



Submission to the Parliamentary Standing Committee on the Prohibition of Child Marriage (Amendment) Bill, 2021¹

6 February 2022

About Enfold

Since 2001, Enfold has been working in the area of prevention of and response to child sexual abuse in India. Over the years, we have contributed towards the capacity building of police, medical practitioners, judicial officers, and public prosecutors, Child Welfare Committees, Juvenile Justice Boards, social workers, and others in Karnataka, Madhya Pradesh, Delhi, Jharkhand, Manipur, West Bengal, Uttar Pradesh. We have also worked with State Governments in Bihar, Karnataka, Madhya Pradesh, and Rajasthan, providing training, and technical support to authorities and functionaries under the child protection system, conducting research studies, offering recommendations for the effective implementation of child laws, and supporting the formulation of Child Safeguarding Policies.

The Rehabilitation and Restorative Practices teams at Enfold work directly with children in the criminal justice and juvenile justice system and have had the experience of supporting child victims of sexual offences, as well as girls who have eloped with their partners and been subsequently placed in Child Care Institutions by the Child Welfare Committee established under the Juvenile Justice (Care and Protection of Children) Act, 2015, for their care and protection. The Research team at Enfold has undertaken empirical research to understand the lived realities of adolescent girls in consensual relationships, as well as the manner in which “romantic cases” involving adolescent girls has been dealt with by the Special Courts under the POCSO Act, 2012. Drawing from this experience, we present our submissions on the Prohibition of Child Marriage (Amendment) Bill, 2021 for the kind consideration of the Hon’ble Members of the Parliamentary Standing Committee.

We urge the Hon’ble Members of the Parliamentary Standing Committee to consider the harmful impact of the increase in the age of marriage on the rights of the girls whose interest the Bill seeks to advance. Our concerns are as follows:

1. The Prohibition of Child Marriage (Amendment) Bill, 2021 seeks to increase the age of marriage for women to 21 years from the present 18 years purportedly to ensure the education of the girl child and improve maternal health parameters by discouraging early pregnancies and early motherhood.² The Bill also seeks to achieve gender equality by ensuring the same minimum age of marriage is the same for both men and women. We are cognizant of the harmful effects of child marriage, and believe that governmental and community resources need to be directed towards addressing the root causes of child

¹ This submission has been prepared by Swagata Raha & Shruthi Ramakrishnan from the Research Team at Enfold Proactive Health Trust with inputs from Arlene Manoharan, Kushi Kushalappa, Dr. Sangeeta Saxena, Sreedevi Nair, and Amala Dasarathi.

² Para 2, Statement of Objects and Reasons, the Prohibition of Child Marriage (Amendment) Bill, 2021



marriage - poverty, uneven development, lack of quality education opportunities and gender inequality. By increasing the age of marriage, the government is using the heavy-hand of the criminal justice system to address a social problem that will end up harming the very target population it seeks to protect. Based on our experience, we are concerned that the Bill will adversely affect young women, and in-fact deepen the existing gender divide, placing the right to life, health, dignity and privacy of women and girls at grave risk.

The increase in age will violate the right to life and personal liberty and privacy of women between 18-21 years

2. The proposed Bill is at severe odds with the existing legal framework in India which recognises “18” as the legal age of majority for purposes such as voting, buying and selling property, entering into contracts, obtaining a driving license, etc. The Indian Majority Act, 1875 sets the age of majority as eighteen years for all persons domiciled in India.³ All major civil and political rights take effect at 18 years, the age at which all persons may exercise their autonomy and take decisions in all matters that concern their lives. To delay the guarantee of an important civil right such as the right to enter into marriage and to treat adults as children, impacts the full enjoyment of rights of adult women between 18-21 years, particularly their right to life, liberty and dignity.
3. Adults in consenting, self-arranged relationships and marriages that do not have societal and familial approval for transgressing boundaries of religion, caste, gender and sexuality, are often subjected to extreme physical violence or threats to their lives at the hands of their parents, relatives and even community members. It is not uncommon for families to use the law to file false criminal cases against partners of their consenting adult daughters, in an attempt to forcibly separate the couple. There have been “honour killings,” where families of consenting adult couples go so far as to murder their own off-spring in order to protect their family’s “honour,” which has been laid to test by adults who have chosen their own relationships. As observed by the Supreme Court of India, “When the ability to choose is crushed in the name of class honour and the person’s physical frame is treated with absolute indignity, a chilling effect dominates over the brains and bones of the society at large.” (Shakti Vahini v. Union of India, (2018) 7 SCC 192). **Courts have also recognized in numerous cases that adults have the unequivocal constitutionally guaranteed right to reside with whoever they want, and define the contours of their relationships, including that of marriage and consenting sexual activity.** The Constitution of India clearly recognizes the liberty and autonomy inherent in each individual, which extends to the ability to choose one’s own partner, part of an inviolable aspect of the right to privacy and personhood (*K.S. Puttaswamy v. Union of India*⁴). In *Shafin Jahan v. Asokan K.M.*,⁵ (2018) 16 SCC 368, the Supreme Court of India held that the right to marry a person of one’s own choosing

