

CHILD MARRIAGE FACTSHEET



Photo Credit: Reuters

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What is child marriage?

The United Nations Children's Fund (UNICEF) defines child marriage as any formal marriage or informal union between a child under the age of 18 and an adult or another child. A study by the Pew Research Center (PRC) found that at least 117 countries around the world allow child marriages. According to Girls Not Brides, a global partnership of civil society organisations committed to ending child marriage, one in five girls are said to be married before the age of 18. The group found that Niger has the highest number of child marriages in the world, nine out of the ten countries with the highest child marriage rates are considered fragile states, and that rates of child marriage increase during a crisis.

The COVID-19 pandemic was widely expected to exacerbate the issue of child marriage as a result of schools remaining shut and an increase in financial instability, loss of income, and poverty. Save The Children, known worldwide for its contribution to child rights, predicts that up to 2.5 million more girls around the world are at risk of child marriage in the next 5 years because of the COVID-19 pandemic - making it the greatest surge in such marriages in 25 years.

In April 2020, Girls Not Brides reported that while there was not enough information about incidents of child marriage during the pandemic, in acute emergencies such as this, families and social structures break down, leaving children extremely vulnerable.[1] Officials at Childline, a toll-free emergency helpline for children funded by the Government of India across the country,

[1] Girls Not Brides, Covid 19 and Child, Early and Forced Marriage: An Agenda for Action, April 2020.

said they had stopped 5,200 incidents of child marriage between March and May 2020.[2]

This fact sheet provides essential information on the issue of child marriage, the countries where child marriage is most prevalent, the legal framework, and the current status of implementation of laws.

Where does child marriage happen?

Child marriages happen across the world. Almost everywhere the age of marriage is prescribed, but in some countries, the specified age may be younger than 18 years. In Sudan, there is no minimum age of marriage. The Sudan Personal Status Law of Muslims, 1994, states that a guardian can give a woman in marriage once she has reached puberty or at the age of 10 with the permission of a judge. The validity or acceptability of child marriage age can hinge on religious affiliations. In many countries which apply Sharia law, such as the Philippines, Muslim boys can marry at fifteen years and Muslim girls can marry any time after attaining puberty. In Malaysia, men can legally marry girls under 16 if they get the Sharia Court's approval. Muslim and Hindu girls can marry at 12 years of age in Tanzania, as long as the marriage is not consummated until the girl reaches the age of 15.

Sometimes, marriages are approved through judicial intervention even if the child has not reached the prescribed marriageable age. In Australia, if a person is at least 18, their spouse can, with the approval of the court, be as young as 16. Similarly, in Massachusetts in the United States, girls as young as

[2] 'Covid-19 lockdown threatens efforts to stop spikes in child marriage', The Deccan Herald, 12 Aug 2020; <https://www.deccanherald.com/national/covid-19-lockdown-threatens-efforts-to-stop-spikes-in-child-marriage-872318.html>

girls as young as 12 are allowed to get married in 'exceptional circumstances' with the consent of a judge. In the US, shockingly, child marriage is legal in 46 states, and only Delaware, New Jersey, Minnesota, and Pennsylvania have set the minimum age at 18 and eliminated any exceptions. Iraq, Jamaica and Uruguay allow children to marry with parental permission. Some member states of the European Union also allow marriage before reaching the age of majority with the consent of the parents and/or a judicial or administrative body. Only in Denmark, Germany, the Netherlands and Sweden (as well as in Poland, but only with regard to men), there is no possibility to marry below 18 years, as recommended by the Committee on the Rights of the Child (CRC). In the United States, in California, Colorado, and Pennsylvania, there is no minimum age if the court decides the marriage is appropriate. In nine states – Oklahoma, Ohio, Maryland, New Mexico, North Carolina, Kentucky, South Carolina, Arkansas, and Florida – exceptions exist to allow minors who are pregnant to marry.



Photo Credit: Reuters

Why does child marriage happen, and what are its effects?



The UN recognises that child marriage can happen due to various factors, including:

- economic insecurity
- poverty
- gender inequality
- increased risks of sexual and gender-based violence
- breakdown of the rule of law and state authority
- the misconception of providing protection through marriage
- the use of forced marriage as a tactic in conflict
- lack of access to education
- the stigma of pregnancy outside of marriage
- absence of family planning services
- disruption of social networks and routines
- the lack of livelihood opportunities

Girls Not Brides observed that in some communities, child marriage is a traditional practice that has happened for generations, and it goes unquestioned as part of community life and identity for a long time.

