

**MEMORANDUM
TO
TASK FORCE SET UP TO EXAMINE AGE OF MOTHERHOOD AND RELATED
ISSUES**

We are grateful for this opportunity to bring to the members of this Task Force our collective experience, advocacy and research on adolescents and young people, women's rights and child rights in relation to early and child marriage, reproductive health and rights. We are presenting a short account of the main points that concern us. Each of these points can be backed up with evidence (both macro and micro), as well as from years of experience on the ground in several regions of the country. We would urge the Task Force to open avenues for further engagement at a more detailed level than is possible here.

We are all fully committed to gender equality and the promotion of women's rights and the rights of the child, and have been engaging on these fronts for decades together. So it may seem surprising as to why we are questioning the idea of raising the minimum legal age of women's marriage to 21 years (to the same age as that for men), which on the surface is surely a means to promote gender equality. We hope you will agree that we are putting forward a very carefully thought out response on this matter, which must be considered seriously.

Our basic premise is that any proposed change in the law needs wide discussion, since it would have far reaching consequences at many levels, even more so at the present time of the pandemic and the accompanying social and economic crisis. We urge the Task Force ***not to take up the legal route of raising the age of marriage for women from 18 to 21 years***, as has been reported in the news. Instead, there are several productive – and urgent – measures that the government should be taking in order to strengthen the positive changes that are already underway according to the available evidence. We make our points as briefly as possible, using official data such as the National Family Health Survey, and will refer to several studies in the references. Needless to say, we are happy to provide further details if required.

1. Child marriage has already given way to late adolescent marriage.

At the all-India level, out of all women who were 20-24 years old at the time of the NFHS-4 survey, *only 6.6% were married below 15 years* (young adolescents), while as many as *20.2% were married between 15-17 years* (late adolescence). In other words, less than 27% (of women in the 20-24 age group) were married before the current legal age of 18 years. This marks a huge improvement from the last decade. Similar improvements can be shown using Census data 2001 to 2011.

Thus, child marriage is no longer a significant phenomenon in India – what we now see is late adolescent marriage, and even here the age at marriage has been improving. Prior to the onset of the pandemic, on the ground information has led us to expect further improvements.

Should the legal age of marriage be raised to 21 years, no less than *56% of the women (in the 20-24 year age group of NFHS IV) who married below this age – and their families – would be turned into criminals overnight*. Moreover, this proportion is *as high as 75% amongst the poorest twenty percent of the population*. Even in a progressive state like Kerala (with excellent health coverage and high levels of education) one third of all women in the 20-24 year group marry below 21 years. Note further that these estimates suffer from what is called the truncation effect: Many women in the age group 18-20 years at the time of the survey and who were unmarried would be marrying before the age of 21 years. **In other words, the vast majority of Indian women across the country marry before 21, and would now become criminalisable.**

2. Early marriage is the consequence – not the cause – of girls dropping out of school.

It is well known that there is a strong correlation between fewer years of education and lower ages at marriage. But which is the cause and which the consequence? Are daughters being pulled out of school (or college) to be married off? Or are girls dropping out of school for other reasons, and then being married off? There are now excellent field based studies in those states reporting high rates of early marriage, such as West Bengal, Rajasthan, Telanganaⁱ, Andhra Pradeshⁱⁱ, and Jharkhand.ⁱⁱⁱ The most frequent sequence is that girls drop out first and only then are married off. Girls end up dropping out despite their mothers being strongly committed to educating their daughters. **Rather than marriage being the reason for drop out, it is the school system that is failing girls**, who are constrained by poverty and low quality of education, pushed out of the schooling system, thus becoming vulnerable to early marriage.

This Task Force is seeking ways to increase access to higher education – which is a crying need in rural India especially. **This means investing in secondary and higher secondary levels of schooling in rural areas.** Existing research shows that in those villages with high schools there are much lower rates of early marriage. On the other hand, early marriages are more prevalent where the quality of schooling is poor, ending at the level of elementary education, and girls are at home with no other work than to help with domestic chores. Adolescents' fundamental right to education beyond elementary education has to be recognized in law and policy. Only then is justice rendered to children as the State's commitment enabling them to live with dignity and freedom.^{iv}

3. Early marriage does not cause high fertility rates.

Fertility rates have also seen a very impressive decline in recent years, even going beyond what demographers had predicted. **From NFHS 3 to NFHS 4 the proportion of teenage pregnancies has halved.** In over 13 states the fertility rates have dropped to below replacement levels, and this includes states like West Bengal and Telangana which are among the highest prevalence states in India for child marriage. The only state that evinces relatively higher rates of fertility in the country is Bihar (TFR 3.54), and is in the nature of an outlier. **In other words, with this exception, all families, even those from poorer backgrounds and who are marrying early are having small families.** This can also be fully corroborated from micro studies.