³ Section 3, The Indian Majority Act, 1875

⁴ (2017) 10 SCC 1).

⁵ (2018) 16 SCC 368.

is a part of the right to life under Article 21 of the Constitution of India. In *Soni Gerry v. Gerry Douglas*⁶, the Supreme Court of India held,

“It needs no special emphasis to state that attaining the age of majority in an individual's life has its own significance. She/he is entitled to make her/his choice. The courts cannot, as long as the choice remains, assume the role of *parens patriae*.”

4. This view has been upheld by judgments of numerous High Courts across India in *Habeas Corpus* petitions filed by partners/friends of adults being forcibly detained by their families for choosing a partner of their choice, or simply for wanting to determine the course of their own lives as adults with a constitutional right to determine where they will reside, with whom, and under what conditions.⁷ The Supreme Court in *Puttaswamy* unequivocally stated “[p]roportionality is an essential facet of the guarantee against arbitrary State action because it ensures that the nature and quality of the encroachment on the right is not disproportionate to the purpose of the law.”⁸ **The PCM Bill, by increasing the minimum age of marriage, adopts a disproportionately restrictive norm that directly impacts the rights of adults to exercise their fundamental right to freedom and live in a valid marriage.**
5. In *Anuj Garg & Ors vs Hotel Association Of India*⁹, the Supreme Court of India has expressly criticized the excessive restriction of women's fundamental rights under the garb of protection. Reading down a law that restricted women from working in establishments that served liquor, the court stated

“The fundamental tension between autonomy and security is difficult to resolve...it is a reasonable proposition that that the measures to safeguard such a guarantee of autonomy should not be so strong that the essence of the guarantee is lost. **State protection must not translate into censorship...The present law ends up victimizing its subject in the name of protection.** In that regard the interference prescribed by state for pursuing the ends of protection should be proportionate to the legitimate aims. The standard for judging the proportionality should be a standard capable of being called reasonable in a modern democratic society.

36. Instead of putting curbs on women's freedom, empowerment would be a more tenable and socially wise approach. This empowerment should reflect in

⁶ (2018) 2 SCC 197

⁷ Mann v. State, 2018 SCC OnLine Del 12479; Sangamitra Acharya (Dr.) v. State (NCT of Delhi), 2018 SCC OnLine Del 8450; Parveen Dayal v. State, W.P.(CRL) 2384/2019 (Delhi HC); Tessy James v. Director General of Police, 2018 SCC OnLine Ker 2140; Sreeja S. v. The Commissioner of Police Thiruvananthapuram & Ors., 2018 SCC OnLine Ker 3578; Shampa Singha v. State of West Bengal & Ors., 2019 SCC OnLine Cal 153; Sadhana Sinsinwar & Anr. v. State & Ors., W.P. (Crl). 3005/2018 (Delhi HC).

⁸ K.S.Puttaswamy v. Union of India, (2017) 10 SCC 1) at para 310

⁹ Appeal (civil) 5657 of 2007

the law enforcement strategies of the state as well as law modeling done in this behalf.”

