



# A case for differentiated legal responses to child, early and forced marriage and unions

Lessons from India  
for a global audience

## ACKNOWLEDGEMENTS

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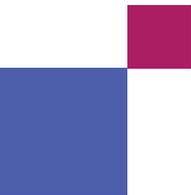
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‘The premise of the law reform must be towards empowering children and adolescents vulnerable to marriage and towards crafting redress that transforms the conditions driving early marriage.’<sup>1</sup>

## INTRODUCTION

Laws aimed at ending child marriage have long been a priority for sustainable development, gender equality and human rights advocates globally. Dating back to the 1994 International Conference on Population and Development and the 1995 United Nations Fourth World Conference on Women, advocates have called for the enactment and strict enforcement of laws concerning the minimum age for marriage.<sup>2</sup> In 2015, 193 countries adopted the Sustainable Development Goals (SDGs), thereby committing to eliminating child and early marriage by 2030. More recently, in 2021, the Generation Equality Forum’s Gender-Based Violence Action Coalition set a target for an additional 55 countries to adopt ‘no exception’ child marriage laws by 2026.<sup>3</sup>

Whilst the attention and resources devoted to addressing this issue are warranted, many stakeholders—including advocates, UN agencies and elected officials—have positioned laws that prescribe absolute prohibition of marriage before the age of 18 as essential to eliminating the practice. However, new research on the impacts of child marriage laws and related laws on the lives of girls in India shows that rigid approaches may cause more harm than good, particularly for the most vulnerable girls.

India, with its significant rates of child and early marriage and its large population, has the world’s highest number of girls married under age 18.<sup>4</sup> Over the past decade, however, the country has seen declining trends in the prevalence of child and early marriage. Whilst awareness of the law, which sets the minimum legal age of marriage at 18 for girls and 21 for boys, has increased during this time, the extent to which

it has deterred marriage is not known. There is scarce evidence about how the law is implemented or the impact it has on the lives of girls. Further, whilst relatively few cases are being registered under the Prohibition of Child Marriage Act (PCMA) in India, a large number of cases involving child and early marriage are being prosecuted under other laws.

Based primarily on the findings of research undertaken by [Partners for Law in Development \(PLD\)](#) for its tripartite series entitled 'Adolescent Sexuality and Early Marriage,' this brief sheds light on how the PCMA and other related laws are being used in practice and the resulting impact on girls' lives. What are the drivers of child and early marriage amongst adolescents in India? Who is using the law and how? Are girls able to access justice through the legal system? Who is benefiting most from the implementation of the law? And, critically, is anyone being harmed?

In seeking the answers to these and many other questions, PLD used a multi-method approach. For the first report in the series, [Why Girls Run Away to Marry: Adolescent Realities and Socio-Legal Responses in India](#), PLD worked with seven research partners<sup>i</sup> to document case studies of 15 girls who had experienced external intervention in their self-arranged marriages or romantic relationships, in order to fully understand the socioeconomic drivers of child and early marriage. For the second report, [Grassroots Experiences of Using the Prohibition of Child Marriage Act 2006](#), PLD documented casework of 13 grassroots organisations across eight states<sup>ii</sup> in India, followed by a national consultation in which 25 organisations across India collectively analysed the casework in light of their own experiences. For the third report, entitled [Child Marriage Prosecutions in India: Case Law Analysis of Actors, Motives and Outcomes 2008 - 2017](#), PLD analysed 83 legal cases involving child and early marriage across a decade.

The findings of PLD's research complicate and disrupt the mainstream narrative on the role of the law by bringing to the fore the different child marriage practices in India; the social complexities and inequalities that drive child and early marriage; the incongruous ways that the law is being used in practice; and the potential that exists in the law's application by judges and community-based organisations. In doing so, new guiding principles and fresh proposals for transformative legal approaches to uphold and advance the rights of girls emerge. These proposals are relevant in India and globally, wherever and amongst whomever child, early and forced marriage and unions are a concern.

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<sup>i</sup> Stree Mukti Sangathan and Women's Guidance Cell at Sakhya in Mumbai; the Global Family Charitable Trust, HAQ Centre for Child Rights, and The YP Foundation in New Delhi; the Mahila Salah Evam Suraksha Kendra and Vishakha in Jaipur.

<sup>ii</sup> The following organisations from eight states of India documented case studies which are part of the report: from Rajasthan—Mahila Jan Adhikar Samiti, Rajsamand Jan Vikas Samiti, and Vikalp Sansthan; from Uttar Pradesh—Social Action for Knowledge-building and Awareness Raising, Astitva Samajik Sansthan, and HUMSAFAR (Support Centre for Women in Crisis); from Maharashtra—Rubi Social Welfare Society and Mahila Sarvangeen Utkarsh Mandal; from West Bengal—TALASH: Society for Inner Strength, Peace and Equality and Nishtha; from Gujarat—Sahiyar Stree Sangathan and ANANDI Area Networking and Development Initiatives; from Andhra Pradesh and Telangana—Bhumika Women's Collective.

