
Submission by Counsel to Secure Justice to the Standing Committee for Education, Women, Children, Youth, and Sports on the Prohibition of Child Marriage Amendment Bill, 2021

Counsel to Secure Justice (CSJ) is a registered non-profit that has been working with children who have been harmed by sexual violence, and children who are in conflict with the law for over nine years. Since its inception, CSJ has provided direct legal and psychosocial support to more than 225 children during criminal proceedings in Delhi trial courts. CSJ employs a holistic approach to providing access to justice services and has also been working with families of children who have been harmed as well as those who have caused harm. In the first year of the pandemic, CSJ also began legally representing women complainants in matters of domestic violence.

Based on CSJ's almost decade long experience of working with children who have been sexually abused as well as adolescent children who have been involved in romantic relationships, these recommendations are made in relation to the Prohibition of Child Marriage Amendment Bill, 2021. These recommendations complement the *Civil Society Submission to the Standing Committee for Education, Women, Children, Youth, And Sports on the Prohibition of Child Marriage Amendment Bill, 2021*¹ (including all the policy recommendations), by **specifically elucidating lived experiences of children CSJ's social workers have worked with in the capacity of Child Welfare Committee appointed Support Persons.**

Infringement of right to life and personal liberty

The proposed amendment will infringe young women's fundamental rights including the right to marry, the right to life and personal liberty. Based on the existing law and evidence from it, it is highly likely that the provision will be used by families of young people to exercise control over them and prevent them from exercising their rights.

In a previous study on child marriage, in cases where girls got married out of their own choice, and parents filed cases against them under this law, it was often as a way of **exerting excessive parental control and negating the young person's right to personal liberty.**²

In CSJ's experience as well, criminal prosecution has been used as a tool of parental control, particularly by abusive families. A 17 year old child, Sunaina³, ran away from her house thrice due to constant verbal and physical abuse and married a boy of her own choice. Another child, Sitara, also chose to marry a boy she loved to escape her father's sexual abuse.

¹ Madhu Mehra and Mary E. John, Submission sent to Parliamentary Committee on behalf of civil society including National Coalition for Advocating Adolescent Concerns, that CSJ is a part of

² Tahra Begum v. State, W.P. (CRL) 446/2012, CrI. M.A. 3701/2012, High Court of Delhi, para. 10

³ All names used are pseudonyms

Similar, to Sunaina's and Sitara's experience, evidence shows that many young girls get married of their choice to evade abuse and housework⁴ and to get out of forced marriages.⁵ In 75% of cases examined in the study on child marriage, where girls married of their own volition, courts acknowledged that the girls' wishes of not being controlled by parental authority must necessarily be considered and that taking the girl's views into account was an integral aspect of upholding the welfare of the child.⁶ To determine 'best interests' of a young girl, her views, decisions and needs must necessarily be considered. However, the proposed amendment further impedes the possibility of young girls exercising their own right to personal liberty.

Instead of supporting the welfare of young girls, often, the legislative provisions become a tool for further controlling young girls and depriving them of their autonomy, an occurrence that will be further intensified if the marriageable age is increased to 21.

Young girls between the age of 18 and 21 will not be able to exercise their own choice, i.e., their right to personal liberty of which right to marriage is core, and parents will be able to use the legislative provision as a way of stifling their needs and interests, and promoting moral policing and vigilantism, in direct opposition of their constitutional rights.

Increased criminalization because of retaliatory measures.

The child marriage legislation has, in the past, been overwhelmingly used by as a retaliatory measure against the boy when parents are unhappy with a self-arranged marriage by a child.⁷ 65% of the cases involve parents using the law against self-arranged marriages by their daughters. The law is used as a retaliatory measure more than it is used to prevent arranged or forced marriages.⁸

CSJ has witnessed this in working with adolescent girls as well with parents using the law to punish the boy.-17 year old Sunaina (mentioned above) who ran away from her house thrice due to constant verbal and physical abuse and married a boy of her own. The family subsequently filed a criminal case against the 22 year old boy. The law was used to control the girl's choices, rather than to protect her.

Monica, a 17 year old girl ran away with a boy and eventually was brought back home after a missing case was filed. The boy is still in judicial custody and will likely suffer a huge psycho-social toll of being in prison and face huge barriers on release. The family has not let Monica leave the house since and has forced her to discontinue education and compelled her into doing all the household labour, and Monica has told us that she has now stopped thinking about her future and will simply give in to her family's commands.

⁴ Mehra, M., & Maheshwari, S. (2021). Child Marriage Prosecutions in India: Case Law Analysis of Actors, Motives and Outcomes 2008-2017. *Motives and Outcomes, 2017*.

⁵ Enfold Proactive Health Trust & UNICEF, Girls involved in "Romantic Cases" and the Justice System - A Study based on the Experience of Girls in Child Care Institutions in Bihar" (2021), Chapter V.

⁶ Tahra Begum v. State, W.P. (CRL) 446/2012, Cri. M.A. 3701/2012, High Court of Delhi, para. 10

⁷ Mehra, M., & Maheshwari, S. (2021). Child Marriage Prosecutions in India: Case Law Analysis of Actors, Motives and Outcomes 2008-2017. *Motives and Outcomes, 2017*.

⁸ Mehra, M., & Maheshwari, S. (2021). Child Marriage Prosecutions in India: Case Law Analysis of Actors, Motives and Outcomes 2008-2017. *Motives and Outcomes, 2017*.