6. Under the garb of empowering women, the PCM Bill essentially takes a protectionist approach and is an incursion on the right of adult women to marry. In *K S Puttaswamy v. Union of India*,¹⁰ the Supreme Court observed that aspects such as the sanctity of marriage, the liberty of procreation, and the choice of a family life are integral to one’s autonomy and dignity. Both autonomy and dignity are essential aspects of privacy. The state is permitted to violate the right to privacy only on the grounds of a legitimate state interest. This entails three requirements- i) there must be a law in existence to justify an encroachment on privacy, ii) that the nature and content of the law must fall within the scope of ‘reasonableness’ mandated by Article 14, and iii) the means adopted by the legislature are proportional to the object sought to be achieved by the law.¹¹ **Increasing the age of marriage for women to 21 years is disproportionate to the objectives sought to be achieved and is a heavily intrusive measure which impinges on the decisional autonomy and privacy of adult women between 18-21 years, when there are less restrictive alternatives available to empower women and discourage early marriage and pregnancy.** The objectives of the PCM Bill can be achieved even when the age of marriage is set at 18 years with greater investment in higher education of adolescent girls, poverty alleviation measures, access to nutrition and health services, skill development programs, and intensive awareness campaigns. Additionally, the assumption that increasing the age of marriage to 21 years will reduce teenage pregnancies, the infant mortality rate, and the maternal mortality rate, is unfounded. Evidence shows that it is poverty, poor nutritional status, lack of access to educational opportunities and health services that impact health outcomes, not age.¹²
7. **The Bill overlooks the rich jurisprudence on equality and liberty and erroneously conflates the ideal age of marriage with the minimum age of marriage and severely undermines the rights of adult women, especially their fundamental right to life, liberty, and privacy.** An overemphasis on law to delay marriage overlooks the prevalent ground-level inequality and discrimination, as well as socio-economic deprivation and lack of adequate educational and employment opportunities for girls. **To suggest that by increasing the age of marriage, women will be treated at par with men, blatantly ignores the ground realities and lived experiences of women in a patriarchal culture with deeply entrenched gender roles.** The Bill in a large leap assumes that families who cannot get their girl children married before 21 years will instead invest in their education. Experience of engaging with the ground realities shows that the age of 18 years as a minimum age has been overwhelmingly challenging to enforce. **An absurd legal standard of 21 years will drive child marriages underground and instead be exploited to**

¹⁰ K S Puttaswamy v. Union of India, (2017) 10 SCC 1 (Supreme Court).

¹¹ Id.

¹² Banerjee, B. et al, 2009; Masoumi, SZ. et al, 2017



prevent girls from marrying someone against their parents wishes. As opposed to advancing equality, the amendment is a disproportionate response to the problem of early marriage. It is also unrelated to the objective of the law to prevent “child” marriages and blurs the distinction between children and adults. It will inadvertently leave women who seek to leave their violent families, escape forced marriages, or be with the partner of their own choice, without any support or social protection and be an affront to their dignity and basic right to marry.

The Bill will result in excessive criminalisation

8. We are concerned that the amendment will **inevitably result in excessive criminalisation of young people entering into relationships willingly.** This is substantiated by our ongoing evidence-based research on 1715 “romantic cases,” i.e., cases under the POCSO Act where the victim girl, her family, or the prosecution expressly states that she is in love with the accused, or the court arrives at such a conclusion. An in-depth analysis of judgements from Assam, Maharashtra, and West Bengal which were registered and disposed during the period of 2016-2020, has revealed the following:
 - a. While actual numbers are much higher, cases where the victim was expressly stated to be in love with the accused constituted 25.1% of all decided cases under the POCSO Act between 2016-2020 in Assam, Maharashtra, and West Bengal.
 - b. The law was triggered predominantly by the girl’s family as in 80.2% cases, they lodged the FIR in a romantic case. In only a minority of cases, i.e., in 314 cases (18.3%) did the girl approach the criminal justice system. Nearly half of these cases, i.e., in 143 cases (45.5% of 314) were filed due to a breach of promise to marry or refusal to marry on the part of the accused.
 - c. In 1113 cases, i.e. 64.9%, the girls left home and in 803 cases (46.8%), the girls married the accused immediately or during the course of the trial. The primary reasons for leaving home included disapproval of the girl’s family, arrangement of a marriage against her will, and violence meted out after the family learnt about the relationship.
 - d. Alongwith charges under the POCSO Act and Section 376, Indian Penal Code (IPC), the men were charged under Section 363, IPC (kidnapping from lawful guardianship) in 920 cases, under Section 366, IPC (kidnapping, abducting or inducing woman to compel her marriage) in 356 cases, and Section 366A (procurement of minor girl) in 504 cases.
 - e. In all three states, the proportion of victims’ family members claiming minority of the victim was high at 63.3% (1086 cases). In contrast, victims stated that they were minors in 664 cases (38.6%) and adults in 391 cases (22.8%).
 - f. Convictions were recorded in 106 cases, while 1609 cases (93.8%) resulted in an acquittal and in a vast majority of cases, i.e., in 1358 cases (79.2%) the victim did not testify against the accused.