The Third Resolution on Child, Early and Forced Marriage adopted by the United Nations General Assembly cites gender inequality as a root cause of child, early and forced marriage.[3] It also highlights poverty, insecurity, early pregnancy and lack of education as factors behind child marriage.

Human Rights Watch states that child marriage violates a series of human rights and causes social justice issues, including adverse impacts on the right to education, freedom from violence, reproductive rights, access to reproductive and sexual health care, access to employment, freedom of movement, and the right to consensual marriage.[4] A child bride is often not allowed to continue her education after marriage as she is expected to take on responsibilities in the home. Girls aged 15-20 years are also twice more likely to die in childbirth than those in their 20s.[5] A significant difference between the age of the spouses which is typical of child marriage poses a significant risk-factor associated with violence and sexual abuse against younger girls. The International Council of Research on Women (ICRW) explains that women with low levels of education and married adolescents between the ages of 15-19 years old are at a higher risk of domestic violence than older and more educated women.

The Economic Impacts of Child Marriage project, a collaborative effort by the ICRW and the World Bank, with funding from the Bill & Melinda Gates Foundation and the Children's Investment Fund Foundation, estimated that

[3] The Third Resolution on Child, Early and Forced Marriage, A/C.3/73/L.22/Rev.1 , 12 Nov 2018

[4] <https://www.hrw.org/news/2013/06/14/q-child-marriage-and-violations-girls-rights>

[5] 'Giving Birth Should Not Be a Matter of Life and Death', UNFPA, 2013:

<https://www.unfpa.org/sites/default/files/resource-pdf/EN-SRH%20fact%20sheet-LifeandDeath.pdf>

The Economic Impacts of Child Marriage project, a collaborative effort by the ICRW and the World Bank, with funding from the Bill & Melinda Gates Foundation and the Children's Investment Fund Foundation, estimated that failing to let girls finish their education could cost the developing world as much as \$30 trillion in lost earnings and productivity by 2030.

What are the international frameworks for preventing child marriage?

- The UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages that came into force in 1964, provides that all State parties shall 'specify a minimum age for marriage and that no marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.' Fifty-five countries are party to this Convention.[6]



Photo Credit: al-Alarabiya.pk

[6] United Nations Treaty Collection; more on:
https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVI-3&chapter=16&lang=en

- The Joint General Recommendation No.31 of the United Nations Convention on the Rights of the Child (CRC) on harmful practices, draws a link between forced marriage and child marriage due to the inability of children to give their free and full consent to marry, and reiterates the importance of issuing and implementing laws establishing 18 years as the minimum age to enter into marriage.
- Goal 5 of The Sustainable Development Goals (SDGs) set by the UN General Assembly in 2015 aims to achieve gender equality and empower all women and girls, including eliminating all harmful practices such as child, early and forced marriage and female genital mutilations. It seeks to eradicate child marriage by 2030. In 2016, UNICEF and the United Nations Population Fund (UNFPA) joined forces through a Global Programme to Accelerate Action to End Child Marriage in 12 countries with the highest rates of child brides.
- In September 2013, the Human Rights Council adopted the first-ever resolution on child, early and forced marriage. Co-sponsored and unanimously adopted by over 100 countries, the resolution calls for the elimination of child, early and forced marriage to be considered in the post-2015 development agenda. It recognises child, early and forced marriage as a human rights violation that “prevents individuals from living their lives free from all forms of violence” and negatively impacts the “right to education, and the highest attainable standard of health, including sexual and reproductive health.”
- On 19 December 2016, the UN General Assembly at its 71st session adopted a second resolution on Child, Early and Forced Marriage. It requires all States to enact and enforce laws requiring a minimum age for marriage and ensure access to justice for women and girls who are at risk

or have been subjected to this child marriage and forced marriage. The resolution also urges States to respect, promote, and protect the sexual and reproductive health and rights of all women and those girls subjected to child, early and forced marriage.

- The United Nations General Assembly agreed on a third resolution on Child, Early and Forced Marriage on 15th November 2018. The resolution, which was led by Canada and Zambia and co-sponsored by 114 member states, recognises the need to support women and girls subjected to child marriage, as well as their children. It also emphasises the vital role that families, communities and religious, traditional and community leaders play in transforming harmful social norms and confronting gender inequality.



Are child marriages legal in India?



This section explores the legal framework for child marriage, particularly in India. It includes the history of legislation, relevant policies and landmark judicial pronouncements on child marriages in India.

