

SOCIAL ISSUES

CONTROVERSY

Assam government's drive against child marriage a ham-handed attempt

VIDYA REDDY

SANNUTHI SURESH

Published : Feb 23, 2023 10:40 IST

Comments



Police personnel push back the family of a person who was arrested for involvement in a child marriage during a massive crackdown across Assam; near Mayong Police Station, in Morigaon on February 4. | Photo Credit: **Rupjyoti Sarmah/ANI**

Fear, threat, and intimidation have the least impact in changing socio-psychological behaviour.

The Assam government's recent drive to end child marriage entered its second week when this article went to press, with over 3,000 arrests made. However, on February 14,

the Gauhati High Court granted anticipatory bail in many cases, pronouncing that the State's drive has caused "havoc in the private life of people, there are children, there are family members and old people". The single-judge bench of Justice Suman Shyam observed that "these are not matters which require custodial interrogation. If a marriage is taking place in violation of law, the law will take its course."

The State government used two Acts to justify the arrests—the Protection of Children from Sexual Offences (POCSO) Act, 2012, and the Prohibition of Child Marriage (PCM) Act, 2006. In one of his daily updates, Chief Minister Himanta Biswa Sarma tweeted that the drive had a "positive side"—that people were now surrendering to the police.

Meanwhile, there were news reports of the deaths of young women, who were delaying or avoiding hospital deliveries to prevent their family members going to jail, and of infants not getting timely healthcare as families ran around arranging for bail.

Of the 4,074 cases filed over the last few weeks, more than 8,000 accused were listed and about 3,000 booked. The Assam government's retrospective enforcement of the PCM Act has raised concerns from activists, health professionals, economists, jurors, and policymakers across the country about the searing damage it will leave in its aftermath.

ALSO READ: **Flawed notion of gender justice**

The purported rationale for Sarma's crackdown was to reduce maternal mortality rates (MMR) and infant mortality rates (IMR), but does that have to be done at any cost, including criminalising families, ask experts. Moreover, it is pointed out that Sarma himself helmed the Ministry of Health for a decade, so failures to reduce MMR and IMR must be laid at his door.

Retrospective arrests are not the answer to long-term health issues, said Dr Shaibya Saldanha, obstetrician-gynaecologist and POCSO trainer, emphasising: "It is clearly found that one of the main causes of death in adolescent girls across India is pregnancy-related. Neither laws nor punishment has changed that. Research shows that education and financial independence alone have raised the age of marriage, delayed first pregnancy, and reduced family size, thus reducing female mortality and morbidity."

Roop Sen, researcher and co-founder of social action organisation Sanjog, said: "Assuming the intent of the government is to discourage parents from marrying off their daughters before the age of maturity, or to discourage young girls from eloping with their lovers while still in their teens, the strategy of arrest, incarceration, and prosecution is hardly going to be effective in achieving that, as various research studies have well established that fear, threat, and intimidation have the least impact in changing socio-psychological behaviours."

Pointing out that marriage and children are seen as anchors for survival and stability by most Indians, Sen added that "in more insecure communities the propensity to marry early and have children is a consequence of the lack of financial stability, social safety, health, and emotional well-being. This is why child marriage and teen elopements are

more common in socio-economically marginalised families, those with less emotional infrastructure and social security.”

There is no refuting that child marriage is a traditional practice that is harmful and needs to be prevented. Nevertheless, we have time and again iterated the need for nuance in any intervention. This applies to child marriages as well.

The NFHS-5 (2019-2021) data state 32 per cent of women in Assam in the 20-24 age bracket were underage at the time of marriage and that 12 per cent of them were either pregnant or had already become mothers. This lays bare the State's failure to address child marriage holistically. To then weaponise this data and use it to further rattle the lives of these women and marginalised communities is telling of the State machinery's view of them as inconsequential in the larger agenda.

While much is being written about IMR and MMR figures, there are other public health concerns that need to be flagged. Importantly, the fact that the very facilities and services that work for women's health have been informants and collaborators in these myopic arrests will mean a rise in public distrust, leading to immunisation and vaccination schedules going awry.

As Sreedevi Nair, legal researcher, said, “Over-reliance on hospital data to track child marriages is dangerous as married girls will be deterred from approaching the healthcare system for reproductive health services.” This, in turn, will result in an increase in IMR and chronic childhood illnesses which will burden the already under-resourced systems and delivery services in the long run. The primary reason for rural debt is health expenses, and so communities already at risk will be driven further into desperate situations. Rather than breaking the cycle, this approach could result in a tremendous setback to meeting many of the Sustainable Development Goals 2030.



A child bride with her infant in Morigaon district. | Photo Credit: PTI

Double victimisation

As Sen said: “If a government has not been able to provide what the most vulnerable of its population needs, and has a right to get, then shifting the blame of early marriage and pregnancy onto those people, including the young girls themselves, is double victimisation. It is shocking how despite having a thriving civil society sector, with child rights activists and organisations that have worked with the departments of women and child development, social welfare, and human rights commissions, the State government could take such an initiative with so little concern about its impact on the most vulnerable people of Assam.”

