

# **CIVIL SOCIETY SUBMISSION TO THE STANDING COMMITTEE FOR EDUCATION, WOMEN, CHILDREN, YOUTH, AND SPORTS ON THE PROHIBITION OF CHILD MARRIAGE AMENDMENT BILL, 2021\*\***

**February 3, 2022**

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The aims and objectives of the Prohibition of Child Marriage Amendment Bill, 2021 (referred to as the Bill) seeks to achieve the “imperatives for lowering maternal mortality rate and infant mortality rate, as well as improvement of nutrition levels and sex ratio at birth, .... empowerment of women, gender equality, increasing the female labour force participation, make them self-reliant,” through raising minimum marriage age for women from 18 to 21 years. These goals correspond with the GoI notification dt. 4.6.2020, for setting up of “a Task Force to examine matters pertaining to age of motherhood, imperatives of lowering MMR, improvement of nutritional levels and related issues.”

The stated aims reflect the government’s recognition of the need to address women’s and girls’ empowerment, the high maternal mortality rates in the country, high levels of malnutrition, and poor educational attainment of girls. Even as we emphatically agree on the need to address each of the indicators of inequality and impoverishment of girls, we disagree with the proposed solution. Unfortunately, not only does raising the minimum marriage age fail to address the issues sought to be achieved, it also raises concerns about unintended harm that will result from such a move.

For the reasons set out below - outlining concerns and linkages of child marriage with the objectives sought to be achieved through the amendment, we oppose the Bill. Instead, we recommend multi-sectoral measures and welfare benefits be allocated for girls from population groups most vulnerable to child and early marriage.

## **PART A: EARLY MARRIAGE TRENDS AND LINKAGES WITH EDUCATION, HEALTH, NUTRITIONAL LEVELS**

### **1. CHILD MARRIAGE PREVALENCE AND TRENDS**

Child marriage has been declining over time. As per the NFHS-4 (2015-16), out of all women who were 20-24 years old, 26.8% were married before the current legal age of 18 years, marking a considerable drop from the 47.4% in NFHS-3 (2005-06) in the same age group who married before 18. The decline in the last five years, as reflected in NFHS-5 (2019-21), at 23% is somewhat slower.<sup>1</sup>

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\*\*The submissions are drafted by Madhu Mehra and Mary E John, who have worked extensively on the issues covered here, with inputs from other experts. These submissions are endorsed by 105 civil society members – the detailed list of signatories is available at the end of the submissions.

<sup>1</sup> However, it should be noted that this data remains incomplete as not all states could be included. Secondly this round of data collection was undertaken partially during the period of the pandemic and

The mean age of marriage for girls has also risen from 17.2 years in 2005-06, to 19 years for women in 2015-16, with corresponding increase in age of marriage for men. The trend shows that child marriage, which is already in the decline, has given way to late adolescent marriage, more aptly described as ‘early marriage’. The trends in early marriage broadly consist of forced marriage, arranged marriage and self-arranged marriages which also include elopements.

## **2. POVERTY AND INSECURITY ARE KEY DRIVERS OF EARLY MARRIAGE**

The bill seeks to address early marriage from late adolescence to early adulthood on the premise that marriage age is the most critical cause shaping opportunities and life conditions of girls. The evidence points otherwise. Early marriage, in adolescence, is the result rather than the cause of poverty and insecurity. **Both statistical and qualitative studies establish many key drivers of early marriage in India including poverty, social marginalisation, lack of safety, lack of decent employment opportunities, humanitarian crisis and conflict, as well as gender inequality within a patriarchal social order.** Poverty at the household and the community level often goes together with limited availability/accessibility and poor quality health and education services, poor infrastructure, and few opportunities. At the same time, traditional patriarchal practices means that girls are less valued than boys, there is insecurity and fear about girls’ safety, and the premium on sexual purity of girls makes daughters’ virginity critical for family ‘izzat’; these practices are exacerbated in situations of poverty and social marginality. A symbolic measure such as raising the minimum marriage age can hardly be expected to resolve these fundamental constraints on empowering girls and improving health and other outcomes for them. While child marriage is likely to occur more in rural areas account of lack of opportunities, it is likely to reduce if girls have secondary education.<sup>2</sup> So there is a correlation between education and early marriage.

## **3. EARLY MARRIAGE IS THE CONSEQUENCE – NOT THE CAUSE – OF GIRLS DROPPING OUT OF SCHOOL.**

Evidence shows that investing in educating and empowering young girls is a powerful deterrent to early and forced marriage. While there has been significant improvement in the enrolment of girls at Primary and Elementary levels, the drop at the Higher Secondary levels

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lockdown that would have posed definite constraints on the gathering of data. Therefore the two figures are not strictly comparable.

<sup>2</sup> Goli, Srinivas, *Eliminating Child Marriage: Progress and Prospects*, New Delhi: Child Rights Focus and Action Aid, 2016; Shireen J Jejeebhoy, *Ending Child Marriage in India: Drivers and Strategies* (Akshara Centre for Equity and Well Being and UNICEF, 2019) <https://www.unicef.org/india/media/2556/file/Drivers-strategies-for-ending-child-marriage.pdf>; A Statistical Analysis of Child Marriage in India: Based on Census 2011: (Young Lives and NCPCR - 2017) [https://younglives-india.org/sites/www.younglives-india.org/files/2018-05/Child%20Marriage%20Report%20Final\\_1.pdf](https://younglives-india.org/sites/www.younglives-india.org/files/2018-05/Child%20Marriage%20Report%20Final_1.pdf) ; Early and Child Marriage in India: A Landscape Analysis (Nirantar Trust 2015) <http://feministlawarchives.pldindia.org/wp-content/uploads/Nirantar-ECM-Report.pdf?>, Mary E John *Child Marriage in an International Frame: A Feminist Analysis from India*, New York, London and New Delhi: Routledge, 2021.

is dramatic - from a net enrolment ratio of 91.58 (Elementary) to 31.42 (Higher Secondary).<sup>3</sup> Despite seeming gains in girls' education, 49% of girls and 56% of boys of ages 15 – 19 years had completed Class 10+ according to NHFS-4 (2015-16). The drop-out rate for girls has shockingly increased at the Secondary level - from 17.79 % in 2014-15 to 19.18 % in 2016-17.<sup>4</sup>

The assumption that early marriage is the primary cause for girls discontinuing after Elementary education is misplaced. Government data shows that the reasons for high drop-out rates amongst girls are a combination of demand and supply side factors, primarily the availability, affordability and quality of schooling. **According to NHFS-4 (2015-16) girls in the age group of 6-14 years provided the following reasons for discontinuing their education: 24.8 % stated a lack of interest in studies; 19.3 % reported the high cost of education; 14.5 % attributed the burden of unpaid household work; only 7.9 % reported marriage as a reason for dropping out of school. Child marriage is more a consequence of girls dropping out of school rather than the cause.**

The high attribution to 'lack of interest in studies' as a reason for discontinuing education relates to three critical factors – low learning levels<sup>5</sup>, the lack of relevant curricular content and poor teaching-learning pedagogies, and discrimination.<sup>6</sup> Several smaller studies have noted that fears about girls' safety and sexual harassment inhibits many from sending daughters to secondary school, constituting additional reasons for pulling girls out of school.<sup>7</sup> Systemic caste and gender-based discrimination are also a reason for drop-out.<sup>8</sup>

The burden of unpaid household work on girls is undeniably held by girls, and significantly defines girls' lives. The wide range of domestic work they are expected to do often costs girls their education. Moreover, when girls and their families perceive that they are not learning in school and don't see education as a possible pathway out of intergenerational poverty, they pull them out of schools and the default option is to get them married. For improved educational outcomes for girls, these complex factors must be recognized.<sup>9</sup>

The evidence shows that to delay girls' age of marriage, it is far more important to improve overall educational access, retention, quality of education and ensure that girls transition from

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<sup>3</sup> National Institute for Educational Planning and Administration (NIEPA) 2018. This figure falls by a further 15% for girls from Schedule Tribe (ST), Schedule Caste (SC) and Muslim communities.

