* of over 600 rape cases in a Delhi court reveals, of the cases tried over 40% dealt with consensual sex, usually involving the elopement of a young couple and the girl's parents subsequently charging the boy with rape.** The notion that women are the sexual property of their communities is deeply internalised in Indian society, leading to violence not merely by the girls' families but also the community. These girls themselves fear going back to their parent's home and are completely at the mercy of system that sees them as needing 'rehabilitation' while all they want is freedom to choose their own path. Boys and their families are the worst victims of this, especially if they belong to 'lower castes' or minority religions. The police that generally take months to find murders and killers is at its most efficient when it comes to 'locating' inter-faith/inter-caste couples. The boy's family is also treated as criminals, and powerful caste and religious majorities make sure that they are socially and economically devastated. Can we forget, this is the land where Manoj and Babli were killed for having 'dis-honoured' the norms of the community. Manoj and his family were charged with kidnapping Babli after they had married in conformity with the law, and were granted court-ordered police protection!

**Studies also show that even the anti trafficking law is frequently (ab)used by parents to punish young and adolescent boys and girls for marrying or eloping out of choice.** For instance, the provisions which says, "Where a police officer or Anti Trafficking Police Officer or Anti-Trafficking Rescue and Unit has reason to believe that it is necessary to rescues person without undue delay due to the imminent danger that may cause to his life and person, he or it may remove such person from any place or premises and produce him before the Magistrate or Child Welfare Committee, as the case may be, and shall take all necessary steps for the medical examination of such person for the purposes of determination as to the age, the assessment or detection of trauma, injury or illnesses..." makes young men and women from marginalised communities extremely vulnerable to misuse of the law. Likewise other sections of the Anti-Trafficking law that allow attachment of property of those 'convicted of trafficking' have a long lasting impact on the parents and families of boys who are falsely implicated for falling in love with women from other castes and communities.

- **Thus, there is a need to understand consensual relationships and making a difference between age of consent for sex and marriage.** Let's not make sex synonymous with marriage. Increasing the age of motherhood through law is premised on the assumption that young boys and girls will have sex for procreation and that too only after 21 years of age. This will lead to prohibiting all consensual relationships below the age of marriage and thus will only criminalise such relationships. We all know that this is not the reality of times where age for sexual activity is decreasing.
- **Consequently, we need to face the fact that the push for increasing the age of marriage of women is nothing more than Population Control by another name.** And let us not fool ourselves, the push to control birth rates and population will have a direct impact on Child Sex Ratios, increasing sex selective abortions once again; in the bargain, undoing years of campaign and struggle to get the PC-PNDT Act in place, and to get it amended – an Act that is in any case under threat with the latest notification of the central government suspending several of its provisions under the guise of the lockdown. As the plea filed by Sabu George challenging the "illegal and arbitrary" notification said, "despite the requirement

for maintenance of records being a standard feature of laws regulating medical practices, in the present instance, the PCPNDT Rules have been arbitrarily selected and 'suspended.'

### Some legal contradictions

- **What does it say about our Indian society and law, that in terms of criminal culpability,**the law has decreased the age at which juveniles can be tried as adults from 18 to 16 years; and yet, now it is asserting men and women must be 21 years old in order to be able to adult enough to be married.
- **Rape within marriage is another crucial point for the Task Force to consider.** As recently as 2015 in the case of Independent Thought v. Union of India, the Supreme Court, while dealing with aspects of marital rape in cases where wife is of the age between 15 to 18 years, recognised the recommendations made by the Justice Verma Committee Report and held that Exception 2 to Section 375 of IPC should be read as sexual intercourse or sexual acts by the husband with his wife who is above the age of 18 years is not rape.

The women's movement in India has struggled to work towards a world in which 'empowerment' of women is about increasing their capacity of being autonomous in decision making and having more control on their lives. What will this legislation for increasing the age of marriage will do? It will further increase the patriarchal control of families and the state agencies on issues of choices of young girls in the areas of sexuality and marriage. ***In fact, two main concerns about the provision of increasing the age of marriage are increasing parental control over young adolescents and criminalising normal sexual activity.*** What is needed is to increase girls' access to education, provide an environment free from sexual violence and access to reproductive health care.