## Terminology

Being able to recognise, name and differentiate amongst marriage practices and experiences is critical to developing appropriate, differentiated legal approaches. In the Indian context and in the sections of this report focused on the research findings from India, the melded term ‘child and early marriage’ (CEM) is used.

As per Table 1, important legal and common-usage distinctions need to be made between ‘child marriage’ and ‘early marriage,’ both of which are forms of ‘underage marriage’ in India and are not considered to be intrinsically forced.

**Table 1: Terms related to child marriage used in the Indian context**

TERM	EXPLANATION
<b>Child marriage</b>	In law, ‘child marriage’ refers to marriages that involve a girl below the age of 18 and/or a boy below the age of 21. <sup>iii</sup> In contrast, many actors in civil society use this term to refer to marriages that occur when one party or both parties is a young adolescent (under the age of 15).
<b>Early marriage</b>	Whilst not a legal term in India, ‘early marriage’ is used by many civil society actors to refer to marriages that involve older adolescents, ages 15 to 17, in recognition of their evolving capacity.
<b>Underage marriage</b>	Whilst not a legal term in India, ‘underage marriage’ refers to marriages that take place amongst or with people under the minimum legal age of marriage (see above). In civil society parlance, this is used to refer to both child marriage and early marriage collectively .
<b>Forced marriage</b>	This term refers to any marriage, regardless of the age of the parties, that involves coercion, trafficking, force, trickery or other exploitative practices in order to affect the marriage. The presumption that all underage marriages are forced does not exist in Indian law or in civil society.
<b>Self-arranged marriage</b>	This term refers to marriages that are arranged by or initiated by the parties themselves, regardless of age.
<b>Young people</b>	People aged 10 to 24 years
<b>Adolescents</b>	People aged 10 to 19
<b>Girl</b>	People who identify as female and are under the age of 18.
<b>Minor</b>	People who have not yet reached the legal age of majority in their respective jurisdiction; in India, this age is 18.

<sup>iii</sup> Prohibition of Child Marriage Act 2006, Article 2: ‘(a) “child” means a person who, if a male, has not completed 21 years of age, and if a female, has not completed 18 years of age; (b) “child marriage” means a marriage to which either of the contracting parties is a child.’ Available at: <https://legislative.gov.in/sites/default/files/A2007-06.pdf>

The terms and related explanations for India differ from those in global discourse, where the more expansive melded term ‘child early and forced marriage/union’ (CEFMU) is commonly used. Whilst this term was meant to capture the distinct dynamics of ‘child marriage,’ ‘early marriage,’ and ‘forced marriage,’ explanations of CEFMU typically instead conflate them, and various combinations of these individual terms are often used synonymously in different contexts. Further, CEFMU refers to all marriages/unions involving people under the age of 18—i.e. those considered to be ‘children’<sup>iv</sup>— and generally considers all marriages/unions that involve under-18s to be forced.<sup>5</sup>

With reference to the law, the term ‘exceptions’ warrants further explanation. The global focus on ‘no exception’ laws (discussed further below) does not distinguish between the many different types of exceptions that exist in law and their impact on girls in each context. Examples of exceptions made to the minimum age of marriage in various jurisdictions include those for: girls who are pregnant; young people who secure parental or judicial consent or permission from other relevant authorities; young people who marry under religious or customary law; and minors who are legally emancipated. Whilst some of these exceptions propagate harmful gender norms, go against young people’s wishes and hurt them, particularly girls, this is not necessarily the case in all instances or for all girls everywhere. It is only with a thorough understanding of girls’ realities and of how the law is applied that this can be determined.

## Legal framework in India

India has prohibited child marriage by law since 1929, with the PCMA 2006 being the statute currently in force. The PCMA can be characterised as a law with ‘exceptions’; whilst there is a minimum age, marriages below that age can be valid unless kidnapping, trafficking, force or enticement are used (see Table 2). Once a marriage involving an underaged party has taken place, however, it can be voided upon petition to courts.

There are two Indian states—Karnataka and Haryana—that have adopted ‘no exception’ laws, meaning that under no circumstances can a marriage involving an underaged party be legally recognised. Other states as well as India’s national government are considering similar reforms. In addition, the Government of India presented a bill in the parliament to raise the minimum age of marriage from 18 to 21 for girls, with the objective of addressing issues of malnourishment, maternal mortality and empowerment of girls. As of January 2022, this was under review by a parliamentary committee.

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<sup>iv</sup> See the Convention on the Rights of the Child, Article 1: ‘For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.’ Available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

In addition to the PCMA, there are a variety of other laws that regulate marriage and adolescent sexuality that are relevant to the issue of CEM in India (see Table 2).