4. Poverty – not early marriage – is the main cause of the ill health of mothers and their children.

One of the most important questions for this Task Force is to examine closely the factors that are responsible for malnourishment and anaemia of mothers, and factors like stunting and underweight among children. When correlations are established between greater health risks to mother and child at younger ages of marriage, this needs to be understood carefully. First of all, the age of 18 years has been scientifically determined to be the age at which most women's reproductive systems are fully developed. Healthy women at this age with adequate pre-natal care can be expected to give birth to healthy babies. However, countries like India are highly unequal, with widespread malnourishment among women, and poor access to health care in several regions. Early marriage predominates among the poorer and more marginalized communities, while women from wealthier backgrounds marry at higher ages. Therefore statistically speaking, if only age at marriage is looked at in relation to the health indicators of mother and child, one forgets that poorer women are over represented at younger ages. When analysed, NFHS 4 data shows quite clearly that once different factors are disaggregated (such as age, poverty, educational attainment and so on) it is poverty that is playing an overwhelming role in the health of mothers (even at higher ages of marriage such as 21 years) and much more so than mere age. Age is the least significant factor and poverty the greatest. In a Lancet study^v of 144 countries, authors note that the existing evidence of increased risk of death during pregnancy or childbirth among adolescent girls is inconsistent and contradictory. Rather, maternal mortality ratio among adolescents is low compared with women older than 30 years.

Hence the most important approach to changing the future of adolescents and young women for a more gender equal and empowered future is to bring them out of the poverty trap. This can be achieved through the combination of education (higher secondary to higher education) along with meaningful employment opportunities. Only from such a position can girls negotiate their marriages, their family life and the health of their future children. This is the challenge and it is a massive one in the current context of declining employment opportunities for women, especially in rural areas (This can be illustrated with the help of National Sample Survey data).

5. Further raising the age of marriage will only criminalise – not prevent – early marriages.

Studies indicate that the laws enacted for preventing child abuse and child marriage have inflicted considerable unintended harm on young persons, for whose protection they were enacted. Rather than achieve the envisaged goals, increasing the age of marriage for girls to 21 years will only aggravate the vulnerability and harm to young persons. Studies show that it is primarily parents who resort to the law through a combination of remedies under different laws – nullification and punishment under PCMA, for rape and kidnapping under POCSO^{vi} and the IPC, as well as recovery of daughter through Habeas Corpus,^{vii} against self-arranged marriages or elopements.^{viii} The formal law is largely inaccessible to girls, and risk laden.

Law reform is necessary for purposes of reducing the ambit of criminalization and parental retaliation against girls and young couples. Legal changes that criminalise and dilute legal protections of underage marriages will render girls more vulnerable to harm. The age of consent has to be reconsidered with in-proximity protections to de-criminalise consensual relations between adolescents, in line with the recommendations of the Committee on the Rights of the Child concerning adolescence^{ix}. Further, the minimum age of marriage should remain at 18 years, and with it, the provision that allows the underage party to marriage to decide whether or not to opt out of marriage. Such law reform would be consistent with the highest international standards as set out in the CRC, the CEDAW, and the ICCPR which India has ratified – which stipulate the right to marry, recognize adolescent capacities and rights to age appropriate SRHR information and services, and forbids criminalization of consensual behaviours.

The implementation of programmes on the ground to prevent child marriage clearly show that it is when there is awareness of law, which girls can use to negotiate the continuation of education and delaying of marriage, combined with the availability of support services for them (accessible and affordable education, health services, supportive family and communities, opportunities for employment after education) that marriages are either stopped or delayed. ^x

6. Other policies are far more relevant for helping to prevent early marriages.

We believe that there are many other productive routes for the state to consider in order to strengthen and empower young women, but not via the legal route of criminalization.