- g. These cases also took substantial time to be disposed by by courts as the average time taken to dispose of a “romantic case” case from the lodging of the FIR was 827 days (i.e., 2.2 years).
9. The above findings illustrate the manner in which the laws are currently being used to regulate consensual adolescent relationships, and portend to similar use in relationships and marriages involving girls between 18-21 years. It will extend the period of control that families can legitimately exercise control over girls. As per the National Family Health Survey, 2019-2021 [NFHS-5], 23.3% of Indian women between the ages of 20 to 24 years were married before they attained 18 years.¹³ This figure is higher in rural areas where 27% of Indian women aged 20 -24 years were married while they were below 18 years of age. As per NFHS-4 (2015-16), a whopping 48.0% of the women aged 20 - 24 years were married by the age of 20 years and 63.4% between the age of 25 - 29 years were married by the age of 21 years.¹⁴ The survey estimates the median age of first marriage for women aged 20 - 49 was 19 years.¹⁵ **Based on this data, it appears that in one stroke, the Bill will criminalise the majority of marriages that take place in India.**
10. **The economic and workload burden that will be imposed on the already strained criminal justice system on account of the increase in age needs to be factored.** According to *Crime in India, 2020*, 15.5 lakh cases of crimes against women were pending disposal by courts and the pendency rate was a staggering 95.6%.¹⁶ While only 785 cases under the PCMA were registered in 2020,¹⁷ there were 24745 cases of kidnapping against women of which 13641 cases involved women above 18 years.¹⁸ Further, 11286 of adult women who were recovered were abducted for the purpose of marriage and 3484 were for the purpose of elopement/love.¹⁹ Enfold’s studies as well as other studies²⁰ based on the implementation of the POCSO Act, reveal that cases of consensual adolescent sex or marriage constitutes 20-25% cases under the POCSO Act. A similar trend will be visible when the age of marriage is increased, as there will be a jump in the use of Section 366, IPC - kidnapping for the purpose of marriage as cases and add to the already large docket of “romantic” and elopement matters that are languishing in lower and upper courts.
11. **The increase in age is unlikely to deter early marriage, but will undoubtedly render a majority of adults between 18-21 years vulnerable to criminalisation for entering into a marriage. It will result in increased arrests, detention, breakdown of families, and**

¹³ India Fact Sheet, National Health and Family Survey 2019-2021 [NFHS-5], pg 3

¹⁴ India Report, National Health and Family Survey 2015-2021 [NFHS-4], pg 165

¹⁵ India Report, National Health and Family Survey 2015-2021 [NFHS-4], pg 156

¹⁶ Crime in India, 2020, Table 3A.7.

¹⁷ Table 4A.2(ii), NCRB, Crime in India 2020

¹⁸ Crime in India, 2020, Table 3A.2(i).

¹⁹ Crime in India, 2020, Table 2C.3.

²⁰ Centre for Child and the Law-NLSIU, 2018. Of the 2788 cases across five states, the study found that romantic cases (cases in which the prosecutrix admitted to a relationship with the accused) constituted 21.2 percent in Andhra Pradesh, 15.6 percent in Assam, 21.58 percent in Delhi, 21.8 percent in Karnataka (in 3 districts), and 20.5 percent in Maharashtra.

institutionalisation of young people, which will come at a huge social, economic and health cost. It will inevitably have a stigmatizing impact upon children born in a marriage penalised by the State. Further, it will also result in a waste of precious time of the investigating authorities, and clog the already overburdened judicial system.