**Table 2: Legal framework relating to marriage and adolescent sexuality**

<p><b>Prevention of Child Marriage Act, 2006 (PCMA)</b></p>	<ul style="list-style-type: none"> <li>▪ Sets the legal age of marriage as 18 for females and 21 for males<sup>v</sup></li> <li>▪ Allows for injunctions (legal orders) to be issued to prevent impending marriages involving underage parties</li> <li>▪ Treats underage marriages as valid unless the underage party was kidnapped, trafficked, forced or enticed, or the marriage took place in violation of an injunction</li> <li>▪ Entitles underage parties to apply to void the marriage within 2 years of reaching the age of majority</li> <li>▪ Penalizes adults for performing or promoting underage marriages with up to 2 years imprisonment and fines</li> </ul>
<p><b>Personal laws</b></p>	<p>Personal laws that govern the validity of marriages prescribe the minimum age of marriage. Under the Hindu Marriage Act, 1955; the Indian Christian Marriage Act, 1872 and the Parsi Marriage and Divorce Act, 1936, the age prescribed is 18 for girls and 21 for boys, which aligns with the PCMA. Under Muslim law, the age of marriage is the age of puberty (usually assumed to be 15 years).</p>
<p><b>Protection of Children against Sexual Offences Act, 2012 (POCSO)</b></p>	<ul style="list-style-type: none"> <li>▪ Criminalizes acts that are committed with ‘sexual intent,’ including touching, with anyone under the age of 18, including if both/all parties are underage (without exception)</li> <li>▪ Sets the minimum penalty for ‘penetrative sexual assault’ at 10 years imprisonment and a fine; this increases to 20 years and a fine if the child is under 16 years of age</li> <li>▪ Mandates reporting to police of information about any underage sexual contact, regardless of professional confidentiality</li> </ul>
<p><b>Indian Penal Code, 1860</b></p>	<ul style="list-style-type: none"> <li>▪ Sets the age of consent to sex at 18 years</li> <li>▪ Sets the minimum penalty for rape at 10 years of rigorous imprisonment and a fine; this increases to 20 years and a fine if the child is under 16 years of age</li> <li>▪ Independent Thoughts vs Union of India verdict extended the statutory rape provision to minors (under 18) within marriage</li> </ul>

<sup>v</sup> A task force set up by the Government of India proposed raising the age of marriage for girls to 21; however, at the time of publication of this brief, this proposal had not yet been adopted into law. See [‘Increase women’s marriage age to 21 for health benefits - Modi govt task force recommends’](#) in The Print, 15 January 2021.



‘Law reform proposals often assume that the law operates in its letter, without reference to the social pressures and structures of the context in which it functions. This formalistic approach is particularly true of proposals that seek to make law stringent, assuming that once enacted, the law will be implemented uniformly and exactly as it is written; that without altering the social and material realities from which the practices arise, and without regard to the power relations and social pressures, the legal machinery will precisely implement the law to effectively bring about social change.’<sup>6</sup>

## REALITIES OF CHILD AND EARLY MARRIAGE AND THE LAW IN INDIA

The prevalence of CEM in India has declined over the past several decades whilst, at the same time, the median age at first marriage has increased. The 2015–2016 National Family Health Survey reported that marriage before the legal age of 18 stood at 27 per cent for women aged 20 to 24, compared with 46 per cent for women aged 45 to 49. The median age at first marriage for women aged 20 to 49 increased from 17.2 years to 19 years of age over a 10-year period.<sup>7</sup> Whilst encouraging, these statistics do not explain how that progress was made, nor the challenges that persist.

When complemented by findings from PLD’s research, a fuller, more realistic picture emerges of the context within which the law functions. PLD’s findings tell a story of adolescents struggling for agency as a result of poverty, marginalization and restrictions on the expression of their sexuality; of the retributive uses of the law and its inaccessibility for those intended to benefit from it; and of the restorative possibilities of the law that emerge from its uses by judges and community-based organisations across India.

## Contextual realities: Poverty, sexuality and struggle for agency

From the findings of PLD's research emerges a pattern of struggle for agency in the lives of resource-poor adolescents. For many girls, the poor quality of education, limited economic opportunities, and norms related to sexuality and marriage leave them with few areas of their lives over which they can exert control. Girls are often thrust into early adulthood, leaving school, working and marrying—either forcibly or of their own accord—at a young age.<sup>8</sup>

### ■ Poverty cuts childhood short and limits adolescents' opportunities beyond marriage

*'Commitments to radically reduce the numbers of early marriages divert attention from addressing the root causes that sustain such social patterns. They empower state machinery to punish, rather than demand it guarantees opportunities and resources to help develop the agency and capacities of girls whose lives are diminished by the pressures of patriarchy and poverty. Calls for strong laws are diversionary for they account for neither the limitations of law, nor the failure to invest in girls, especially those from poor and marginalized contexts, who are most likely to marry early.'*<sup>9</sup>

Recent studies show that every second person belonging to the Scheduled Tribes, every third person belonging to the Scheduled Castes, and 27 per cent of India's overall population lives in 'multidimensional poverty.'<sup>10</sup> Poverty and the poor quality education and social marginalization that often accompany it cut childhood short for girls, curtailing their possibilities to develop capacities, agency, aspirations and opportunities beyond marriage.<sup>11</sup>