According to UNICEF, India ranks fourth amongst eight South Asian countries in terms of child marriage prevalence, after Bangladesh, Nepal and Afghanistan. More than half of India's child brides live in Uttar Pradesh, Bihar, West Bengal, Maharashtra and Madhya Pradesh.

The right to equality, protection of life and personal liberty, right against exploitation, and right to education are enshrined in the Constitution. Article 39 provides that the State shall direct its policy towards securing that *'children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and childhood and youth are protected against exploitation and against moral and material abandonment'*.

When the Indian Penal Code (IPC) came into force in 1860, marriage was regulated by customary practices and the age of consent was fixed at 10 years by law. Sex with a girl less than 10 years of age was deemed to be statutory rape under the IPC. In 1891, the colonial administration raised the age of consent to 12 years with the enactment of the Age of Consent Act. This shift was triggered by outrage over the death of child bride Phulmonee in Bengal after forced sexual penetration by her much older husband. The case established that fatal injury can be caused by sexual intercourse between an older man and a young girl. In 1929, the Child Marriage Restraint Act fixed the age of marriage for girls at 14 years and boys at 18 years. By 1940, incremental reform led to fixing the age of consent at 16 years.

To eradicate child marriage and ensure that the child protection law conforms with international standards, the Child Marriage Restraint Act was passed in 1929, which was then replaced by the Prohibition of Child Marriage Act in 2006. The Act re-defined child marriage as a marriage in which the girl is under 18 years of age, or the boy is under 21 years. Furthermore, it enabled provisions that prohibit child marriage, protect the victim, and enhance punishment for those who abet, promote or solemnize such a marriage. According to this Act, child marriage is voidable at the option of the child. The child, within two years of attaining majority, or through a guardian or next of friend, along with the Child Marriage Prohibition Officer (who is appointed by the state government for the particular state), can file a petition to annul the marriage at the district court. The Act can also be applied retrospectively, making child marriages solemnised before the commencement of the Act also voidable by the child. However, marriages solemnised under the following circumstances would be null and void from the beginning:

1. Where a minor child is taken or enticed out of the keeping of the lawful guardian, or
2. By force compelled, or by any deceitful means induced to go from any place, or
3. Is sold for marriage and made to go through a form of marriage, or if the minor is married after which the minor is sold off or trafficked or used for immoral purposes.

The PCMA also gives power to courts to issue injunctions to prohibit solemnisation of a child marriage either suo moto or in response to complaints filed by any person or organisation having reasonable information about the occurrence of child marriage. Solemnisation of child marriage is punishable by imprisonment for up to two years or fines of up to one lakh rupees for a groom who is older than 21 years of age; anyone who knowingly performs, conducts, directs, or abets any child marriage; and parents, guardians, religious officials, and others for knowingly promoting, negligently failing to stop, or attending and participating in child marriages. Under the PCMA, a child born from child marriages is a legitimate child, and the district courts issuing the decree of nullity of marriage should make appropriate orders for the custody and maintenance of the child.

In 2013, the Government of India adopted the National Policy for Children to strengthen the child protection framework. It provides for tracking, rescuing and rehabilitating children out-of-school, including married children, and ensuring that they have access to their right to education.

The Protection of Children from Sexual Offences Act (POCSO), 2012, states that a person under the age of 18 is a 'child' and, hence, cannot make an

informed decision about engaging in sexual intercourse. The Criminal Law (Amendment) Act of 2013 increased the age limit of intercourse with a girl to be considered rape under IPC, irrespective of consent, from 16 to 18 years. Yet, till 2017, Section 375 of the IPC, which defines ‘rape’, had an exception that stated that sexual intercourse by a man with his wife, who is above the age of 15, will not be considered rape. On 11th October 2017, the Supreme Court of India delivered a landmark judgement by striking down the exception and criminalising sex with child brides. An NGO, Independent Thought, filed the PIL[7] which sought to increase the age limit from 15 to 18 years, considering that all the other child protection laws in India set the age of consent for a girl child at 18 years. By declaring the exception under Sec. 375 “discriminatory, capricious and arbitrary”, the Apex Court accepted the petitioner’s argument that the distinction in terms of punishment related to the rape of an unmarried child and rape of a married child was unconstitutional and was in clear violation of Article 14, 15 and 21 of the Constitution, along with being contradictory to the provisions of the POCSO Act. The court also acknowledged that allowing the marital rape of a girl child to continue weakened the enforcement of the Prohibition of Child Marriage. The order sought to bring all the child protection laws in conformity with one another.