Much better policies are needed than the ones on offer today, such as the Conditional Cash Transfer Schemes of Kanyasree, Rajsree, Shaadi Mubarak and so on, which are known colloquially as “dahej schemes” and basically encourage girls to marry at 18 years. There are many studies that have pointed out the problems with these schemes. They reinforce the sense of burden represented by daughters who must be married off at 18 years, rather than encouraging girls to study further.^{xi}

Instead consider policies that would directly help girls stay in school and give their parents hope of jobs after leaving school or college. Make education for girls free all the way to higher education, especially from marginalised backgrounds, with preferences in government jobs.

7. Reproductive health, contraceptive and abortion access for all women are needed more than ever, especially under conditions of the lockdown.

Reproductive health services have been severely impacted by the COVID 19 lockdown, resulting in unwanted pregnancies, unsafe abortions and maternal deaths. Estimates by FRHS India (footnote xii) indicate that anywhere between 25 and 27 million couples have not been able to access contraception during the lockdown period. Minors and caregivers are reluctant to report cases of unwanted pregnancies in the current scenario as they are concerned about the minor being taken to public places like police stations and hospitals.(footnote xiii) Stigma and confidentiality are huge issues related to abortion seeking.

Reproductive and sexual health services are an issue for young people even in so called 'normal' times, as several studies show (footnote xiv). NFHS data demonstrates that the use of contraceptives has stagnated at 48% and that age at sterilization has remained unchanged at 25 years. From our experience in the field, across several parts of India, we strongly recommend that the Rashtriya Kishore Swasthya Karyakram based on the spirit of the ARSH Strategy be universally implemented with the requisite human and financial resources.

A sensitive RSKS and School Health programme which incorporates Life Skills Education (including Comprehensive Sexuality Education) will enhance young people's negotiation skills, decision making and support seeking. Programmes such as the Kishori Shakti Yojana, SABALA, etc are also required for improving girls' nutritional status - these must be made universal, and must have community and young people's participation and action built into them.

What would be effective is to make information (knowledge), products (contraception, sanitary pads, counselling) and services (appropriately trained ASHAs, RSKS peer leaders, Adolescent Reproductive and Sexual Health (ARSH) services, regardless of their marital status, available to adolescent girls and boys. Rather than increasing the age of marriage to 21 years, an inter-sectoral approach for addressing adolescent girls' and boys' needs for health, education, skills-development, jobs/ employment would synergise the efforts of the various government departments and go a long way in addressing current gaps and challenges on reproductive health.

8. Why fix an unbroken thing during an unprecedented health crisis and an economic meltdown?

We fail to understand why the idea of raising the age of marriage to 21 years is being contemplated at this moment in time. The Asian Development Bank has predicted a 30% reduction in India's economy. There are numerous daily reports from across the country of joblessness with even well educated men and women signing up for NREGA work in rural areas. All this is leading to consequent mass malnourishment and material hardships of all kinds. There are reports of families struggling to make ends meet, and some may well look to early marriages for their daughters as a way out. Such families need wholesale support for their many basic needs. Schooling under CoVid and lockdown conditions is one of the biggest challenges of the present, when it is not possible to attend classes and online options are being offered in areas which may not even have steady sources of electricity. How can this be a moment to add further to the burdens of families struggling for their very survival by making 21 the legal marriageable age of their daughters, in the absence of which they would face imprisonment or fines?

9. Please pay more attention to Gender Biased Sex Selection and Excess Female Mortality

The TOR of the Task Force mentions adverse Child Sex Ratios and Sex Ratios at Birth. Here too it should not be necessary to spell out details which must be well known to everyone. Census 2011 and NFHS 4 have indicated a further worsening in both SRBs and CSRs in India, as gender biased sex selection (GBSS) in particular is now spreading to most parts of the country including south India. (John 2014 for an overview.)^{xv} However, what must not be forgotten is that there is excess female

mortality at the post-natal level too, and this is a significant contributor to adverse sex ratios, especially in poorer regions of the country and in states like Bihar and Uttar Pradesh. A very significant study (Bongaarts and Guilimoto 2015) ^{xvi} has estimated India's contribution to missing females at 40 million by 2050 due to sex selection and to a lesser extent excess female mortality. Consider what effects the economic slowdown and the now unfolding crisis may have on families newly experiencing hardship and the gender biases against girls that may result.