PLD's research shows that in contexts of poverty and marginalization, both boys and girls assume adult responsibilities at young ages. Girls are pulled out of school at an early age to shoulder the burden of household chores or undertake paid domestic work, whilst boys leave school early to seek income-earning opportunities. The lacklustre quality of schools in resource-poor settings does not inspire parents' confidence in their ability to translate education into employment opportunities for their children and, in turn, security for the family. Marriage, on the other hand, is deeply internalized culturally as a symbol of security, and is privileged in law through protections such as matrimonial rights for the wife.<sup>12</sup> As a result, leaving school and marrying young are not seen as depriving young people of opportunities that they otherwise might have had.<sup>13</sup>

Since 2020, the COVID-19-generated economic crises have exacerbated household poverty in India, widening the gap between those who have access to education and employment and those who do not. During this time, some states have documented an increase in CEM, with suspected contributing factors that include girls' lack of access to online schooling, girls being orphaned by COVID-19, and suspension of programming and emergency support for girls at risk of forced marriage.<sup>14</sup>

## ■ Self-arranged marriage acts as an escape

*'The evidence of self-arranged marriages, with their surrounding complexities, prompts questions regarding the policy solutions that promote punitive measures that treat underaged marriages as a homogenous forced practice and all underaged parties to marriage as lacking agency in relation to their future. Such assumptions lay the basis for proposals that deny the legal validity to all marriages, without seeking the views of the involved underaged parties or, indeed, a focus on "age of marriage", without equal attention to the intersecting concerns, like the criminalization of sexual consent.'*<sup>15</sup>

Self-arranged marriage amongst adolescents is a phenomenon that remains largely absent from the discourse on CEFMU globally and in India. Acknowledging that some adolescents exercise agency and make decisions to marry before the legal age clashes with dominant understandings of age as an indicator of exploitation and of all child marriages as forced and custom-driven.<sup>16</sup>

In India, self-arranged marriage is often adolescents' response to the stigmatisation and criminalization of their sexuality. In particular for girls, the social imperative to remain sexually 'pure' before marriage leads to stigmatising not just premarital sexual activity but also opposite gender friendships. And with the enactment of POCSO, *'every expression of child and adolescent sexuality, including caressing, has been cast as exploitative, harmful and punishable, with consent and capacity linked entirely to age'*<sup>17</sup> whether within or outside of marriage.

The discovery of a 'forbidden' intimate relationship or pregnancy may force adolescents into earlier-than-anticipated decisions about marriage. In their efforts to dignify premarital sexuality, adolescents exercise agency over their lives by self-arranging their marriages (mostly through elopement), which may provide them with a modicum of the social legitimacy desired for their relationships.<sup>18</sup> In some cases, self-arranged marriage is also a means to escape an impending parentally arranged, forced marriage.

*'Marriage is a popular litmus test of romantic commitment, even when the couple is unsure of or experiences disquiet within their relationship. It is not surprising that when faced with stigma and parental retribution, marriage becomes inevitable.'*<sup>19</sup>

As mentioned above, marriage can also be seen as lending social and economic security in some contexts in India; in these contexts, it should not be a surprise that adolescents attempt to exert control over this domain of their lives, choosing to marry when they have limited freedom to enter romantic relationships and/or few opportunities for self-advancement, due to poverty.<sup>20</sup>

## **Application of the law: Retribution, weaponization and criminalization**

The findings of PLD's research provide insight into who is accessing the law and the ends for which they are using it. Whilst commonly used by parents seeking retribution against the husbands of their daughters in self-arranged marriages, the law is ill-equipped to offer protection and remedies for its intended beneficiaries.<sup>21</sup>

## ■ Law is used by parents seeking retribution

Case analysis shows that the primary users of CEM-related laws in India are parents, who are using them to break up underage self-arranged marriages of which they do not approve and/or to retaliate against their daughter's chosen husband, particularly where the relationship is inter-caste. In the cases analysed by PLD, parents used the law to seek custody of daughters who had eloped; to prosecute the husband of their underage daughter; to nullify a daughter's marriage that had broken down; or, in a few cases, to appeal against a judicial injunction barring them from marrying a daughter.<sup>22</sup>

*'In exercising sexual- and marriage-related decisions independently of their family, the girls disrupted the social balance of caste or community and paid the price dearly for it. In a context in which marriage is compulsory and arranged marriages of underage girls common, the betrayal felt by the parents can only be explained in terms of the disruption of custom, caste and patriarchy.'*<sup>23</sup>

The weaponization of the law by parents is particularly acute in contexts where young people have 'transgressed' the rules of endogamy<sup>vi</sup> or other caste, religious and social norms.<sup>24</sup> In their disregard for these rules or norms, adolescents' actions are commonly perceived as 'dishonouring' the family or community, and this frequently leads *'to forcibly separating the couple, breaking ties with them or, in some cases, perpetrating violence against them'*.<sup>25</sup>

