

Submission to the Parliamentary Standing Committee on Education, Women, Children, Youth and Sports

by

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On the invitation of the Department of Woman and Child development (DWCD), Government of Karnataka, and the Ministry of Women and Child Development (MWCD), Government of India (GoI), a representation was made by NLSIU, representing Centre for Women and Law (CWL), NLSIU, and Centre for Child and the Law (CCL), NLSIU on 26th May 2022. The presentation was based on the study recently completed by NLSIU, Bangalore with support from NITI Ayog on the *Impact of the Karnataka Amendment 2016 to the Prohibition of Child Marriage Act 2006*.

Two issues that were discussed at length during the meeting were:

- (A) Void Ab Initio status of child marriages
- (B) Raising the age of marriage for girls from 18 years to 21 years

Through this submission we would like to highlight some key points pertaining to these issues that have emerged from the studies conducted by NLSIU

A. Void Ab Initio status of child marriages

Void ab initio status of child marriage is detrimental to children's rights and wellbeing:

- B. Treating child marriages as void ab initio takes away the right of the child to choose and make a decision for herself. The PCMA, 2006 incorporated the child rights approach to some extent in its original form. Many underage marriages were declared voidable *at the option* of the minor contracting party. Here "at the option" requires listening to the child and her views. Her views determine how she will be impacted. It is no more an adult deciding for the child, rather a child deciding her own life.² By making the marriage void ab initio, the child's view is erased – an example of the hegemony of adultism on the matters of the child. Many children may exercise this choice from the age of 18-20 when they are adults. This choice is affected if child marriages are declared *void ab initio*.
- C. Void Ab initio status jeopardises the right to access remedies such as 498A or under the domestic violence law as well as civil rights of a legally married wife and legitimate children including maintenance, succession and others. All these are governed by personal law which may vary based on religion, tribe, geography etc.

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² On one hand, the PCMA is empowering the child, while on the other, it also obscures the child's sexuality. In fact, the act creates an artificial distinction between marriage and child sexuality, in the sense that whereas marriage contracted between the minors are voidable, romantic cases or elopement cases make the marriage void.

- D. NFHS-5 (2019-21) data suggests that there is hardly any change in the age of first marriage after the Amendment Act. As per the survey, in the State of Karnataka, 21.3% of women are married before attaining age of 18 years compared to 21.4% as per NFHS-4 Survey. Large numbers of women and children will therefore be affected adversely if marriages are declared void.
- E. The Minister for Women and Child Development mentioned in the Lok Sabha that child marriages are carried out due to societal customs, traditions, illiteracy, poverty, low status of women in society & lack of awareness and these are issues that cannot be tackled through legislations.³ Without addressing these issues, declaring child marriages to be void ab initio or increasing the age of marriage to 21 years is a futile exercise. The solution should be to strengthen the life choices that girls and their families have.
- F. Education, health and other such provisions and support are needed to be strengthened Rehabilitation services and support is far from being ready to respond to the needs of children who do not wish to stay in child marriages.
- G. PCMA 2006 already lists the circumstances in which the child marriage is void ab initio. This list may be closely evaluated and revised to exclude or include circumstances, if needed, rather than declaring all child marriages void ab initio.

B. Increasing the age of marriage from 18 to 21 years

Age of marriage for girls should NOT be increased to 21 years:

1. The purpose of child marriage law is to protect children, not to restrict the right of young adults to marry. This is what will happen if the age is increased.
2. Sexual expression and marriage are two separate domains, but in the Indian context, they are intricately intertwined. Increasing the age of marriage as proposed in the Prohibition of Child Marriage (Amendment) Bill, 2021 takes away the sexual autonomy of those in the age group of 18 to 21 years and tries to criminalise a natural process. In India, the rights of the child are regulated and even repressed, and marriage becomes a medium for adolescents to explore their sexuality⁴. This is evident from a study that was conducted by the Centre for Child and the Law, NLSIU to analyse the dynamics of the POCSO Act, 2012.⁵ In Karnataka, 6 of the 110 (5.45%), in Delhi, 144 of 667 (21.58%) judgments analysed were ‘romantic’ cases, and in Assam, 27 out of 172 cases (15.69%) were ‘romantic’ in nature. The percentages in Maharashtra and Andhra Pradesh were 20.52% and 21.21%, respectively. Romantic nature cases include the cases where the girl and boy elope together and establish a sexual relationship. In the majority of the cases, either there is a marriage or an assurance of marriage. More than 40% of marriages in Karnataka involve girls upto the age of 21 years. Similar is the case with other states too. India’s child marriage data will show dramatic increase if the age of marriage is increased for girls from 18 to 21 years
3. Access to health care and the sexual and reproductive rights of women in the age group of 18-21 years will be jeopardised if the Amendment Bill of 2021 is brought forth as sexual activity in unmarried females is still stigmatised in Indian society. Families would also be

³ Answer to Unstarred Question No. 4526, available at <http://164.100.24.220/loksabhaquestions/annex/173/AU4526.pdf>

⁴ Murphy-Graham, E. and G. Leal (2015) *Child Marriage, Agency, and Schooling in Rural Honduras*, Comparative Education Review 59(1): 24-49.

⁵ IMPLEMENTATION OF THE POCSO ACT, 2012 BY SPECIAL COURTS: CHALLENGES AND ISSUES, CENTRE FOR CHILD AND THE LAW, (NLSIU, Bengaluru, 2018).

wary of criminal sanctions if they brought the young woman to government or even private facilities for deliveries or pregnancy related complications. Young women who are most vulnerable will thus not be able to access the health services they require.

4. The social stigma associated with child brides has proved to be an indomitable challenge in reporting and filing of cases. Once a girl child has been married, she is tied down to the institution of marriage, irrespective of whether it is considered illegal or not. If the child bride is rescued eventually, she continues to be shunned by the family and society, owing to several reasons. The girls are blamed for bringing shame and dishonour to the families. They face ill-treatment at the rehabilitation centres, and blamed for ruining the prospects of marriage for their siblings. Girls rescued from child marriages often face a bleak future with no scope for education or empowerment. The stigma associated with such children often makes it impossible for them to lead life normally. The number of girls affected by this stigma will increase drastically if the age of marriage for girls is increased.
5. The focus of the Karnataka Amendment Act needs to have a child-centric approach which it currently lacks. The primary emphasis should be on the 'whole child' and her best interest - something that Shivaraj V. Patil Committee also envisioned⁶. The participation of a child "to make her voice heard" is a basic building block of child's right jurisprudence. The Amendment Act withdraws the voice of the child by making the marriage void ab initio. This is a stark contrast to empirical findings that the girls often exercise agency to elope with a boy and get married. There is a need to treat elopement cases differently from forced marriage cases where parents force children into marriages. This is especially true keeping in mind social stigma associated with girls who have been forced into child marriage.
6. Raising the age of marriage will also criminalise a large section of the population. If 40% of marriages are illegal, everyone included in it including relatives, those who perform the marriage and others will be considered to be offenders. A pertinent fact is that even in the 21% child marriage cases that are now there, there are very few cases in which action is taken and convictions are very low for forced child marriages.

⁶ Shivaraj V Patil Committee Report, (n, 41).