Often young girls refuse to return to their homes after criminal prosecution is initiated by their family, and they are sent to protective shelter,⁹ and in some cases, this may also take a toll on their wellbeing and mental health, which has also been acknowledged by courts.¹⁰

Especially in the case of inter-caste, inter-religious and other marriages that are considered socially unacceptable by families, the provisions of the law will be used as a punitive retaliatory tool against the young adults.

Education

While it has been indicated that the proposed amendment is a way to ensure young girls do not discontinue their education, earlier evidence has shown that girls discontinuing education is majorly attributable to a lack of interest, the high cost, and household labour, with marriage being a reason for dropping out of school for only 7.9% girls.¹¹

In CSJ's experience as well, Sunaina (mentioned earlier), a young child who married a boy after running away from her abusive family, could continue her education and live a safe, healthy life, only after she made this decision to break away from her family and marry someone of her choice. Other girls, staying with their own parents after a case was filed against the boy, have been forced to stay at home and discontinue education. Lack of access to education needs to be understood in light of the nuanced social context, particularly the major contributing reasons including being forced to do household labor, the unaffordable cost and a disinterest in studying, further exacerbated during the pandemic.

Child marriage is often a consequence of girls dropping out of school, instead of vice versa and evidence shows that girls' non-completion of the 10th standard is associated with increased risk of marrying early, and in fact, is the key "tipping point" promoting early marriage.¹²

While there is indeed a pressing need to increase accessible education for young girls, increasing the age of marriage cannot be an effective means to do so and requires a more holistic approach. In fact, it is shown that an increase in education is the main factor that has resulted in decreasing child marriages in India and more effective policy measures to ensure increased education can also delay the age of marriage¹³ and subsequently pregnancies, while avoiding the adverse consequences of further criminalization. A study of 20 years of evidence has shown that to bring in genuine, systemic change and delay marriages, building human capital through education and opportunities is the most compelling pathway¹⁴ while currently women's participation in the workforce in India is at 20%, an all time low¹⁵.

⁹ Mehra, M., & Maheshwari, S. (2021). Child Marriage Prosecutions in India: Case Law Analysis of Actors, Motives and Outcomes 2008-2017. *Motives and Outcomes, 2017*.

¹⁰ Furqan v. State, W.P.(CRL) 1025/2012, High Court of Delhi, 22 January 2013.

¹¹ Mehra, M., & Maheshwari, S. (2021). Child Marriage Prosecutions in India: Case Law Analysis of Actors, Motives and Outcomes 2008-2017. *Motives and Outcomes, 2017*.

¹² Marphatia, A. A., Wells, J. C., Reid, A. M., & Yajnik, C. S. (2022). Biosocial life-course factors associated with women's early marriage in rural India: The prospective longitudinal Pune Maternal Nutrition Study. *American Journal of Biological Anthropology, 177*(1), 147-161.

¹³ Jejeebhoy, S. (2019). Ending Child Marriage In India: Drivers and strategies. UNICEF. <https://www.unicef.org/india/media/2556/file/Drivers-strategies-for-ending-child-marriage.pdf>

¹⁴ Malhotra, A., & Elnakib, S. (2021). 20 years of the evidence base on what works to prevent child marriage: A systematic review. *Journal of Adolescent Health, 68*(5), 847-862.

¹⁵ For 2019: Labour Force, Female (2021). The World Bank.

https://data.worldbank.org/indicator/SL.TLF.TOTL.FE.ZS?locations=IN&most_recent_year_desc=false; For 2020 Urban data: Periodic Labour Force Survey (PLFS) – Quarterly Bulletin [October-December 2020] <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1753531>

Counsel to Secure Justice

Towards providing healing & ensuring justice for people
& communities impacted by gender-based harm & other
forms of violence.



A clear indication that even the girls not getting married early, are not joining the workforce and experiencing the benefits of economic independence. Any policy aiming to empower young girls, needs to be formulated on the bases of an in depth understanding of these key indicators.

Reproductive rights

A woman's right to reproductive choices is recognized as a dimension of their personal liberty whether married or not.¹⁶ However once the marriage of 18 year old women is no longer legally recognized, reproductive rights of women will also be jeopardized, including seeking access to a safe medical termination of pregnancy, maternal health, access to contraceptives. **Children CSJ has worked with have been able to access medical termination of pregnancy because they have been supported by Child Welfare Committee orders, however, for girls above the age of 18, accessing medical aid related to their reproductive rights will be difficult, and are extremely likely to face stigmatization and hampered rights at the hands of healthcare providers. While stigmatization has been prevalent around reproductive rights, *this amendment will allow for state sanctioned stigma.***

Recommendations

In line with the above submissions, **it is recommended that the age of marriage for young girls be maintained at 18 instead of being raised to 21** in order to protect their right to life and liberty and to prevent collateral adverse consequences. Simultaneously, in order to ensure long term systemic change, other components, particularly education of young girls must be focused on to ensure delayed marriages and avoid the health costs of early pregnancies.

CSJ would be happy to appear before the committee. For any further communication, please contact the undersigned.

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¹⁶ Government of India (2008). *Law Commission of India, Report 205: Proposal to Amend the Prohibition of Child Marriage Act, 2006 and Other Allied Laws.*