<sup>4</sup> Ibid. The drop-out rate further increases for girls belonging to SC, ST and minority communities. Nearly 68.21 % ST and 62.57 % SC children drop out by the time they reach upper primary level and 88.17 % ST children and 83.62 % SC children drop out by the time they reach secondary level (Pandita, 2015).

<sup>5</sup> The Annual Status of Education Reports (ASER) by Pratham repeatedly point to the low learning levels. The ASER 2018 Report focuses on Secondary education.

<sup>6</sup> Despite reforms, gender biases in textbooks persist. As the problem is complex, scholars have cautioned that a mere 'sanitisation' by removal of stereotypes or top-down messaging (eg. early marriage as a social evil) are not effective. Instead content needs to acknowledge multidimensional deprivations that girls' experience (Bhog D. et al, 2010; NCERT, 2006).

<sup>7</sup> Increase in gender-based violence pushes communities to marry girls off early. (Santhya KG et al, 2019)

<sup>8</sup> Nambissan, G., 2010; Ramachandran, V. & Naorem, T, 2013

<sup>9</sup> Decline in child marriage rates between 2001 and 2011 was found to have been explained by improvements in female education, reduction in poverty and average household size. (Zavier AJF. et al, 2019)

Elementary to Secondary education and further, than to raise the legal age of marriage. Notably, the Right to Education (RTE) does not extend beyond 14 years. This means that after completing Elementary education, secondary schools are more difficult to access; involve costs of transport, books, and uniforms which are beyond the reach of poor girls. Low ages at marriage correlate strongly with the absence of high schools in rural areas according to various studies.<sup>10</sup> **Hence, extending RTE to 18 years, in addition to accompanying measures to make secondary schools accessible and quality education affordable will significantly incentivise girls' retention in schools.**

**With the continuing Covid pandemic and closure of schools, we run a grave risk of losing the gains we have made in furthering girls' education over the past few decades.** The reports of increase in girls' drop-out rates due to economic devastation, increased unpaid household work and shift to online classes, has resulted in loss of learning for a vast majority of girls who are on the wrong side of the digital divide – in addition to the pre-existing rural-urban and gender – disparities. These conditions have reportedly led to a spurt in child marriages, confirming its correlation with poverty and insecurity.<sup>11</sup>

#### **4. MALNUTRITION AND ANAEMIA RESULT FROM POVERTY, NOT MARRIAGE BELOW 21 YEARS**

Both the Task Force and the current Amendment are concerned about the nutritional status of mother and child, and about maternal mortality. There is an obvious way in which higher ages at marriage correlate with better levels of nutrition (measured in the NFHS by stunting and wasting) and lower rates of maternal mortality (whose principal cause is anaemia which causes excessive blood loss at the time of child birth). **The Tables 1 and 2 in the attached Appendix** (taken from the Appendix of Mary John 2021, which analyses unit level data from NFHS 4) provide a clear picture regarding the problem with this line of reasoning. **Higher ages at marriage correlate with better health outcomes for both mother and child because it is women belonging to households of higher economic status who marry at higher ages, and such women are also healthier and have access to better health care as a result of their higher socioeconomic status.**

In order to make a rigorous scientific basis for the significance of the age at marriage it is necessary to control for all other factors first which is what the regression analyses in the Tables undertake. From these Tables the following can be readily seen: **Anaemia in women is not affected by their age at marriage. Secondly, stunting and wasting is far more strongly correlated by poverty than by any other factor.**

**Age at marriage has little impact on the nutrition levels of the mother and her child, whereas factors like poverty and quality health services are far more instrumental in**

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<sup>10</sup> Kalpana Kannabiran et al Investigating the Causes of Low Female Age at Marriage: the Case of Telangana and Andhra, EPW 52 (18) 2017; MV Foundation And they never lived happily ever after... the battle for justice goes on: voices of Married Girls in Telangana, 2018.

<sup>11</sup> S. Jejeebhoy, Child marriage during the pandemic, India Forum 23 June 2021

**improving women's and children's health and nutritional status.** Levels of anaemia show no change even when women marry after the age of 21 years. As per NFHS-5, the percentage of anaemic women rose to 57 per cent from 53.1 per cent, anaemic teenage girls (15-19 years of age) to 59.1 per cent from 54.1 per cent and the number of anaemic men also rose to 25 per cent from 22.7 per cent. India's nutrition strategy is not yet fully coupled with poverty or food security strategies.

## **5. SOCIO-ECONOMIC CONDITIONS RATHER THAN AGE RESULTS IN POOR MATERNAL AND CHILD HEALTH OUTCOMES:**

Poor maternal health outcomes and child mortality are matters of great concern for all of us. While traditional literature has associated young motherhood and age with poor pregnancy and birth outcomes<sup>12</sup>, studies in the last decade link it with socio-economic vulnerabilities of young girls. **There is evidence that pregnancy at younger adolescence (below 18) is associated with poor pregnancy outcomes, the ages 18+ are physiologically healthy ages for pregnancy. Recent studies show that the poor health outcomes arising from pregnancy at or after 18 years arise from household poverty, poor nutritional status, lack of education and inadequate access to health services, not age.**<sup>13</sup>

NFHS-4 data (2015-16) reveal that girls from poor families and those who have not completed secondary education are more likely to get married before the age of 18.<sup>14</sup> These girls are likely to have adverse pregnancy outcomes for child birth even through adulthood, regardless of age at marriage.<sup>15</sup> Intimate partner violence during pregnancy is also known to be associated with poor maternal and birth outcomes.<sup>16</sup>

In India, the mortality rate of children is higher among historically marginalised population like Scheduled Castes and Scheduled Tribes. Access to health care, household wealth, economic condition of the family and social status are key factors which determine the possibilities of survival for children, especially children from vulnerable backgrounds.<sup>17</sup> These findings invite our attention to the importance of addressing deeper structural inequalities to tackle the issues of high maternal mortality and child mortality rates. To address health outcomes, therefore, interventions aimed solely at delaying age at marriage will have no effect.

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<sup>12</sup> Santhya, KG. et al, 2010; Godha, D. et al, 2013; Raj, A. et al, 2010; Paul, P., 2018.

<sup>13</sup> Banerjee, B. et al, 2009; Masoumi, SZ. et al, 2017

<sup>14</sup> NFHS – 4, 2015-16.