Failure to consider structural and socio-economic factors

12. **The proposed amendment also fails to consider the complex socio-economic context within which young girls are compelled to leave home and enter into a marriage.** In a study by Enfold and UNICEF in 2021 on *Girls involved in “Romantic Cases” and the Justice System*, the experience of 43 girls residing in Child Care Institutions in Bihar was gathered. Their explanations of why they chose to elope and marry their partners revealed that 23 girls (53.49%) said that they decided to leave home with their partners when their families forcibly fixed or solemnised their marriage with another person against their will.²¹ 18 girls (41.86%) found the violence being perpetrated against them by their families after they learnt about the relationship unbearable, and an equal number shared that they left home because of parental opposition to their relationship.
13. The voices of the girls excerpted below indicate the poor implementation of the PCMA and the lack of accessibility and visibility of prevention mechanisms such as Child Marriage Prohibition Officers, Gram Panchayat, Childline 1098, etc., to girls in such vulnerable situations. It also indicates the risks faced by young people in inter-caste and inter-faith relationships:

“मेरी शादी मेरे घरवाले कहीं और करना चाहते थे और हम नहीं करना चाहते थे। इसलिए हम लोग घर छोड़ दिए।” (My parents were getting me married off to someone else and I did not want to marry that person. Therefore, we decided to elope.)

“मां-पिताजी मेरी शादी एक 40 साल के व्यक्ति से करवाने की बात कर रहे थे। इसलिए गुस्से से घर छोड़ दिए।” (My parents were talking about getting me married to a 40-year-old person. So I got angry and left home.)

“मेरी शादी जबरदस्ती दूसरे लड़के से करा दी गई थी, पर मैंने उसे स्वीकार नहीं किया। तब वह लड़का अपने घर चला गया। इस घटना के बाद आए दिन घर में मुझसे डांट फटकार होती थी। बहुत तनाव में मैंने घर छोड़ने का फैसला किया, और फिर बताया।” (I was forcibly married to another boy but I did not accept him as my husband. So, my husband left me and went home. After that, I was getting abused and scolded every day. There was a lot of pressure. That’s when I decided to leave home and then I told my partner.)

²¹ 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.

“हमारा उनसे बात करना मम्मी को पसंद नहीं था क्योंकि वह दूसरे धर्म के हैं। वह हमें जब भी मोबाइल देते थे बात करने के लिए तो मम्मी उसको हमसे छीन लेती थी। इस तरह जब मम्मी ने हमसे तीसरा मोबाइल छीना तब गुस्से से बहुत डाटा, कहा की पापा को बता देंगी और उनसे बात करना बंद करो। फिर एक दिन दोपहर को मम्मी-पापा ने उन लोगों पर केस किया। उसी शाम छः बजे हम उनके साथ भाग गए और शादी करके उनके दोस्त के पास रहने लगे।”

(My mother did not like me talking with him since he is from a different religion. He used to give me a mobile phone and my mother used to take it away from me. When she snatched my third mobile phone, she scolded me a lot, threatened to tell my father and asked me to stop talking to the boy. After that, one afternoon my parents registered a case against them. The same evening at six o'clock I ran away with him, got married and we lived with his friend.)

“सब लोग बोलते थे कि नीचे जाति का है, तो अच्छी बात नहीं है उससे दोस्ती करना। फुफा, चचेरा भाई सब टॉर्चर करते थे। कहते थे कि नीचा जाति है मेरे औकात का नहीं है... देहाती लोग है तो उतना समझेंगे नहीं।” (Everyone said that he is from a lower caste and it is not good to be friends with him. My uncle and my cousin would torture me and say that he is from a lower caste and was beneath our status... they are from the village and do not understand.)

14. That the girls lacked any other alternative is evident from the fact that 23 out of the 43 girls who were interviewed, (i.e., 53.49%) said that they were aware that running away to get married was wrong or an offence. A majority of the girls also shared that the decision to leave their parents' home was taken by them. 27 girls (62.79%) had taken the initiative to leave home by themselves alone, and 12 girls (27.91%) said that the decision was jointly taken with their partner. In one case, it was suggested by the boy's aunt, as there was a fear of caste-based violence (also referred to as, “honour killing”), which had been perpetrated in the past by the girl's family.
15. Out of the 23 girls who responded that they were aware that running away to get married was an offence, three girls said that they were not aware of the actual consequences that would follow if a case were filed against their partner and that they would have to live in a Children's Home. Out of the 43 girls who were interviewed, 17 girls (39.53%) said that at the time of leaving their homes, they were not aware that running away to get married was unlawful. This data shows that quite a few girls were unaware of the age of marriage and genuinely believed that it was lawful to leave home and get married before the age of 18. This data must also be seen in light of the fact that many girls believed that it is lawful to marry below the age of 18, since their parents were arranging marriages for them anyway. **We believe that increasing the age of marriage to 21 will simply exacerbate this situation, with more young adults being trapped in the criminal justice system for genuinely believing that they could get married at the age of 18 or before that.** While it is true that ignorance of the law is no defence, the reality, as our study shows, is that quite a few girls are still not aware of the legal age of marriage. In this context, increasing the age of