## ■ Husbands in self-arranged marriages are criminalized disproportionately

*'This disproportionate burden of criminality and stigma on husbands in self-arranged marriages lends the law to malicious and retributive use, which it was not enacted for.'*<sup>26</sup>

PLD's case analysis demonstrates clearly how laws related to marriage and sexuality are being leveraged to harshly punish husbands for violating social norms. In cases brought by parents against the husbands of their married daughters, it was not uncommon for charges of rape and kidnapping to be brought in conjunction with PCMA offenses. Even if the marriage was entered into wilfully by the girl, statutory rape provisions in the POCSO Act and/or the penal code and kidnapping provisions in the penal code—all of which carry hefty prison sentences upon conviction—were used against husbands.<sup>27</sup>

Whilst the criminality attached to self-arranged marriage for the husbands is severe, it is perhaps even more shocking in contrast to the punishment for offences involving the performance or solemnization of a child marriage under the PCMA, which comes with no minimum sentence and a maximum sentence of two years' imprisonment and/or a fine.<sup>28</sup> In other words, young people in self-arranged marriages face far harsher punishment than adults who arrange, enable and perform ceremonies for underage marriages. The harsh consequences for underage girls in self-arranged marriages are more social in nature than criminal, as discussed later in this brief.

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<sup>vi</sup> 'The rules of endogamy entail that marriage takes place within one's own caste.' Partners for Law in Development (2019) Why Girls Run Away to Marry: Adolescent Realities and Socio-Legal Responses in India. Available at: [https://www.academia.edu/40718265/Why\\_Girls\\_Run\\_Away\\_to\\_Marry\\_Adolescent\\_Realities\\_and\\_Socio\\_Legal\\_Responses\\_in\\_India\\_2019\\_Adolescent\\_Sexuality\\_and\\_Early\\_Marriage\\_Series\\_Volume\\_1](https://www.academia.edu/40718265/Why_Girls_Run_Away_to_Marry_Adolescent_Realities_and_Socio_Legal_Responses_in_India_2019_Adolescent_Sexuality_and_Early_Marriage_Series_Volume_1) p 13

## ■ Parents involved in forced marriage of daughters are rarely prosecuted

*‘The criminal prosecution of parents involved offences only under the PCMA and not the Penal Code, leaving the parents implicated in forced or arranged underage marriages to be tried for lesser offences with lighter sentences.’<sup>29</sup>*

Forced marriage by parents is largely invisible both in the letter of the law and in its application. The PCMA does not specifically recognise forced marriage by parents as a category of child marriages that is automatically void (*void ab initio*).<sup>30</sup> As mentioned above, in contrast to the sentences used against husbands in self-arranged marriages, offences involving the performance or solemnization of a child marriage under the PCMA come with no minimum sentence and a maximum sentence of two years’ imprisonment and/or a fine.<sup>31</sup>

This absence in the law is reflected in the relative rarity of its use in the context of forced marriage. Of 83 legal cases analysed by PLD, just four involved forced marriage and, of those, just two were brought by girls themselves seeking to avoid forced marriage.<sup>32</sup> Girls seeking to use the law to avoid a forced marriage find barriers at every turn; beyond the inevitable parental and community backlash, girls are subjected to long, tedious legal procedures that require them to attend court several times. Further, minors cannot initiate legal proceedings without the support of an adult guardian or Child Marriage Prohibition Officer (CMPO).<sup>33</sup>

*‘The legal system seems to push back those who access the PCMA without lawyers, social capital or resources assets that are typically not available to the girls who are the most powerless in the familial structures and the community.’<sup>34</sup>*

## ■ Vulnerability to prosecution is higher in resource-poor contexts

The limited demographic data available in the CEM judgments and orders analysed by PLD suggests that litigation against parents for arranging their underage children’s marriages also arises primarily within resource-poor contexts.<sup>35</sup> This is at least in part because families from poor and/or marginalized caste groups do not have the influence or financial resources needed to bypass the law.

*‘Formal legal prosecution is more likely to be secured when the girls’ parents are from marginalized and poor communities. In the case of dominant caste/social groups, the influence over the police (and sometimes other agencies, too) is strong, as is the threat of backlash, which makes formal legal interventions counter-productive. This may magnify the risks for the social workers and the girls. Ironically, the law is seen to work best against families that are poor and lower caste.’<sup>36</sup>*

## Centering girls’ voices and advancing their rights: Judicial discretion and restorative justice

Despite the above evidence of the harmful ways the law is being used, there are spaces where the rights of girls stand central. In India, judges are using their discretion to allow for girls’ voices to be heard in relation to the validity of their marriages and other related legal issues. At the community level, networks and agencies involved in preventing CEM leverage the law for the benefit of girls, ensuring their safety and well-being in the long term.