<sup>15</sup> Mehra, S., & Agrawal, D., 2004

<sup>16</sup> Dhar, D. et al, 2018; World Health Organization (WHO), 2013

<sup>17</sup> It was found that the under-five mortality rate for SC (56 deaths per 1,000 live births), ST (57 deaths per 1,000 live births), and OBC (51 deaths per 1,000 live births) are considerably higher than for those who are not from SC, ST, or OBC (39 deaths per 1,000 live births). The under-five mortality rate also declines with increasing household wealth. The under-five mortality rate declined from 72 deaths per 1,000 live births in the lowest wealth quintile to 23 deaths per 1,000 live births in the highest wealth quintile (NFHS-4).

## **6. NO CORRELATION BETWEEN SEX RATIOS AT BIRTH (SRBs) AND EARLY MARRIAGE**

Both the Task Force and the current Amendment under consideration mention that another reason for raising the age of marriage of girls from 18 to 21 years is to improve the adverse sex ratio at birth. Here there seems to be the assumption that lower ages at marriage go together with negative sex ratios at birth. However negative sex ratios at birth are due to gender biased sex selection, namely the resort by the families to sex determination testing of a foetus and its selective elimination through sex selective abortions. It may also be due to more advanced techniques of ensuring the birth of a son using newer assisted reproductive technologies. Regions and social groups associated with gender biased sex selection are, however, not positively correlated with low ages at marriage. **The worst SRBs are in regions such as Punjab and Haryana, and among non-poor and middle class groups, including in urban India. These are not the families who are marrying their children too young – indeed these are groups and regions with higher than average ages at marriage.**

## **7. LACK OF DECENT PAID EMPLOYMENT, NOT AGE OF MARRIAGE THE CAUSE OF JOBLESSNESS OF EDUCATED WOMEN**

Another major assumption that is driving the current interest in raising the age at marriage for women is the belief that raising the age at marriage would enable women's empowerment through greater opportunities for employment. The amendment argues that if girls marry after the age of 21 they would be able to access more work opportunities before their marriage and have much more economic independence as a result. However, what is very little understood in the Indian context is the following: First and foremost, women's employment has been declining in recent decades, the very decades that have seen declines in child marriage. Secondly, most women are working out of necessity in jobs that are poorly paid, if at all, and characterised by informal, casual and generally speaking bad working conditions. **As Table 3 in the attached Appendix shows (taken from John 2021), the proportion of women engaged in paid employment decreases at higher ages at marriage! This is because there are much fewer decent and meaningful employment opportunities for better educated and better off women who marry at such ages.**

Female Labour Force Participation of India is amongst the lowest in the world. Opportunities for girls to enter the labour force are limited, the sphere of "acceptable" jobs for girls is small, access to skilling is limited. Aside from agricultural labour, the only occupations that rural girls aspire for in the village are teacher, AWW/ASHA; or even home tailoring, and similar jobs that don't involve interaction with men (beauty parlour, ANM etc), and those that are perceived as culturally acceptable by their families and communities. The problem is therefore not the age at marriage but the lack of good jobs, and gendered attitudes about acceptable work for women in society.

## PART B: THE LAW AND ITS UNINTENDED HARMS

### 1. LIMITING CIVIL RIGHTS OF YOUNG ADULTS VIOLATES FUNDAMENTAL RIGHTS AND SUBJECTS THEM TO WRONGFUL CRIMINALISATION

The age of majority is 18 years in India and across the world. Under 18 years, some laws distinguish ‘child’ from ‘adolescent’ for purposes of permitting/ prohibiting specified activities, but after completion of 18 years age of majority and legal capacity for enjoyment of fundamental rights is guaranteed by the Constitution.

Legal capacity for adolescent minors is also acknowledged in some contexts and circumstances. The child labour prohibition shields ‘child’ below 14/ 15 years<sup>18</sup> from work while permitting adolescents between 14 to 18 years to work in non-hazardous occupations and processes, as also under the Factories Act 1948 and the Plantation Labour Act 1951. The Juvenile Justice (Care and Protection of Children) Act, 2015 introduced a “transfer system” to allow children between 16 and 18 years, accused of “heinous crime,” to be tried and punished as adults. The Age of Majority Act, 1875 treats 18 as the legal age of majority, excepting for purposes of marriage and family related concerns governed by religious laws, where underage marriage, annulment and divorce are permissible.

The distinction among minors – with adolescents permitted to work, or be prosecuted as adults in relation to some crimes – leans towards greater recognition of capacities, closer to that of adults. Judicial precedents have frequently upheld older adolescent’s capacity for discretion and intelligible differentiation in underage marriages, especially in cases when the girl consistently affirms her participation in planning elopement or running away.<sup>19</sup> The trends in early marriage vary, with some being forced, others arranged or self-arranged either with parental consent or against parental consent. The diversity of situations and particularity of facts calls for a case by case approach rather than a uniform age centric response, as held by *Court on Its Own Motion (Lajja Devi) v. State*<sup>20</sup>

*“We feel that no straight jacket formula or answer can be given. It depends upon the facts and circumstances of each case. The decision will largely depend upon the interest of the boy and the girl, their level of understanding and maturity, whether they understand the consequences, etc. The attitude of the families or parents has to be taken note of, either as an affirmative or a negative factor in determining and deciding whether the girl and boy should be permitted to stay together or if the girl should be directed to live with her parents. Probably the last direction may be legally justified, but for sound and good reasons, the Court has option(s) to order otherwise. We may note that in many cases, such girls severely oppose and object to their staying*

<sup>18</sup> The Child Labour (Prohibition and Regulation) Act, 1986.

<sup>19</sup> S.Vardarajan vs State of Madras 1965 AIR 942; *G. Saravanan v. Commissioner of Police*, H.C.P. (MD) No.190 of 2011, High Court of Madras, 6 April 2011; *Furqan v. State*, W.P.(CRL) 1025/2012, High Court of Delhi, 22 January 2013

<sup>20</sup> 2012 SCC Online Del 3973

*in special homes, where they are not allowed to meet the boy or their parents. The stay in the said special homes cannot be unduly prolonged as it virtually amounts to confinement, or detention. The girl, if mature, cannot and should not be denied her freedom and her wishes should not get negated as if she has no voice and her wishes are of no consequence.”*

The Committee on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Joint General Recommendation 31/ General Comment 18 (2019) are categorical in 18 years as the age of marriage. The Office of the High Commissioner of Human Rights, and Resolutions of the Human Rights Council<sup>21</sup> define child marriage as that where at least one of the parties is under 18 years of age. On attaining adulthood, if not earlier under domestic law, all persons are holders of civil and political rights, which includes the right to marry and found a family of one’s choice. Adulthood corresponds with the recognition of the right to sexual autonomy, among other personal rights, in addition to the right to enter into contract and to vote.

**Thus, a uniform ‘age centric’ response to diversity of situations will not only violate and be contrary to existing jurisprudence, it will also inflict untold harm on young lives.** By exposing the young to criminalisation, this move will stigmatise and inflict long-term impact on their future. Evidence points towards the retaliatory use of criminal law to punish girls who marry against parental wishes, rather than preventing arranged or forced marriages. An analysis of case law from 2008-17 shows use of a combination of habeas corpus action, criminal prosecution and nullification of marriage largely by parents against daughters who elope/ or marry against parental wishes, often to evade forced marriage, domestic abuse and housework, and parental wrath on discovery of relationship.<sup>22</sup> While 65% of the cases involve parents using the law against self-arranged marriages by their daughters; only 35% of the remaining cases pertain to arranged marriages, for the non-punitive recourse of nullifying marriages that have broken down on account of dowry or domestic abuse or incompatibility. Cases of injunction against child marriage are minimal. Preliminary studies are also showing that the POCSO Act and kidnapping provisions are also used in cases involving adult women who marry against their parents’ wishes.<sup>23</sup> The impact on the number of underage marriages, particularly those in disregard of parental disapproval which are most likely to be punitively prosecuted, is crippling when the intention of the law is to support and empower the young. Such devastating outcomes for the young, from poorest population groups, will magnify with increase in marriage age for girls.