marriage to 21 will simply result in more girls aged between 18-21 years falling foul of the law.

16. **The Bill fails to consider that as opposed to empowering girls, it is likely to be used against them when they decide to exercise their choice regarding their life partner.** Our studies point that the age of the girl is heavily contested in court, and many girls who shared their anguish of being detained against their will, even though they were above 18 years of age. This will undoubtedly be the fate of many young women who will experience an incursion on their liberty based on the age provided by their family members.

Implication on access to social security benefits

17. Currently, married girls or pregnant girls below the age of 18 years are not entitled to benefits available under Central and State Schemes aimed at protecting maternal health and providing for maternity benefits.²² Pregnant minor girls are presently forced to hide their pregnancies and even opt out of formal medical care in the fear of triggering criminal action against their partners. Further still, they remain at risk in accessing safe medical termination of pregnancy although it is legal as per the Medical Termination of Pregnancy Act, 1971. In fear of the law, they are forced to opt for unsafe methods or go for backdoor abortions performed by unregistered medical practitioners.
18. We are concerned that a similar fate will befall women between the ages of 18-21 years who are married and pregnant. Attempted access to reproductive and maternal health-related benefits may also draw attention to the fact that a “child marriage” has been solemnised.

Departure from international standards

19. The PCM Bill also stands in contravention of several international legal treaties ratified or acceded to by India. International human rights law treaties lay emphasis on the right to found a family. Article 23(2), International Covenant on Civil and Political Rights, 1966 (ICCPR) recognises the “right of men and women of marriageable age to marry and to found a family shall be recognized.” Although no specific marriageable age has been specified in the ICCPR, the Human Rights Committee has observed that “age should be such as to enable each of the intending spouses to give his or **her free and full personal consent** in a form and under conditions prescribed by law.”²³ The Committee on the Elimination of all Forms of Discrimination against Women and the Committee on the Rights of the Child have jointly observed that “**Child marriage, also referred to as early marriage, is any marriage where at least one of the parties is under 18 years of age.**”²⁴

²² Jagriti Chandra, “‘Maternity scheme exclusionary, need benefits for all’, *The Hindu*, 19 December 2019, <https://www.thehindu.com/news/national/other-states/maternity-scheme-exclusionary-need-benefits-for-all/article30314030.ece>

²³ Human Rights Committee, CCPR General comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses (1990), para 4.

²⁴ 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 (2019) on harmful practices, para 20.



20. The Committee on the Elimination of Discrimination against Women has in its recommendation on “Equality in marriage and family relations” unequivocally stated that “the Committee considers that the minimum age for marriage should be 18 years for both man and woman.”²⁵ Further the Committee states that **“A woman’s right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being...Subject to reasonable restrictions based for example on a woman’s youth or consanguinity with her partner, a woman’s right to choose when, if, and whom she will marry must be protected and enforced at law.”**²⁶
21. The global norm signified by legal standards in most countries has been to recognise 18 years, as the age of majority and the age at which individuals can exercise several crucial civil and political rights, including the right to marry.