## ■ Judicial discretion allows for consideration of girls' voices

Given that child marriages are not automatically void under the PCMA, there is scope for judicial discretion. Whilst this results in noticeable inconsistencies, and judges do not always 'side with' the girl, it also opens possibilities for nuanced, customizable solutions that provide safety nets for girls through consideration of a range of contextual and familial circumstances that go beyond age.<sup>37</sup>

In its analysis of CEM case law, PLD illustrates that consideration of the girls' best interests and well-being stood central in a range of cases that concerned: 1) the validity of underage marriages; 2) whether underage married couples could cohabit; and 3) the criminality of husbands accused by their wives' parents of kidnapping their underage daughters for marriage. In these cases, the consideration of factors beyond age allowed judges to respond to the unique circumstances of each girl.

Whilst personal law and PCMA provisions were important in determining the validity of underage marriages, judges also considered girls' best interests, the marital bond, and the need to protect the couple from the risk of retributive violence by their family and community members. Although the legal capacity of girls under 18 to make decisions regarding marriage is not enshrined in statutory law, courts did consider their capacities for differentiating between free choice, on the one hand, and coercion, force or enticement on the other. Judges tended to align their decisions with the wishes of older adolescents, whilst also ensuring that younger adolescents' voices were considered in line with their evolving capacities.<sup>38</sup>

*'This leeway in the statute, through which a minor's right to be heard and judicial discretion are made possible, is of paramount importance. ...Rather than compel the courts to adjudicate along binaries of void and voidability—or parental or shelter homes—this possibility allowed the Delhi courts to craft insightful responses that attempted to address the precise vulnerability of girls in such a union. By stipulating financial arrangements, securing commitment for continuing education and livelihood skills training, and mandating regular counselling to secure a girl's reproductive rights, the two cases in Delhi demonstrated that "best interest" and "well-being" within lived realities can go far beyond what age-centric parameters allow.'*<sup>39</sup>

In cases centering on whether underage couples could cohabit after marriage, judges took account of a range of factors, including girls' wishes. Some considered the adverse implications of early 'domesticity' for adolescents, citing the poor health outcomes experienced by young mothers and their children. Placing girls in shelter homes until they reached the age of majority and, in other cases, putting plans in place to ensure girls' financial security in the matrimonial home were other solutions used. In some cases involving cohabitation, judges referred to the potentially adverse effects of girls staying in shelter homes for extended periods of time, citing the abysmal conditions and limited opportunities for girls.<sup>40</sup>

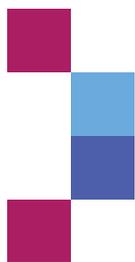
Finally, in cases where a husband was accused by a girl's parents of kidnapping their daughter for marriage, courts also were able to consider the girl's ability to distinguish between being enticed and making an autonomous decision to leave her parent/legal guardian without any offer or allurements. Her capacity in this regard was, in some cases, used to acquit the husband.<sup>41</sup>

## ■ Community-led networks are invested in girls' safety and empowerment

At the community level, complex networks of actors that include social workers, CMPOs, families, friends and (young) leaders, work together to prevent CEM and forced marriage and to ensure the safety and well-being of girls in the aftermath of marriage or legal proceedings. These actors have earned the trust of their communities and are able to navigate existing social power relations, leveraging these and the law for the benefit of girls.<sup>42</sup> Rather than being punitive, interventions by community organisations tend to be restorative for these girls and their families/communities, with organisations investing in *'continuous follow-up, facilitating linkages of the girls with education, relocation to safe spaces, and mediation with the family and community elders so as to rebuild broken bonds.'*<sup>43</sup>

Findings from PLD's research show that news of pending marriages reaches welfare agencies in a number of ways—through helplines (e.g. Child Line), acquaintances, adolescent clubs and the volunteer networks of community-based organisations. When frontline workers are presented with cases of impending marriage, they leverage the law to secure support from police, Child Welfare Committees, Subdivisional Magistrates and CMPOs. Rather than initiating legal proceedings immediately, community organisations negotiate informally with families and communities to prevent impending underage marriages.<sup>44</sup> This alternative approach can help to avoid the imprisonment of parents, which can have negative economic consequences for the girls involved as well as their siblings.<sup>45</sup>

Community networks also act in support of the continued development of girls who have been married or involved in legal proceedings related to CEM. As mentioned earlier, the consequences that accrue to minor wives or girls in these circumstances are more social than criminal in nature. As a protective measure, many girls end up being *'placed in apathetic shelter homes, which offer neither education, life skills or nurturance'* as a stop-gap measure.<sup>46</sup> Other social consequences include the loss of communication with, and ostracization from, parents and other family members, which has immediate consequences in terms of their safety and material well-being, as well as a long-lasting impact for their emotional well-being.<sup>47</sup>



‘The fact that child marriages remain prevalent is not sufficient to conclude that the law needs to be made stringent or declare child marriage void. Recommendations for law reform have to correlate with findings in relation to how the law is applied and implemented.’<sup>48</sup>

## PRINCIPLES FOR LEGAL REFORM: LESSONS FROM INDIA FOR A GLOBAL AUDIENCE

The law is but one component of a comprehensive approach to preventing CEFMU and supporting married girls. It must be part of a broad spectrum of investments that includes girls’ education, health and livelihood opportunities, as well as social norm change efforts. Whilst laws that set a minimum age of marriage can play a role in comprehensive responses to CEFMU, it is critical that they are crafted and implemented with the primary purpose of advancing the interests, rights and empowerment of girls in mind. Where they fall short of this, stock must be taken and reforms enacted.