**While criminal laws are invariably deployed against elopements, only PCMA is used in the cases of arranged marriage. The disparity in prosecutions under PCMA as compared to those under section 366 IPC for kidnapping with the intent to marry is**

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<sup>21</sup> A/HRC/RES/41/8

<sup>22</sup> Mehra M, Maheshwari S, Child Marriage Prosecutions in India (Partners for Law in Development, 2021); See also, Mehra M, Nandy A, Why Girls Run Away to Marry: Adolescent Realities and Socio-Legal Responses in India (Partners for Law in Development, 2019).

<sup>23</sup> An ongoing study of 1715 romantic cases under the POCSO Act from Assam, Maharashtra and West Bengal by Enfold Proactive Health Trust has revealed that in 22.8% cases, the victims claimed they were adults when they eloped or married their partner.



**reflected in the NCRB data**<sup>24</sup> Discounting a fraction of the cases involving criminal coercion and force, the staggering disparity in prosecutions still points to the targeting of elopements over regular PCMA cases.

<b>No of cases registered in the following years</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
Prohibition of Child Marriage Act	501	523	785
Sec.366 IPC:Kidnapping and Abduction of Women to compel her for marriage	33354	32066	24745

As a consequence of such prosecutions, girls often get placed in shelter homes (on refusal to return to parents, or the latter refusing to accept their child), and the boys sent to jails or correction homes, tragically cut off from educational, livelihood or empowerment opportunities.<sup>25</sup> In practice, the law has come to enforce parental and community controls on girls, the very thing the law should alter.

The proposed amendment fails to consider the complex socio-economic context within which self-initiated marriages are taking place. In a study in 2021 on *Girls involved in “Romantic Cases” and the Justice System*, based on the experience of 43 girls residing in Child Care Institutions in Bihar, 23 girls (53.49%) said that they decided to leave home with their partners when their families forcibly fixed or solemnised their marriage with another person against their will.<sup>26</sup> 18 girls (41.86%) found the violence being perpetrated against them by their families after they learnt about the relationship unbearable, and thus decided to leave home and an equal number shared that they left home because of parental opposition to their relationship. 27 girls (62.79%) stated that the decision to leave home was taken by them alone, and 12 girls (27.91%) said that the decision was jointly taken with their partners. The gravity of their home situation and the absence of educational opportunities and alternatives cannot be ignored, considering that 23 girls (53.49%) were aware that elopement and marriage below the age of 18 was a legal offence and yet chose to do so.

**The jurisprudence firmly upholds the right of young women’s choice, in marriage or in ‘live-in’ relationship,<sup>27</sup> a Constitutional right that the bill disturbs, which will most likely encourage vigilantism, moral policing and motivated prosecutions to dismantle**

<sup>24</sup> 366. Kidnapping, abducting or inducing woman to compel her marriage, etc.—Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; 1[and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid].

<sup>25</sup> Enfold Proactive Health Trust & UNICEF, *Girls involved in “Romantic Cases” and the Justice System - A Study based on the Experience of Girls in Child Care Institutions in Bihar* (2021), Sections 12.1, 12.4.

<sup>26</sup> Enfold Proactive Health Trust & UNICEF, *Girls involved in “Romantic Cases” and the Justice System - A Study based on the Experience of Girls in Child Care Institutions in Bihar* (2021), Chapter V.

<sup>27</sup> Lata Singh [(2006) 5 SCC 475; Writ Petition (crl.) 208 of 2004]; Shafin Jahan vs. Asokan K.M., (2018) 16 SCC 368; Shayara Khatun @ Shaira Khatun And Another v. State Of U.P. And 3 Others (WRIT - C No. - 19795 of 2021) Allahabad HC; Pushpa Devi v. St. of Punjab (CRWP-6314-2021) P&H HC; Mafi and another v State of Haryana and other (CRWP No.691 of 2021) P&H HC

the recognised rights to privacy, autonomy and choice. A raise in the age of marriage will now extend the period within which prosecutions under Section 366, IPC can take place, and magnify the harm, the disempowerment and loss of agency of women.

Any law that suspends rights of adults after 18 years, is therefore untenable and unconstitutional. The age of marriage for men at 21 years is a striking anomaly that needs correction, rather than raising women's marriage age. The proposed amendment to Section 3(a) of the Prohibition of Child Marriage Act interferes with the right of an adult woman to marry, as well as her right to life and personal liberty, and privacy. It is contrary to the Indian Constitution as well as international standards and should be rejected.

## **2. MINIMUM MARRIAGE AGE OUGHT NOT TO BE CONFUSED TO BE EITHER MANDATORY OR DESIRABLE MARRIAGE AGE**

A minimum marriage age signifies the baseline compliance for society, failure to meet which can attract penalties and prosecution. **It is neither mandatory, nor an ideal age for marriage that is to be encouraged or promoted. It marks an important threshold to distinguish when a marriage may be prosecuted by the state or third parties, or conversely, when it may be protected against intrusion of the state or third parties.** This distinction must be borne in mind while discussing minimum marriage age.

In countries where child and early marriage persists, the minimum marriage age counters social norms, helps raise awareness, and enables social workers, child protection agencies and so on, to intervene – especially when the girls resist and raise an alarm. With 23% of girls still marrying before 18 years (NFHS-5), much remains to be done to ensure compliance with the law, and more importantly, to empower girls to resist, have a voice, which is possible only if they have quality education and access to opportunities within their local contexts. Since early marriage arises from poverty and insecurity, there is a pressing need to allocate resources and create opportunities for girls most vulnerable within these contexts. A reported spike in child marriages during Covid 19 pandemic, confirms this correlation – a fallout of the continuing financial distress, job losses and closure of schools.<sup>28</sup> This context more than ever, calls for support services and programmes for girls who are married, and for resources and opportunities that offer meaningful alternatives and options to girls vulnerable to early marriage. Empowerment of girls rests on making available opportunities for their growth and capacities, rather than raising marriage age, that only seeks to delay marriage without challenging its compulsory nature for the social and economic survival of women. It is dangerous in that the delay into adulthood is driven by silencing girls' voices, denying them agency, and infantilising them through law.

**Early marriage is an outcome of poverty that pushes young from marginalised populations into waged labour, low paid jobs, housework and other adult responsibilities early. Without corresponding investments in married girls or those most**

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<sup>28</sup> S. Jejeeboy, see footnote 11, *ibid.*

**vulnerable to early marriage, the Bill's objectives are mere platitudes to disguise the unjustifiable suspension of women's autonomy, voice and self determination in relation to their personal life.** This does not stand the test of judicial precedent, constitutionality or universal human rights standards, even for children who under the CRC have the right of the child to be heard, the right to not be criminalised for consensual non-coercive sexual activity with peers.

