

## WHY LEGAL ACTION ALONE MAY BE INSUFFICIENT IN ENDING CHILD MARRIAGES

On 22 December, the Prohibition of Child Marriage (Amendment) Bill, 2021, which seeks to raise the age of legal marriage for women from 18 to 21, was sent to a Parliamentary Standing Committee for further discussion. The bill aims to eradicate the practice of child marriage and ensure parity in the marriageable age for men and women. While the concern with child marriage is most welcome, there are several issues regarding the effectiveness of the measure. The rationale on which this bill is premised is not evidence-based, as previous legislation also failed to eliminate child marriages. Legislation alone cannot possibly address underlying causes that contribute to a higher incidence of early marriages.

Based on available evidence, and our experience in the field, we have tried to highlight the underlying causes leading to the prevalence of early marriages; concerns about the proposed legislation; and a few recommendations to address the issue.

### Causes of Child Marriages

Child marriage is a consequence of deep-rooted socio-cultural norms and entrenched gender inequalities, which disproportionately impact girls. Poverty, insecurity, and limited access to quality education and employment opportunities imply that child marriage is often seen as the ultimate solution for parents to mitigate their dire economic circumstances.<sup>1</sup> Others may marry their daughters off, thinking it will secure their futures or protect them.

Patriarchal social norms play a crucial role in perpetuating this practice. Stereotypes around gender roles and the socio-economic risk of extra-marital pregnancy make child marriage seem like a solution instead of a problem for most communities.

Thus, regardless of its legal status, the practice has wide societal sanction. This is evident from the recently released fifth round of the National Family Health Survey where nearly one in every four women, aged between 20 and 24, reported having been married before the age of 18. The decrease is marginal from the last round of the survey, conducted in 2015-16, despite the fact that the existing child-marriage law has been in place for over four decades. While there was an impressive drop in child marriages between 2005-06 and 2015-16, this was most likely attributable to expanded educational opportunities and changing parental aspirations, not to the law. Thus, while a legal age of marriage is a necessity, it is not in itself an adequate prescription to end child marriages. Any approach to end child marriage must put these causes at the core.

### Concerns about the Proposed Legislation

The proposed legislation could have several harmful consequences.

1. **Misuse of the law:** According to a [survey by Partners for Law in Development](#), 65 percent of the cases filed under the existing child marriage law related to elopement and were filed by disapproving parents. Often, despite the consent of the girl, the male partner of her choice is punished as a criminal and the girl is locked up or forcibly married to someone. The proposed

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<sup>1</sup> UNFPA- State of the world population report 2020

legislation would increase the number of young couples who are vulnerable to such misuse of the law.

2. **Disempowerment of women:** A 2008 Law Commission Report on reforming family law, recommended a uniform age of marriage for boys and girls at 18 years and not 21. There's good reason for this: at the age of 18, all citizens can vote, enter contracts, be guardians, be tried as adults for crimes they commit. Adding three years to valid marriage age seems anomalous to all other legal rights. Even a man's age of 21 for marriage is unreasonable and we should not perpetuate it. Most countries have 18 years as the legal age of marriage. For instance, in Sri Lanka, the legal marriage age for both boys and girls stands at 18. However, the prevalence of child marriage in the country is much lower than in other South Asian countries. In Bangladesh too, the legal marriage age for girls stands at 18. They are choosing to tackle the child-marriage menace by investing in girls' education and women's empowerment. Most developed countries do not have a high legal marriage age, but they do have a high median age at marriage for women because women are empowered in these regions. While a higher age-at-marriage is the desired outcome, it must be secured through a rights-based approach where women freely determine the course of their future. Increasing the legal marriage age to 21 years would mean that our girls would have no say in their choice of partner until they are 21.
  
3. **Possible increase in sex-selective practices:** Child marriages are most common in rural, low-income, low-literacy households. According to the NFHS-5, about 27 percent of women aged between 20 and 24 reported getting married before the age of 18 in rural areas. In urban areas, the same number stood at 14.7 percent. Girls from low-income backgrounds have little agency and are often viewed as undervalued compared to the male child, too often forced to drop out of school early with little prospect and skills to find a job. Increasing the legal age at marriage could result in parents feeling even more "burdened" by what they view as additional responsibility of the girl child, which in turn could lead to an increase in sex-selective practices.

## Recommendations

There are several strategies that have worked globally in reducing the incidence of child marriages.<sup>2</sup>

1. **Investing in girls' education:** There is clear evidence that allowing girls to complete their education delays marriage and provides them with the opportunity of being financially independent. According to NFHS-4, the median age at first marriage for women increases from 17.2 years for women with no schooling to 22.7 years for women with 12 or more years of schooling. Education enables them to fulfil their aspirations and live a life of dignity as well as the agency to uphold their sexual and reproductive rights in their choice to marry, plan and space the births of their children. There is direct evidence to support that child marriage is closely tied to low levels of education, poverty and rural residence. According to NFHS-4, girls living in rural areas with little or no education, and from the lowest wealth quintile are more likely to be married

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<sup>2</sup> Repositioning Family Planning, A review of evidence on effective interventions, Population Foundation of India, 2013

before they turn 18. The government must address the barriers to girls' education by providing a safe environment, improving the quality of education and making girls' education a more useful investment for parents.

2. **Economic and social empowerment of girls:** Investing in the capacity and skill-building of adolescent girls is critical for them to realize their economic potential and transition into empowered adults. Greater attention on creating opportunities for paid work among women and girls that includes ensuring safety while on the way to work and at the place of work is also imperative.
3. **Targeted social and behavior change communication (SBCC) campaigns to end child marriage:** Ending child marriage requires investments in targeted social and behavioural change communication. We must change social norms that exclude girls and boys from marriage-related decision-making. Evaluation findings from Population Foundation of India's flagship SBCC initiative titled "**Main Kuch Bhi Kar Sakti Hoon—I, A Woman, Can Achieve Anything**" showed that reinforcement of messages on ending child marriage brought a positive shift in the attitude of girls and parents who were exposed to the programme. A comprehensive social and behavior change initiative, supported by local leadership—including elected representatives, community and religious leaders—to transform gender stereotypes of submissiveness and institutional discrimination that denies women agency and promote the value of the girl child is, therefore, recommended.
4. **Policies and programmes that reach the most marginalised:** Policies and programmes that empower girls, young women and their families to better access financial institutions, education services, access to information and services on sexual and reproductive health, mental health and nutrition services, and facilities and social platforms must include the most marginalized communities, to ensure that no one is left behind—a key goal among the Sustainable Development Goals.
5. **Protection from violence and exploitation:** Children must be protected from abuse (both online and offline), neglect and harmful practices, including child marriage, rape, sexual slavery and forced labor so that they can continue their education.
6. **Mandatory registration:** All marriages, births and deaths must be mandatorily registered through a system, including civil, religious and customary unions as a means to track marriages and the age of marriage.
7. **Uniform age of marriage for boys and girls at 18 years:** To ensure gender equality, legal marriage age should be made uniform at 18 years for both boys and girls, across all religions, class and creed.