

The role of law in ending child marriage



Child Marriage Remains a Human Rights Crisis in India

- * India accounts for the highest number of child marriages globally, despite legal and policy commitments
- * 1 in 3 girls married before 18 nationally, higher in some states
- * New national data shows marginalized girls are most vulnerable

Child Marriage Triggers a Continuum of Harm and Human Rights Violations

- * Non-consensual sexual relationship
- * Early and unwanted pregnancy
- * Maternal mortality and morbidity
- * Physical and emotional abuse and violence
- * Deprived of educational and employment opportunities

Violations of Rights Guaranteed Under International Human Rights Treaties and the Constitution

- * Right to **life and health**: exposes women and girls to reproductive health risks, especially early pregnancy with increased risk of maternal mortality and morbidity.
- * Right to **non discrimination and equality**, including right to consent to marriage: results from and reinforces discriminatory social values and negative gender stereotypes and involves sexual and domestic violence.

- * Right to **determine the number, spacing and timing of children:** used as a means to control women's and girls sexuality and reproductive capacity resulting in unwanted, forced and repeated pregnancies.
- * Right to **freedom from torture and cruelty:** a form of servile marriage that involves domestic servitude and marital rape.
- * Right to **education and right to work:** forces girls to leave school eventually denying them opportunities for employment and pushing them into an unbreakable cycle of poverty and disempowerment.
- * Right to **privacy:** arbitrarily interferes with important decisions about their private lives and bodily integrity.

HUMAN RIGHTS STANDARDS

- * **Establish 18 years as the minimum age for marriage in law.**
- * **Ensure that child marriage has no legal effect**
- * **Ensure legal accountability and effective remedies**
- * **Harmonize national and personal laws with HR standards**
- * **Prevent, investigate and punish all acts of violence, including within marriage**
- * **Register all marriages and births**
- * **Prioritize addressing the reproductive health needs of married girls and those at risk**



Recent Commitments by and Recommendations to the Government to End Child Marriage

- * Regional Commitments
- * National Court Cases and State Plans.
- * UN TMBs.
- * UN Special Rapporteurs.
- * UN GA and Human Rights Council Resolutions.

India's Accountability to Eliminate Child Marriage: Key Legal Barriers and Implementation Gaps

Child marriage violates the Prohibition of Child Marriage Act and the Constitution

- * Absence of a uniform minimum age
 - * Personal laws provide for a lower age of marriage
 - * Lower age of marriage for girls than boys

- * Legal status of marriages involving children: voidable not void *ab initio*
 - * Onus of challenging validity of marriage on the child
 - * Unreasonable criteria for dissolution of marriage
 - * Need judicial authorization

- * Restrictive statute of limitation

Legal Gaps and Implementation Barriers (cont'd)

- * Poor implementation
 - * Lack of trained Child Marriage Prohibition Officers as mandated
 - * Lack of clarity of roles and responsibilities among duty bearers
- * Failure to clarify primacy over personal laws leading to ambiguity about minimum legal age of marriage and rights to dissolve a child marriage

OTHER LAWS RELATED TO THE CONTINUATION OF CHILD MARRIAGE

- * Exceptions that allow child marriage to legitimize what would otherwise be recognized as rape
- * Failure to recognize child marriage in domestic violence and child protection laws
- * Poor enforcement of laws on dowry
- * Child labor laws do not recognize child labor within marriage
- * Lack of enforcement of laws and judicial decisions mandating registration of birth and marriages
- * Failure to mandate free education until 18 years of age

LEGAL BARRIERS AND DETERRENTS FACED BY GIRLS WHO WANT TO END THEIR MARRIAGES

- * Powerlessness of girls in decision-making
- * Unreasonable criteria for dissolution of marriage
- * Weak enforcement of laws on sexual violence and limited recognition of sexual crimes within marriage
- * Lack of evidence of age at the time of marriage
- * Lack of alternatives for physical and financial security outside of marriage



KEY LEGAL RECOMMENDATIONS



Strengthen the PCMA

- Harmonize personal and national laws with human rights
- Establish appropriate penalties for the offence
- Removal of barriers for dissolution of child marriages



Effective enforcement of PCMA

- Elimination of barriers in access to justice
- Investigation, prosecution and punishment of perpetrators
- Legal protection and remedies to girls
- Ensure oversight of state initiatives, including recognizing best practices



Reform of related and discriminatory laws and policies

- Mandatory and systematic registration of births and marriages
- Criminalization of sexual violence within marriage
- Ensure access to education until 18
- Ensure girls' access to sexual and reproductive health services

Potential Role of NHRIs in India

- * **Intervene in individual cases of child marriage**
- * **Order investigations to identify the scope of child marriage and gaps in enforcement**
- * **Review and strengthen laws by proposing human rights-based legislation and intervening in judicial cases concerning child marriage**
- * **Convene meetings to identify and promote solutions for the elimination of child marriage**

THANK YOU!

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