### **3. PROHIBITION OF CHILD MARRIAGE ACT, 2006 (PCMA) IS BARELY IMPLEMENTED, THE CHILD MARRIAGE PROTECTION OFFICERS (CMPO) SCARCELY ACTIVE**

The PCMA was enacted to prevent child marriage, is scarcely implemented for child marriage prosecution – and while it has served to popularise legal minimum age, the right to repudiation of marriage are not well known. Grassroots accounts show that the PCMA is scarcely implemented through formal prosecutions, and CMPOs inactive.<sup>29</sup>

Social workers are the most likely to help girls seeking to avoid marriage, or exit one. **Documented accounts show that social workers hesitate to prosecute formally to avoid the risk of backlash to themselves and the girl,**<sup>30</sup> the protracted legal procedure takes time, and the functionaries including the police are subject to pressures of local elite, which may even cause the girl to be whisked away to be married secretly. Consequently, social workers prefer to intervene informally, to negotiate with families and the community members, under oversight of the administration, child protection system and the police, whose support is available on account of the law.<sup>31</sup> Such negotiations, when successful, secures long term oversight and wishes of the girl in the agreements secured, and resolve the hefty customary fines and social boycott by the *biradari* that result from calling off a marriage. The law in contrast, at best imposes penalties and delays marriage, without addressing the girl's future or the contentious customary issues that arise.

**The CMPOs at the district level are too distant from the villages where child marriage occurs, are not accessible and are invariably officers holding additional charge, with little orientation or time to undertake the assigned role.** The law could be made more effective by involving schools, frontline workers, and by linking dedicated programmes for married girls with the PCMA, to facilitate their participation in adolescent programmes, sexual and reproductive health services, among other things. Much needs to be done to ensure that the law as it exists is implemented so as to achieve realisation of minimum marriage age of 18 as the norm.

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<sup>29</sup> Mehra M, Grassroots Experiences of Using The Prohibition of Child Marriage Act, 2006 (Partners for Law in Development, 2019)

<sup>30</sup> Bhawari Devi, a frontline worker with the Rajasthan government's Women Development Programme was gang raped in retaliation for her reporting a case of infant marriage in a dominant caste family in 1992, and years after faced social and economic boycott in her village – is the most stark but not the only example of the risks social workers face in this context. See also, Mehra M, Grassroots Experiences of Using the PCMA, *supra*.

<sup>31</sup> *Supra*

#### **4. HARMFUL FALLOUT IN JURISDICTIONS THAT HAVE AMENDED THE LAW TO MAKE UNDERAGE MARRIAGE VOID**

In states like Karnataka and Haryana where underage marriages are declared void ab initio, the harmful consequences of raising minimum marriage of girls will magnify. By way of amendments, Karnataka in 2017 and Haryana in 2020 child marriages are deemed void ab initio (instead of being valid but voidable as in the Central law). **Raising the age of marriage would jeopardise social matrimonial rights of married girls in these two states until 21 years, rendering their status to that of de facto wives, while exonerating husbands of liability if they were to desert and remarry.** The unforeseen and unintended consequences of this proposal will hurt the social, economic and legal status of married girls.

While cases of girls marrying between 18 and 21 years will not attract POCSO, the existing evidence of selective criminalisation points towards the extended use of Sec 366 IPC on married and/ or consensual couples between this age group. The selective and targeted criminalisation of self-arranged marriages of young adults is a certainty in view of the overwhelming evidence. Likewise, underage mothers and their families are likely to face **barriers accessing social welfare and maternity benefits that are tied up with marriage**, if the age of marriage is raised.<sup>32</sup>

### **PART C: RECOMMENDATIONS**

#### **1. Recommendations pertaining to the PCMA**

- b. The age of marriage for girls should remain at 18 years in consonance with universal standards, constitutional law, and existing jurisprudence.
- c. Underage marriage to remain valid though voidable, at the option of the underage party to marriage.
- d. The right to repudiate an underage marriage should be extended upto five years of attaining majority, with the provision for judicial condonation of delay beyond the limitation period, for specified reasons.
- e. Raise awareness about PCMA and other laws which secure rights to women and girls, ensure reliable and effective legal redress which guarantees victim and witness protection to women and girls.

#### **2. Recommendations in relation to IPC and the POCSO**

Since the Bill aspires to empower women, it is pertinent to rectify penal provisions that wrongfully criminalise adolescents, as outlined below:

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<sup>32</sup> Reports indicate that the Pradhan Mantri Matru Vandana Yojana (PMMVY) to pregnant and lactating mothers for the first born is not universal but conditional upon attaining 19 years and marital status. Raising minimum marriage age will exclude many more women from its scope if this scheme is not made universal. <https://www.thehindu.com/news/national/other-states/maternity-scheme-exclusionary-need-benefits-for-all/article30314030.ece>

- a. Protect adolescent from sexual abuse, without criminalising consensual and non-coercive sexual activity. Decriminalise close-in-age sexual contact between peers of 16-18 years for close in age partners.
- b. The blanket marital rape exception ought not to be replaced with a blanket statutory rape charges for wife above 15 years. Instead, the notion of consent within marital relations, with a wife of 15 years and above, to be recognised, for decriminalising consensual non-coercive marital sexual intercourse with wife between 15 to 18 years.
- c. The application of offence of kidnapping or abduction or inducing a woman to compel her to marriage under Sec 366 IPC be subject to exceptions, that make it inapplicable in cases where the girl has jointly planned and willingly decided to join her partner, in accordance with existing judicial precedent and to ensure this provision is not misused to punish eloping couples.
- d. Exceptions to accommodate professional confidentiality to be enacted for health care providers and counsellors in relation to Sec 19 POCSO relating to mandatory reporting of older adolescents and young women seeking abortion or other sexual and reproductive health services.
- e. Appoint CMPOs on single charge in districts and villages where early marriage is most prevalent, with adequate training to assist the girls.

### **3. Empower girls who are married or vulnerable to early marriage through targeted programmes**

Setting legal marriage age is not a way of addressing child and early marriage. There is no shortcut to investments in education, health, nutrition, 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. The following recommendations are a pathway for that change.

- i. Legislative reform to extend the right to free and compulsory education to adolescents between 14-18 years, and to provide vocational training and skill development.
- ii. Expand and improve on evidence-based interventions that increase high school completion, notably through cash transfers, supplementary coaching for girls with difficulty.
- iii. Quality education including age appropriate comprehensive sexuality education for all children and adolescents
- iv. Invest and prioritise improvement of infrastructure, hygienic toilets, transport ensuring mobility and safety of girls
- v. Nutritional programmes, distribution and access need to be better coupled with poverty and food security for women and girls.
- vi. Reliable and effective helplines; safe spaces for girls to seek refuge from domestic violence; hostels for girls and single women.

- vii. The Central Government and State Governments proactively take measures to improve young peoples' access to adolescent-friendly sexual and reproductive health information and services, through removal of social and legal barriers and ensure effective implementation of the national adolescent health programme, the Rashtriya Kishore Swasthya Karyakram (RKSK).