By way of summing up, **we believe that it is necessary to focus on empowerment, not age.** Articulation of the problem in terms of age at marriage, rather than empowerment of women and girls, obscures the prevalence of structural factors that impede girls' agency, aspirations, and voice, and leads to narrow-focused interventions that aim to merely 'stop' marriages below a certain age, whether 18 or 21 years.

Young people want change and want to get out of their predicament and have the full capacity to be equal partners to reconstruct their lives. Thereby, they will gain confidence to pursue education from the point where they have left off. This would unleash tremendous energy, and build a confident youth force. The state has to shoulder the responsibility of reaching out to them and extend itself to constantly engage with them, consult and visibilise them.

This would correct the injustice meted out to them and give them a fair chance to participate in the process of nation building as well. Given the gross neglect of children, the continuing violation of their human rights and the deprivation of their basic entitlements it is a moral imperative to provide them all that is necessary in terms of education, health, food security and a condition that gives them a sense of self-worth and importance. In all fairness marginalized children in particular require the wholehearted and uncompromising effort of one and all to energise those in power and authority to pledge themselves to children's wellbeing. In all the ways that this note has suggested the national consciousness can be aroused to correct the wrongs that they have been subjected to and so ensure that their sufferings for survival are part of history.

LIST OF ORGANISATIONS AND INDIVIDUALS ENDORSING THIS MEMORANDUM

- 1) Archana Diwedi, Nirantar Trust, New Delhi
- 2) Aparajita Gogoi, Centre for Catalysing Change (CCC), New Delhi
- 3) Amita Pitre, Oxfam- India, New Delhi
- 4) Arvind Ojha, URMUL Trust, Rajasthan
- 5) Asha Bajpai, Child Rights Expert, Mumbai. Maharashtra
- 6) Baitali Ganguly, Jabala Action Research Organisation, Kolkata, West Bengal
- 7) Bharat, Vishakha, Jaipur, Rajasthan
- 8) Bharti Ali, HAQ: Centre for Child Rights, New Delhi
- 9) Bharti Sharma, Shakti Shalini, New Delhi
- 10) Enakshi Ganguly, Co-Founder- HAQ: Centre for Child Rights and Honorary Professor, National Law University, Odisha
- 11) Ghasiram Panda, Action Aid Association India, Odisha
- 12) Gayatri Sharma, Women Power Connect, New Delhi
- 13) Indira Pancholi, Mahila Janadhikar Samiti, Ajmer, Rajasthan
- 14) Jashodhara Dasgupta, Independent Researcher, New Delhi
- 15) Javid Sayyid, Director, American Jewish World Service (AJWS)
- 16) Kavita Ratna, The Concerned for Working Children, Bangalore, Karnataka
- 17) Karuna Bishnoi, Independent Child Rights Expert, New Delhi
- 18) Kiran Modi, Udayan Care, New Delhi
- 19) Madhu Mehra, Partners for Law and Development, New Delhi
- 20) Mary John, Centre for Women's Development Studies, New Delhi
- 21) Manak Matiyani, The YP Foundation, Delhi
- 22) Mahesh Menon, Sai University, Chennai, Tamil Nadu
- 23) Nicole Rangel, Leher, New Delhi
- 24) Nidhi Bansal, CARE India, New Delhi
- 25) Sandhya VK, Sahayog, Lucknow, UP
- 26) Poonam Kathuria, SWATI, Gujarat
- 27) Prabhat Kumar, Save the Children India, Gurgaon
- 28) Prasanna Gettu, PCVC, Chennai
- 29) Rashmi Singh, Independent Researcher, New Delhi
- 30) Ravi Verma, ICRW, New Delhi and Member, National Task Force to Combat Corona, ICMR
- 31) Renu Khanna, SAHAJ, Gujarat
- 32) Rimjhim Jain, CHSJ, New Delhi
- 33) Shantha Sinha , Former Chairperson, NCPCR
- 34) Sneha Mishra, AAINA, Odisha
- 35) Sushmita Mukherjee, Project Concern India, New Delhi
- 36) Swagata Raha, Enfold Proactive Health Trust, Bangalore, Karnataka
- 37) Anuradha Kapoor, SWAYAM, Kolkata
- 38) Shipra Jha, *Girls Not Brides*
- 39) Vanita Nayak Mukherjee, Independent Researcher and Gender Expert, New Delhi
- 40) Venkat Reddy, MV Foundation, Hyderabad, Telangana
- 41) Vipin Bhatt, Independent Legal Expert, New Delhi
- 42) Yogesh, Vikalp Sansthan, Udaipur, Rajasthan