Whilst each context is distinct, the underlying drivers of CEFMU, including the control of adolescent sexuality, poverty and social norms, manifest in many parts of the globe. As such, the findings of PLD’s research on the dynamics of the law’s implementation in India and the lessons that can be drawn from it bear relevance for advocates and policymakers globally. What follows are a series of principles that, without prescribing the letter of the law, can serve as a guide for advocates and policymakers seeking to advance a rights-based approach to addressing CEFMU.

### Inform law proposals with on-the-ground evidence

Without an in-depth understanding of the drivers of CEFMU and how existing laws are used, one-size-fits-all legal responses may be used that exacerbate the vulnerabilities of girls whose experiences do not align with the dominant narrative of CEFMU. PLD’s research on adolescent sexuality and CEM sheds light on a range of topics that are largely absent from the mainstream narratives on CEFMU on national and global levels, but

that are crucial to an understanding of how the law operates in India, including: the drivers of self-arranged marriages amongst adolescents; the interplay between child marriage laws and laws that regulate adolescent sexuality (e.g. laws that establish age of consent); the misuse of the law by parents to enforce social, cultural and religious rules and norms; the informal use of the law and restorative justice approaches promoted by community-based organisations; and judges' exercise of discretion and recognition of adolescents' evolving capacities. Policymakers and advocates should commit to child marriage law reform that is based on research, including the voices and realities of girls.

## **Recognise different 'types' of marriage amongst adolescents in law**

Without differentiated responses according to context and circumstances, child marriage laws can thwart girls' agency and autonomy; embolden regressive forces of discrimination based on class, caste and religion; and harm the most marginalized girls and families in society. In India, whilst the law is scarcely used in defense of those in forced marriages, it is being used prolifically by parents with the objective of breaking up self-arranged marriages of which they disapprove. Yet, judges are able to use their discretion to implement customizable solutions that provide safety and security for adolescents who choose to marry. Whilst maintaining a minimum legal age of marriage, the law should distinguish between the various 'types' of marriage and the legal responses that are needed for each, including for forced marriage, parentally arranged marriage, self-arranged marriage, elopement, customary/religious marriages and informal unions, as well as marriages where age and power differentials between spouses amount to coercion.

## **Facilitate girls' access to the law**

Without access, girls are unable to use the very laws that are intended to protect them and promote their rights. In India, girls face a multitude of barriers, including: backlash, imposition of fines, boycotts under customary law, and a lack of access to financial resources and lawyers, as well as the requirement for an adult to initiate legal proceedings. Further, PLD's research shows that the government functionaries (CMPOs) designated to implement the PCMA at the community level are rarely bringing cases on behalf of girls. Disseminating information about the right to repudiate marriage should be popularised alongside efforts to increase girls' access to frontline workers who might facilitate legal redress.

## **Address the legal age of consent to sex**

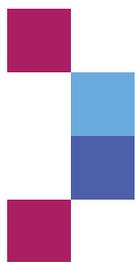
The stigma and criminalization of adolescent sexuality is a factor driving underage marriage. In India, adolescents who fear reprisal—including being forced into marriage with partners not of their choosing—when their romantic relationships are discovered, choose marriage as a means of escape. Where the minimum age of marriage is the same as the age of sexual consent, not only does it reinforce the stigma associated with sex outside of marriage, but it also may criminalize adolescents engaging in sexual relationships; contribute to adolescents conducting sexual relationships in secrecy (without access to the information and services they need to stay safe); and/or oblige those whose job it is to support them (e.g. health professionals) to report young people's sexual activity to the authorities. Laws concerning the age of marriage and the age of sexual consent go hand-in-hand, and must be addressed together in advocacy and law reform.

## **Prioritise the education and empowerment of girls**

The law alone cannot prevent CEFMU, especially in contexts such as Latin America where informal union is common. Challenges such as enhancing educational and employment opportunities and changing patriarchal norms that disadvantage girls lie beyond the reach of child marriage laws.

Solutions should go beyond criminalization to address poverty, insecurity, lack of safety and the premium on female virginity, all of which drive early marriage. The pressure to marry early, much like the burdens of housework and income generation, fall early on the shoulders of young people in poor populations. Therefore, governments must invest in quality education that meets the needs of young people, especially girls—including schools with toilets and menstrual hygiene products—alongside comprehensive sexuality education, skill building, livelihood opportunities and welfare schemes for girls in poor population groups, all of which are surer ways of achieving empowerment, and with it, delaying marriage. Quality, accessible youth-friendly health facilities, including sexual and reproductive health, are also critical for young people to be empowered to make decisions about their bodies and relationships.