**We request the Hon'ble Chairperson of the Standing Committee to allow us to make an online oral presentation to the Committee members.**

**For More Information Contact:**

- **Madhu Mehra** - [madhu.mehra@pldindia.org](mailto:madhu.mehra@pldindia.org)

Lawyer, heads research and training programmes at Partners for Law in Development (PLD), a organisation working for the advancement of women's equality and social justice; and the Convenor of the National Coalition Advocating for Adolescent Concerns (NCAAC), a coalition of 21 members working across thematic domains, in rural and urban contexts. PLD has published three socio-legal studies on the issue of child and early marriage, and the fourth (forthcoming) reviews the impact of making child marriages void in Karnataka. In the recent past, PLD has in conducted research studies for MWCD, Department of Justice and the NHRC, led by her.

- **Mary E John** - [maryjohn1@gmail.com](mailto:maryjohn1@gmail.com)

Formerly Professor, Centre for Women's Development Studies (CWDS), has extensively worked within gender studies, and in recent years on gender biased sex selection and child marriage. With many publications to her credit, the latest is, *Child Marriage in an International Frame: A feminist review from India* (Routledge 2022). She has served as a consultant to UN Women and UNFPA.

**On behalf of civil society organisations and individuals –  
full list of 105 signatories attached after the Appendix.**

**APPENDIX**

**TABLE 1: MATERNAL HEALTH ASSOCIATIONS WITH AGE AT MARRIAGE IN INDIA**

Variables	BMI		Anaemia
	Normal Underweight	vs. Normal vs. Overweight	
<b>Age at marriage</b>			
<18 years †	1	1	1
18–20 years	1.07 [1.05, 1.08]***	0.87 [0.86, 0.89]***	1.02 [1.01, 1.04]**
21 years and above	0.96 [0.93, 0.98]***	0.91 [0.89, 0.93]***	0.96 [0.95, 0.97]***
<b>Economic status</b>			
Poorest †	1	1	1
Poorer	0.79 [0.77, 0.80]***	1.78 [1.72, 1.84]***	0.88 [0.87, 0.90]***
Middle	0.59 [0.57, 0.60]***	2.83 [2.74, 2.92]***	0.84 [0.82, 0.85]***
Richer	0.44 [0.42, 0.45]***	4.29 [4.16, 4.44]***	0.79 [0.77, 0.81]***
Richest	0.27 [0.26, 0.28]***	5.95 [5.74, 6.16]***	0.75 [0.73, 0.77]***
<b>Women's education</b>			
No education †	1	1	1
Primary	1.02 [1.00, 1.05]	1.06 [1.04, 1.09]***	0.94 [0.93, 0.96]***
Secondary	1.07 [1.05, 1.09]***	0.95 [0.93, 0.97]***	0.90 [0.89, 0.92]***
Higher	0.92 [0.89, 0.96]***	0.81 [0.79, 0.84]***	0.82 [0.80, 0.84]***
<b>Place of Residence</b>			
Urban	1	1	1
Rural	1.17 [1.15, 1.20]***	0.73 [0.72, 0.74]***	0.98 [0.97, 1.00]*

<b>Caste</b>			
Other †	1	1	1
Scheduled castes	1.10 [1.07, 1.13]***	0.82 [0.81, 0.84]***	1.15 [1.13, 1.17]***
Scheduled tribes	1.35 [1.31, 1.39]***	0.61 [0.59, 0.63]***	1.38 [1.35, 1.41]***
OBCs	1.07 [1.04, 1.09]***	0.86 [0.85, 0.88]***	1.09 [1.08, 1.11]***
Don't know	1.01 [0.96, 1.05]	0.90 [0.87, 0.94]***	0.94 [0.91, 0.97]***

<b>Religion</b>			
Hindu	1	1	1
Muslim	0.98 [0.95, 1.00]	1.17 [1.15, 1.20]***	0.88 [0.87,0.90]***
Christian	0.63 [0.59, 0.67]***	1.24 [1.19, 1.30]***	0.77 [0.75,0.80]***
Others	0.89 [0.85, 0.94]***	1.08 [1.04, 1.12]***	1.02 [0.98, 1.05]

No. of observations	469251	5,04,689
Likelihood-ratio chi-squared	71348.53****	6959.39***
Log likelihood	-436309.04	-351488.82

Note: 95% confidence intervals were given in the parentheses; † Reference category; \*\*\* P <0.001, \*\* P <0.01, \* P <0.05. BMI, body mass index.



**TABLE 2: CHILD HEALTH ASSOCIATIONS WITH AGE AT MARRIAGE IN INDIA**

Variables	Stunting	Underweight	Wasting	Anaemia
<b>Age at marriage</b>				
<18 years †	1	1	1	1
18–20 years	0.94 [0.92, 0.96]***	0.98 [0.96, 1.00]*	1.07 [1.04, 1.10]***	1.04 [1.02, 1.07]***
21 years and above	0.85 [0.83, 0.88]***	0.89 [0.87,0.91]***	1.07 [1.04, 1.10]***	0.94 [0.91, 0.96]***

<b>Economic status</b>				
Poorest †	1	1	1	1
Poorer	0.85 [0.83, 0.87]***	0.83 [0.81,0.85]***	0.89 [0.86, 0.92]***	0.93 [0.90, 0.95]***
Middle	0.70 [0.68, 0.72]***	0.66 [0.64,0.68]***	0.79 [0.77, 0.82]***	0.93 [0.90, 0.96]***
Richer	0.55 [0.53, 0.57]***	0.54 [0.52,0.56]***	0.75 [0.72, 0.78]***	0.80 [0.78, 0.83]***
Richest	0.44 [0.42, 0.46]***	0.41 [0.39,0.43]***	0.67 [0.64, 0.71]***	0.79 [0.76, 0.83]***

<b>Women's education</b>				
No education †	1	1	1	1
Primary	0.86 [0.83, 0.88]***	0.87 [0.85, 0.90]***	0.97 [0.94, 1.01]	0.88 [0.85, 0.90]***
Secondary	0.67 [0.65, 0.68]***	0.72 [0.70, 0.74]***	1.00 [0.97, 1.03]	0.76 [0.74, 0.78]***
Higher	0.49 [0.47, 0.51]***	0.50 [0.48, 0.52]***	0.92 [0.88, 0.96]***	0.66 [0.63, 0.68]***

<b>Place of residence</b>				
Urban †	1	1	1	1
Rural	0.94 [0.92, 0.97]***	0.88 [0.86,0.91]***	0.92 [0.89, 0.94]***	0.95 [0.93, 0.98]***

<b>Caste</b>				
Other †	1	1	1	1

Scheduled castes	1.28 [1.25, 1.32]***	1.20 [1.17,1.24]***	1.04 [1.00, 1.07]*	1.15 [1.11, 1.18]***
Scheduled tribes	1.17 [1.13, 1.22]***	1.36 [1.31,1.41]***	1.37 [1.31, 1.42]***	1.27 [1.22, 1.32]***
OBCs	1.15 [1.12, 1.18]***	1.12 [1.09,1.15]***	1.03 [1.00, 1.06]*	1.06 [1.04, 1.09]***

<b>Religion</b>				
Hindu †	1	1	1	1
Muslim	1.09 [1.06, 1.12]***	0.99 [0.96, 1.02]	0.93 [0.90, 0.96]***	1.09 [1.06, 1.12]***
Christian	0.85 [0.79, 0.91]***	0.76 [0.71,0.82]***	0.80 [0.74, 0.87]***	0.60 [0.56, 0.64]***
Others	1.00 [0.94, 1.05]	1.00 [0.94, 1.06]	0.98 [0.92, 1.05]	1.08 [1.02, 1.14]**

No. of observations	2,12,658	2,12,658	2,12,658	1,97,803
Likelihood-ratio chi-squared	12573.58***	11310.26***	1092.61***	2927.01***
Log likelihood	-130792.4	-128817.1	-105812.3	-127730.9

Note: 95% confidence intervals were given in the parentheses; † Reference category; \*\*\* P <0.001, \*\* P <0.01, \* P <0.05.