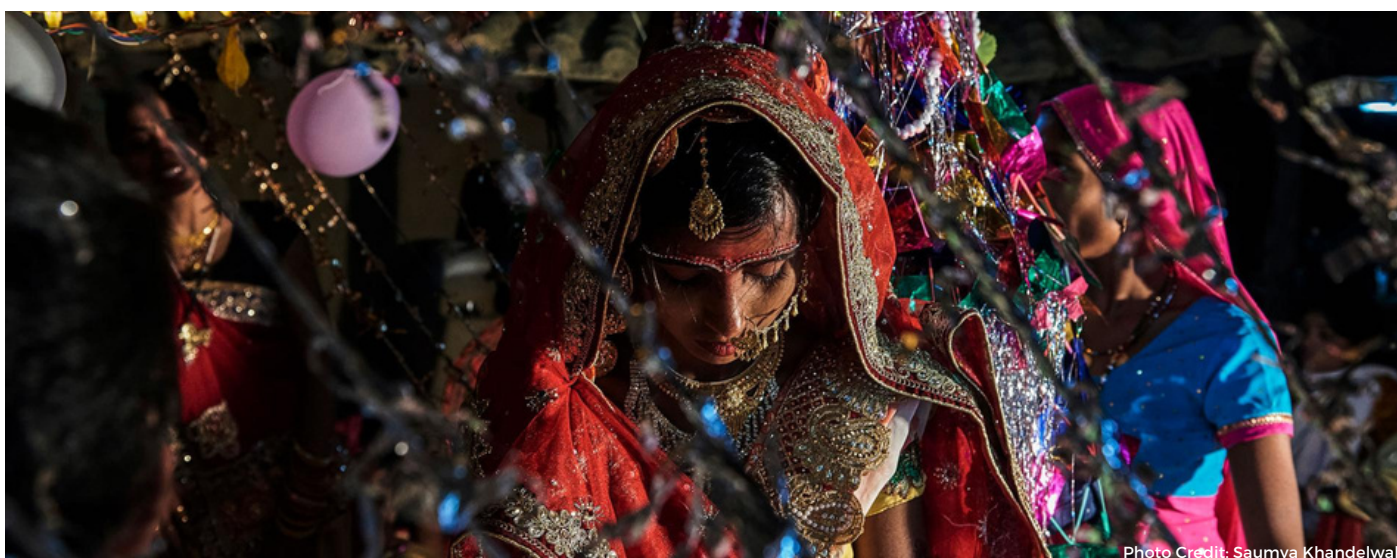


Photo Credit: Saumya Khandelwal

[7] Independent Thought v. UOI WP (C) 382/2013

Despite comprehensive laws prohibiting and penalising child marriages, UNICEF data estimates that each year, at least 1.5 million girls under 18 years get married in India, which makes it home to the largest number of child brides in the world, a third of the global total. Nearly 16 per cent of all adolescent girls aged 15 to 19 years are currently married. India is also one of the twelve countries selected to be part of the UNFPA and UNICEF's Global Programme to Accelerate Action to End Child Marriage. There have been several community efforts to eradicate child marriage in India. In 2017, Gender Alliance Bihar, a collective effort of over 270 civil society organisations backed by the UNFPA, came up with a mobile application called 'Bandhan Tod' to fight the rampant social evil of child marriage in the state. Organisations like Childfund International, SNEHA, Child Rights and You (CRY) have been instrumental in leading an offensive against child marriage in India.



Child marriages of boys



Photo Credit: Fawzan Husain

While the practice of child marriage violates the rights of young girls and boys and cuts short their childhood, its prevalence is higher among girls. The risks and consequences faced by child grooms, however, are still significant and tied to the biological and social differences between boys and girls. Child grooms, like child brides, are forced to take on adult responsibilities for which they may not be prepared. The union may also force young boys into fatherhood and cause additional economic pressures to provide for a household. There are also chances that the responsibility will place restrictions on access to education and limit the opportunities for career advancement. Globally, 115 million boys and men were married before the age of 18.[8] It is important to note that the countries where child marriage among boys is most common are geographically diverse and differ from the countries in which the practice is most common among girls. It has also been observed that further research is needed on the drivers of the practice and its effect on child grooms.

[8] <https://data.unicef.org/topic/child-protection/child-marriage/>

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This is the third document in a series of legal information factsheets curated by iProbono on violence against women and girls. While our factsheets aim to provide a global perspective, the focus of this document is the laws in India.

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