And as the research from PLD shows, complex networks of community-based actors are able to navigate existing social power relations, leveraging these and the law for the benefit of girls' education, health and livelihoods. The role that these actors play in the implementation of the law as well as the welfare of girls deserves further recognition and investment.



‘There is no shortcut to investments in education, health, nutrition, [or] creation of opportunities to fuel aspirations in girls, build their leadership and give them a voice. Most importantly, transforming conditions and opportunities, investment in safety, infrastructure and improved schooling are known to not just delay marriage, but to also enable women to choose, if, when and who to marry.’<sup>49</sup>

## CONCLUSION

The findings of PLD’s research paint a complex picture of CEM in India, offering important insights into the law’s relevance vis-à-vis adolescent sexuality, caste, religion and poverty, as well as the phenomena of self-arranged marriage amongst adolescents. Whilst offering cautionary insights on the harms and risks for girls associated with the law, including its weaponization by parents and the disproportionate criminalization of marginalized populations, the findings also highlight the importance of judicial discretion in ensuring that girls’ best interests and self-determination are factored into the equation. The informal ways in which the PCMA is used by community organisations, which leverage the law for restorative rather than punitive justice, add to the understanding of the law’s role within a distinct socio-political context.

There are widespread assumptions about the homogeneity of child marriage and the power of the law to drive social change. In an evidence vacuum, these assumptions have gained traction in India and beyond, emboldening advocates and policymakers to push for and adopt ‘no exception’ child marriage laws, enforce punitive approaches, and/or raise the age of marriage beyond 18. Images of very young girls in bridalwear and stories of their betrothals to octogenarians, as well as emphasis on child marriage as a customary practice, have deeply informed global perceptions of the issue and have inspired a response with this scenario in mind. Whilst these impulses may be coming from well-meaning advocates seeking to protect girls from harm, this approach masks the realities on the ground, including the diversity of child marriage practices that exist within and between countries.

At the same time, assumptions about the transformative value of the law lying in its power to outlaw, criminalize and punish abound. Challenging this notion, in addition to PLD's research, is evidence on informal unions from Mexico. Following the introduction of new laws at the federal and state levels in Mexico, which set the minimum age of marriage at 18 without exception, one study found that whilst formal marriages amongst adolescents decreased, informal unions increased; this left the overall rate of child marriage and unions, taken together, unchanged.<sup>50</sup> Further, these new laws in Mexico have not been shown to have any impact on school attendance or early motherhood amongst girls.<sup>51</sup> This is a clear example of how a belief in the law as a silver bullet may come at the expense of the long-term investment and positive shifts in girls' social, educational and economic welfare that are needed to expand their life options beyond marriage.

Another such example is the current proposal to raise the age of marriage to 21 in India. The Prohibition of Child Marriage (Amendment) Bill (2021) changes the definition of a child to mean those under age 21, a move that is estimated to affect the more than 60 per cent of girls in India who marry before that age.<sup>52</sup> Whilst the proposal is justified by pointing to evidence that girls who marry after 21 tend to be healthier and have higher levels of education, experts agree that this is a function of their wealth status, rather than of age of marriage.<sup>53</sup> The additional three years during which young women would be subjected to parental and state authority in their marital decision-making not only denies them voice and agency commensurate with their evolving capacity, but also extends the period during which they are at risk of criminalization; this is particularly true for young people from poor populations (as illustrated throughout this brief).<sup>54</sup> Finally, whilst the proposed amendment to the PCMA is tasked with combating malnutrition, school dropout and maternal mortality (amongst other social issues), it is not accompanied by the enhancements to welfare, health and education for girls that are needed to change the material circumstances and inequalities that drive CEM in India.

Advocates, policymakers, donors and others must resist the temptation to weave the plurality of girls' experiences into one single, mainstream narrative centered on the forced, exploitative nature of all marriages under the legal age. Not only does this preclude an understanding of the distinct socio-economic, legal, political, cultural and religious realities that shape the practice, but it also results in the advancement of one-size-fits-all solutions—including legal solutions. Rather than seeking an outright ban on all exceptions to the legal age of marriage or proposing to raise the age of marriage to curtail civil rights of young people, discussion, advocacy and legal reform should turn on understanding which exceptions help, protect and empower girls, and which ones subject them to harm.

The fact that CEFMU remains prevalent is not sufficient evidence to introduce stricter laws, and a narrow focus on the law detracts from the urgent need to create conditions that empower girls from disadvantaged populations. Going forward, the narrative must reflect the diverse reality of girls' experiences, and recommendations for law reform must correlate with research findings, such as those from India, on how the law is implemented in each context.

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