**TABLE 3: OCCUPATIONAL STATUS BY AGE OF MARRIAGE GROUPS IN INDIA, NFHS 2015–16**

States and indicators	Married below 18 years	Married between 18 and 20 years	Married by 21 years and above	Total	N
<b>Not working</b>					
Rajasthan	66.2	72.1	75.1	69.7	3,045
West Bengal	74.3	84.8	77.6	77.8	5,306
Telangana	42.1	58.8	62.4	50.7	1,357
<b>India</b>	65.2	73.5	74.4	70.2	61,329

<b>Professional/Technical/Managerial/Clerical</b>					
Rajasthan	0.7	0.9	4.2	1.4	61

West Bengal	0.8	1.2	9.5	2.4	162
Telangana	1.4	4.8	12.5	4.4	117
<b>India</b>	1.1	2.2	7	3	2,609

<b>Sales/Services</b>					
Rajasthan	2.8	1.7	2.7	2.4	105
West Bengal	5.4	2.7	4.3	4.5	305
Telangana	8	8	3.8	7.3	195
<b>India</b>	5	4.1	4.8	4.6	4,061

<b>Agricultural</b>					
Rajasthan	22.4	18.8	14.2	19.8	863
West Bengal	6.9	4.9	4.1	5.9	400
Telangana	37.6	19.9	15	28.3	758
<b>India</b>	21.3	14.4	9.1	16	14,005

<b>Skilled/Unskilled Manual</b>					
Rajasthan	8	6.4	3.7	6.7	293
West Bengal	12.5	6.4	4.6	9.4	644
Telangana	10.9	8.5	6.3	9.4	251
<b>India</b>	7.4	5.7	4.7	6.2	5,394

Source: National Family Health Survey (NFHS 4), 2015–16, Ages 15 to 49 years. The summation of all types of workers and non-workers is 100%. N denotes weighted sample size.

*All Tables taken from Mary E John's Child Marriage in an International Frame: A Feminist review from India. New York, London and New Delhi: Routledge 2021.*

## LIST OF 105 SIGNATORIES TO THE SUBMISSION

Sl.no	Name	Professional description or organisation affiliation	Email address
1	Vidya Reddy	Tulir -CPHCSA, Chennai	preventcsa@gmail.com
2	Shireen Jejeebhoy	Director, Aksha Centre for Equity and Wellbeing, Mumbai	sjejeebhoy@gmail.com
3	Sangeeta Rege	Coordinator, CEHAT, Mumbai	cehatmumbai@gmail.com
4	Bharti Ali	HAQ: Centre for Child Rights, Delhi	info@haqrc.org
5	Dunu Roy	Hazards Centre, Delhi	qadeeroy@gmail.com
6	Swagata Raha	Head, Research Enfold Proactive Health Trust, Bangalore	swagata.raha@enfoldindia.org
7	Jasmine George	Programme Manager, Hidden Pockets Collective, Bangalore	hiddenpocketsinfo@gmail.com
8	Sandhya Gautam	Director Programmes-Centre for Health and Social Justice and Coordinator, National Alliance for Maternal Health and Human Rights (NAMHHR), Delhi	sandhya@chsj.org
9	Divya Mukand	Delhi	dmukand@gmail.com
10	Parul Sheth	Executive Director, Shaishav, Gujarat	parul@shaishavchildrights.org
11	Sneha Mishra	Secretary, Aaina	secretary@aina.org.in
12	Shipra Jha	Girls Not Brides, Delhi	shiprajhaswami@gmail.com
13	Satish	Director, Child Rights Trust, Bengaluru	crtssatish@gmail.com
14	Nishita Khajane	Advocacy and Policy Impact, The Concerned for Working Children, Bengaluru	nishita.cwc@gmail.com
15	Shantha Sinha	Former Chairperson, NCPCR, Hyderabad	shanthasinha@gmail.com
16	Himanshu Gupta	Professional Social Worker, Bathinda	himanshugupta35@gmail.com
17	Jim Jesudoss	Executive Director, Sakthi - Vidiyal, Madurai	jimjesudoss@gmail.com
18	R.Venkat Redy	National convener, M.V.Foundation, Hyderabad	mvfindia@gmail.com
19	Sejal Dand	Executive Director, ANANDI, Ahmedabad	sejal@anandi-india.org
20	Archana Dwivedi	Director, Nirantar Trust, New Delhi	nirantar.mail@gmail.com
21	Yogesh Vaishnav	Development Director, Vikalp Sansthan, Udaipur, Rajasthan	vikalporg@gmail.com
22	Poonam Kathuria	Director, Society for Women's Action and Training Initiatives-SWATI, Ahmedabad, Gujarat	pkathuria.swati@gmail.com
23	Manisha Gupte	MASUM, Pune	manishagupte@gmail.com

24	Nicole Rangel	Co-founder, Leher, New Delhi	nicole@leher.org
25	Rita Panicker	Director, Butterflies, New Delhi	ritapanicker@butterfliesngo.org
26	J. B. Oli	Head-Programmes, New Delhi	jboli@butterfliesngo.org
27	Kavita Ratna	Director - Advocacy, The Concerned for Working Children, Bengaluru	cwc@pobox.com
28	Amita Pitre	Lead Specialist, Gender Justice, Oxfam India, Pune	amita@oxfamindia.org
29	Aarti Gor	Child Rights Activist, Mumbai	rt.bgor@gmail.com
30	Meena Jain	Ex-chairperson CWC -II, Independent Expert Consultant	mehermj@gmail.com
31	Bharat	Secretary, Vishakha, Jaipur	bharatvishakha@gmail.com
32	Rubin Mathew sdb	Executive Director, Bangalore Rural Educational And Development Society (BREADS), Bengaluru	director@breadsbangalore.org
33	P.Laksha pathi	Executive Director Association for Promoting Social Action [APSA], apsa,bangalore	laksha50@gmail.com
34	Aruna Joshi	Director -Executive Secretary, Kutch Mahila Vikas Sangathan ( KMVS), Kutch - Gujarat	arunaljoshi@gmail.com
35	Khushboo Jain	Research Scholar, FAU, Erlangen-Nuremberg, Germany, Hisar - Haryana	khusheejain@gmail.com
36	Roshni Nuggehalli	Youth for Unity and Voluntary Action (YUVA), Mumbai	roshni.n@yuvaindia.org
37	Rita Chokshi	Social workers, Sahiyar stree sangathan, Vadodara	sahiyar@gmail.com
38	Anushree Jairath	Program coordinator - Gender justice, Oxfam India, New Delhi	anushree@oxfamindia.org
39	Veda Bharadwaja	Senior Program Officer, The Hunger Project India, New Delhi	veda.bharadwaja@thp.org
40	Mayuri Dhumal	Project In-charge, Abhivyakti Media for Development, Nashik	mayuri@abhivyakti.org.in
41	Deepti Colaco	Consultant- Research & Information Management, The Concerned For Working Children, Bangalore	deepti.cwc@gmail.com
42	Saumya Maheshwari	Legal researcher, Delhi	saumya.maheshwari28@gmail.com
43	Amrita Das Gupta	Associate Director, Swayam, Kolkata	amrita@swayam.info
44	Asif Iqbal	General Secretary, Dhanak of Humanity, Delhi	dhanak.humanity@gmail.com
45	Anuradha Rajan	Executive Director, South Asia Women Foundation India, Mumbai	sawfindia@gmail.com