Conclusion: Holistic solutions that respond to root causes needed

“Criminalization fails where there is no social norm of legal obedience, when a new legal norm is too far from a current social norm, or both. When a new legal norm is too far from a current social norm, law enforcement personnel have reasons not to enforce and citizens have reasons to disobey.” - Gerry Mackie²⁷

22. There is a need to address the wider context that underpins child marriages and acknowledge that poverty and not age is the critical consideration. Laws can set norms, but cannot in the process criminalise an entire segment of the population. Experience on the ground also reveals the tacit sanction of child marriages by authorities themselves, given the socio-cultural implications of a thwarted marriage upon girls. The increase of the age of marriage to 21 years is a legal norm far removed from the social realities of the majority of families and young women in India and will simply drive early marriages underground.
23. A 2013 Report by the Inter-Parliamentary Union based on the impact of laws on child marriage in 10 African countries revealed that there was minimal correlation between the strength of the child marriage laws and its prevalence.²⁸ **Contrary to popular expectations, all the countries opting to address the issue through stringent penal laws *in fact* had comparatively higher rates of early marriage.**²⁹ Countries in which the rate of early marriage declined, it was explained by increase in education, and community outreach

²⁵ General Recommendation No.21 on Equality in marriage and family relations, General Recommendation adopted by the Committee on the Elimination of Discrimination against Women, para 36

²⁶ General Recommendation No.21 on Equality in marriage and family relations, General Recommendation adopted by the Committee on the Elimination of Discrimination against Women, para 16

²⁷ Mackie G., Effective Rule of Law Requires Construction of A Social Norm of Legal Obedience. Forthcoming, edited volume on Antanas Mockus, Harvard University Press as cited in Inter-Parliamentarian Union Geneva, The contribution of laws to change the practice of child marriage in Africa, [October 2013], p.18.

²⁸ Inter-Parliamentarian Union Geneva, The contribution of laws to change the practice of child marriage in Africa, [October 2013] Pg 18

²⁹ Id. at pg 18.

programs. No study has found penal provisions as a factor contributing to decline in child marriage.³⁰ The report unequivocally opines that although law plays a role in addressing early marriages, it is effective only when complemented with a clear action plan, enforcement mechanisms, financial allocation, and training of public functionaries.

24. The PCM Bill is a dangerous and short-sighted approach to delay the age at which women marry and confuses the minimum age with the ideal age. A complex issue such as early marriage requires a multi-pronged approach with community engagement, holistic education, and adequate financial resources to ensure functional child protection mechanisms to prevent child marriage and violence against children. The impact of COVID-19 on the socio-economic well-being of the majority of the population and on children's access to education needs to be considered as well. To address early marriage and improve women's participation in the work-force and the gender inequality gap, investments are required in schools, higher education, skill-development and social protection programmes that enable girls and women to access opportunities on the same footing as boys and men. The government also needs to ensure that girls who marry before the legal age are not deprived of access to reproductive health care and maternity benefits. Prohibiting marriages before 21 years will not automatically transform the lives of women, raise their level of education, accelerate their entry into the workforce, and make them independent. This move is premature and it will be a norm that will neither be respected by families, communities, or young people, nor enforced by functionaries. Instead, it will undoubtedly be used to curtail the choice exercised by young adults.

In the light of the above, we urge the Standing Committee to reject the amendment proposed to the PCMA to increase the age of girls to 21 years. We also propose that the following measures be considered to address early marriages in India:

- a. An amendment to the Right of Children to Free and Compulsory Education Act, 2009 to ensure children have access to education till the completion of 18 years. A concomitant investment in building schools, hygienic toilets, and safe means of transportation for girls to access education.
- b. Socio-economic policies and programmes that address nutrition, health, and also facilitate skill-development for adolescent children pushed out of school.
- c. Legal provisions to ensure that adolescents should have unhindered access to reproductive and sexual health care, as well as access to social protection schemes for pregnant women, without triggering the criminal justice system.
- d. A legislative provision that mandates the introduction of comprehensive life skills and personal safety education programs within the school curriculum and review of

³⁰ Id. at pg. 18



textbooks to ensure they do not perpetuate gender-based stereotypes that restrict women's role in society.

- e. A review of laws to identify barriers to effective access to sexual and reproductive health information and services.
- f. Legislative recognition of Child Protection Committees at the village and block level with their obligations and accountability mechanism laid out clearly.
- g. Ensuring adequate allocation of budget for education and child protection in the Union Budget.

Swagata Raha,

Head, Research
Enfold Proactive Health Trust
swagata.raha@enfoldindia.org
+91-9900105511

Shruthi Ramakrishnan,

Senior Legal Researcher
Enfold Proactive Health Trust
shruthi.ramakrishnan@enfoldindia.org
+91-9845029889