Endnotes and References

- ⁱ Ongoing study on Education, Work and Marriage in three States, Centre for Women's Development Studies with support from the Ford Foundation. All NFHS data in this note from unit level analysis undertaken in this study. The study focused on three states – West Bengal, Rajasthan and Telangana.
- ⁱⁱ Kannabiran, Kalpana, Sujit Kumar Mishra, and S. Surapa Raju. 2017. "Investigating the Causes for Low Female Age at Marriage: The Case of Telangana and Andhra Pradesh." *Economic and Political Weekly* 52 (18): 57-65.
- ⁱⁱⁱ ICRW forthcoming, No Voice, No Choice: Agency and Aspirations of Adolescent Girls on Marriage in Jharkhand, Baseline findings from UMANG Program; Srinivasan, Padmavathi; Khan, Nizamuddin; Verma, Ravi; Giusti, Dora; Theis, Joachim & Chakraborty, Supriti. (2015). *District-level study on child marriage in India: What do we know about the prevalence, trends and patterns?* New Delhi, India: International Center for Research on Women.
- ^{iv} MV Foundation, 2016, Lost Childhood: Voices of Out of School Children in Telangana.
- ^v Nove A., Mathews Z., Neal S., Camacho A.V., "Maternal mortality in adolescents compared with women of other ages: Evidence from 144 countries", *The Lancet*, vol.2, March 2014.
- ^{vi} 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>
- ^{vii} Forthcoming (2020) study by Partners for Law in Development, based on a qualitative review of 83 cases from the District, High and Supreme Courts of India, from 2008-2017.
- ^{viii} Madhu Mehra, *Grassroots Experiences of Using the Prohibition of Child Marriage Act, 2006*, Partners for Law in Development (2019), at <https://bit.ly/2Veg9FA>. Mehra, Madhu and Nundy, Amrita, *Why Girls Run Away to Marry: Adolescent Realities and Socio-Legal Responses in India*, Partners for Law in Development (2019), at <https://bit.ly/2YuyZu5>
- ^{ix} See the Madras High Court's decision in Sabari v. Inspector of Police, Criminal Appeal No. 490 of 2018 decided on 26.04.2019.
- ^x HAQ:Centre for Child Rights. <https://www.haqcrc.org/new-at-haq/report-of-the-child-marriage-prevention-programme-summary-report/>; <https://www.haqcrc.org/issue-based-publication/child-marriage/towards-ending-child-marriage-2018/>
- ^{xi} Nanda, P; Das, P; Datta, N; Lamba, S; Pradhan, E; & Warner, A. (2016) *Making Change with Cash? Impact of a Conditional Cash Transfer Program on Girls' Education and Age of Marriage in India*. International Center for Research on Women; Vindhya, U., Nilanjana Ray, and Ujithra Ponniah 2019. *Conditional Cash transfer schemes and Child marriages in Andhra and Telangana: An Exploratory Study*. Hyderabad: Tata Institute of Social Sciences.
- ^{xii} Impact of COVID 19 on India's Family Planning Program Policy Brief. Foundation for Reproductive Health Services India (May 2020)
- ^{xiii} <https://www.newindianexpress.com/states/karnataka/2020/jun/02/185-lakh-in-india-didnt-get-access-to-abortion-facilities-in-lockdown-2150999.html>
- ^{xiv} Barua, Alka, Katherine Watson, Marina Plesons, et.al. Adolescent health programming in India: a rapid review. Reproductive Health. BMC. (2020). 'Seen, Not Heard: Youth Led Audit of Sexual and Reproductive Health Services in Lucknow. The YP Foundation. (2016).
- ^{xv} John, Mary E., (2014) Sex Ratios and Gender Biased Sex Selection: History, Debates and Future Directions, UNWomen and UNFPA).
- ^{xvi} Bongaarts, John and Christophe Z. Guilmoto (2015) How Many More Missing Women? Excess Female Mortality and Pre-natal Sex Selection 1970-2050. *Population and Development Review* 41 (2).