46	Manjula Pradeep	National Convener, National Council of Women Leaders, Ahmedabad	ncwllindia@gmail.com
47	Dr. Kiran Modi	Founder Managing Trustee, Udayan Care, Delhi	kiranmodi@udayancare.org
48	Jeevika Shiv	lawyer social worker, Delhi	Jeevikas@gmail.com
49	Tanvi Jha	State Coordinator, International Center for Research on Women, Ranchi	tjha@icrw.org
50	Ankuram Sumitra	Founder Secretary, Ankuram, Hyderabad	ankuram@yahoo.com
51	Prabhleen Tuteja	Feminist Youth Advocate, Delhi	tuteja.prabhleen@gmail.com
52	Vanita N Mukherjee	Independent Professional, New Delhi	vanitam@gmail.com
53	Dr. Bharti Sharma	Honorary Secretary, Shakti Shalini, New Delhi	shaktishalini87@gmail.com
54	Renu Khanna	Co Founder and Trustee, Vadodara	renu.cmnhsa@gmail.com
55	Sindhu Naik		sindhunaik@gmail.com
56	Manish Acharya	Director, SETU Abhiyan, Bhuj(Kachchh)- Gujarat	setuabhiyan@gmail.com
57	Richa	Program Coordinator, HUMSAFAR, Lucknow	humsafar25nov@gmail.com
58	Ravi Verma	Gender researcher, ICRW, New Delhi	ravi.icrw@gmail.com
59	Deepa Venkatachalam	Director (Training and Research), Sama Resource Group for Women and Health, New Delhi	sama.womenshealth@gmail.com
60	Malini Ghose	Independent Researcher, New Delhi	malini.ghose@gmail.com
61	Ajay Kumar	Secretary, Pratigya, Ranchi, Jharkhand	ajay@pratigya.in
62	Kajal Jain	Maharashtra Mahila Arogya Hakk Parishad, Maharashtra	socialkajal@gmail.com
63	Ranjana Kanhare		janarthorg@rediffmail.com
64	Manisha Gupte	MASUM	manishagupte@gmail.com
65	Shubhada Deshmukh		shubhadadeshmukh1505@gmail.com
66	Trupti Malti		truptj@gmail.com
67	Meena	Secretary, Sahajani Shiksha Kendra, Mahroni, Lalitpur (U.P)	sahajni.lalitpur02@gmail.com
68	Dalia Roy	Director, Jeevika Development Society, Kolkata	daliaroy66@gmail.com
69	Priyanka Das	Supervisor, Programs Women and Girl's Rights, Kolkata	pdas51500@gmail.com
70	Ritambhara Mehta	Independent consultant - gender, sexuality, POSH, DEI, New Delhi	ritambharamehtha@gmail.com

71	Hameeda Khatoon	Program Director, Sadbhavana Trust, Lucknow	sadbhavanalko12@gmail.com
72	Renu Mishra	Executive Director, Association For Advocacy and Legal Initiatives trust, Lucknow	aali@aalilegal.org
73	Chotak Gyatso	<b>Social Worker at Leh Nutrition Project, Leh-Ladakh</b>	
74	Ishanee Bhattacharyya	Program Officer, Girls Education Program, Room to Read India	ishanee.bhattacharyya@gmail.com
75	Karuna Philip	Program coordinator, Child Right to education and Protection, mahila jan adhikar samiti, Rajasthan	karuna.mjas@gmail.com
76	Dr. Vasudeva Sharma NV	Executive Director, Child Rights Trust, Bengaluru	crtindia@yahoo.co.in
77	Sathish GC	State Convenor, KCRO- Karnataka Child Rights Observatory, Bengaluru	kcronodalcrt@gmail.com
78	Shakuntala Pamecha	Director, Rajsamand Jan Vikas Sansthan, District Rajsamnd ,Rajasthan	<a href="mailto:rjvs1@yahoo.in">rjvs1@yahoo.in</a>
79	Suneeta Dhar		suneeta.dhar@gmail.com
80	Geeta Ramaseshan	Advocate, Madras High Court, Chennai	geetaramaseshan@gmail.com
81	Aparna Chandra	Associate Professor, National Law School of India University, Bengaluru	aparnachandra@gmail.com
82	Mahendra Kumar	Men's Initiatives for Transforming Relationship's Through Action (MITRA)	mahendrabanda@gmail.com
83	Baitali Ganguly	Executive Director- Jabala Action Research Organisation, Kolkata	baitali@yahoo.com
84	Jashodhara Dasgupta	Independent researcher, Uttarakhand	jasho_dg2006@yahoo.com
85	Pragnya Joshi	Independent Researcher, Rajasthan	pragnyaj1@gmail.com
86	Enakshi Ganguly	Co Founder and Advisor, Former Co-Director HAQ:Centre for Child RightsChild, New Delhi	enakshi.ganguly@gmail.com
87	Ved Kumari	Vice Chancellor, NLUO	vedkumari@gmail.com
88	Young Voices National Movement	India	cwc@pobox.com
89	Maharukh Adenwalla	Advocate, Mumbai, Maharashtra	maharukhadenwalla@gmail.com
90	The YP Foundation (Delhi)	New Delhi	info@theypfoundation.org
91	Sruti Disability Rights Centre (West Bengal)	Kolkata, West Bengal	sruti.darc@gmail.com

92	New Alipore Praajak Development Society	Kolkata, West Bengal	praajak.kol@gmail.com
93	Counsel to Secure Justice	New Delhi	engage@csjindia.org
94	Action India (Delhi)	New Delhi	actionindia1976@gmail.com
95	Aarambh India	Mumbai, Maharashtra	info@aarambhindia.org
96	Bebaak Collective	Mumbai, Maharashtra	bebaakcollective@gmail.com
97	Barsha Mishra	Training Coordinator, Partners for Law in Development, New Delhi	barshamishra.adv@gmail.com
98	Ekta Rathore	Law Researcher, Partners for Law in Development, New Delhi	ektadrathore@gmail.com
99	Sunanda	Social workers, Sahiyar stree sangathan, Vadodara	sahiyar@gmail.com
100	Kamal	Social workers, Sahiyar stree sangathan, Vadodara	sahiyar@gmail.com
101	Reshma	Social workers, Sahiyar stree sangathan, Vadodara	sahiyar@gmail.com
102	Sejal	Social workers, Sahiyar stree sangathan, Vadodara	sahiyar@gmail.com
103	Reena	Social workers, Sahiyar stree sangathan, Vadodara	sahiyar@gmail.com
104	Vibhuti	Social workers, Sahiyar stree sangathan, Vadodara	sahiyar@gmail.com
105	Kruti	Social workers, Sahiyar stree sangathan, Vadodara	sahiyar@gmail.com