According to Census 2011, there were 29,18,176 working children in Assam. A survey commissioned by the Assam Sarva Shiksha Abhiyan Mission (ASSAM) in 2018 showed that 25 per cent of children in the 6-14 age group were out of school, while 43 per cent were working in tea estates. A 2022 study that covered 300 households to look at the incidence of child labour and child marriage from tea estate communities in Dibrugarh district found that 69 per cent of child labourers had dropped out from school as a result of the rigours of having to work, the difficulty of coping with studies, poor economic conditions of the family, and eventual disinterest given the constant fight for survival. In these circumstances, 49 per cent of the young people reported that they got married either to settle family debts or to escape the cycle of poverty.

Nimisha Srivastava, executive director, Counsel to Secure Justice, said: “Data from the 2011 census throws up some stark numbers about Dhubri, a district that has recorded several arrests. Of the total female population of 9,51,410, only 2,00,359 were in any educational institution. Equally damning, females who ‘never attended’ any educational institution numbered 5,19,103. Recent statistics in the 2021-22 report of the ‘Unified District Information System for Education Plus’ of the Ministry of Education tells us that Dhubri has 3,122 schools in all.

“The women of Dhubri would be well justified in asking the government—if you could not provide us schools to study in, how exactly did you expect us to empower ourselves and not choose the only socially and economically viable option for sustenance, marriage? Women with no other economic alternatives take to the time-tested societal practice of marrying. Now the State government has decided that they need to be ‘saved’, but once again without any say in a decision that will upturn their lives. What does the Assam government plan to offer these young women? There were no options earlier, will there be any now?”



Relatives of those arrested during the State-wide crackdown on child marriages, outside Mayong police station, on February 4. | Photo Credit: PTI

Laws least effective

Studies published by Girls Not Brides and Save the Children reiterates that laws alone are insufficient to end child marriage and are seen as the least effective in combating child, early and forced marriage. Governments use laws to respond to social issues without putting in place policies and programmes needed to support social change.

In many contexts, like we are seeing in Assam at the moment, the law is used to punish as opposed to seeking justice and redressal. This means that priority is placed on stopping a marriage from happening rather than on protecting the girls who choose not to marry young or who have been forced into marriage.

Indira Pancholi, feminist, human rights activist, and founder-member of Mahila Jan Adhikar Samiti, said: “What has the government done to assist young people to challenge marriages they are forced into? While schemes are available for divorced and widowed women, there are none for women who have sought annulment. The Assam government’s drive is anti-people as it affects the same people that have been marginalised in the country’s progress, leading to a double marginalisation.”

An impact study done in Karnataka by Terre des Hommes and Child Rights Trust along with five other organisations implementing the IMAGE project found that setting up Early Married Girls (EMG) centres, which are exclusive and safe spaces for teenage girls open all day with a library and for capacity-building, was key in empowering them. The programme also invited spouses and families to attend gatherings, which further helped the girls.

The project called for enhanced commitments by multiple stakeholders, including the Departments of Women and Child Development; Empowerment of Women and

Differently Aabled; Child Protection, Health and Family Welfare; Primary and Secondary Education; Rural Development and Panchayati Raj; Social Welfare; State Commission for Protection of Child Rights, Home, Revenue and State Legal Services Authorities. The complexities that surround the custom of child marriage demand a cross-cutting integrated effort that addresses the root of the issue.

The Assam government's carceral approach is not a solution. Swagata Raha, Director-Research, Enfold Proactive Health Trust, explained that an intervention on child marriage cannot ignore the interests of the very group it seeks to help. "Undoubtedly, the police and the child protection system should proactively respond to information and complaints about child marriages," said Raha, "but delayed action several years after the families have settled down will result in trauma and harassment for those young women whose husbands and family members have been arrested."

In December 2022, the Tamil Nadu Police issued a circular that was based on a resolution passed by the POCSO and Juvenile Justice (JJ) Committee of the Madras High Court, which is pathbreaking and upturns the conventional way of dealing with such cases. Justice (Retired) P.N. Prakash, former Chairperson of the Madras High Court Committee on POCSO and JJ Act, said, "We were aware of young people's psychosocial realities. Especially within current contexts. So, in the cases of mutual romantic relationships involving 16-18 year old girls, the Madras High Court Committee on POCSO and JJ Act passed a resolution in December 22 to recommend that the police use sections of CrPC and not apprehend hastily. Of course, this certainly has to be carried out on a case-to-case basis with due diligence of facts by senior officers. After all, in these cases, what is going to be achieved by routine and indiscriminate arresting?"

This approach allows for optimal policing, which takes into account the narratives of the people involved. Fathers are able to assume their responsibilities without the fear of being hauled away or expending precious financial resources for bail procedures, anxiety does not paralyse expecting young women that it transmits to their unborn child or young mothers to the extent they stop lactating, and continue to access reproductive health services without fear. Transgressions of law are addressed but with recognition of the people involved and not just sections and numbers.

The Assam approach also begs the question of how the State judicial system will handle the sudden deluge of cases. Despite 17 POCSO courts, the pendency of cases relating to crimes against children (without the recent additions) is 95.3 per cent (NCRB, 2022). If the stock answer to this is to start more fast track courts, can the State muster enough resources and judicial officers to manage these additional courts?

Understanding that there are no short-term solutions to child marriage, the Supreme Court had ruled that registration of marriages must be made compulsory in its judgement in *Smt. Seema vs Ashwani Kumar* (2006). Notably, compulsory registration of marriage provisions also exist in States such as Karnataka and Maharashtra.

The Parliamentary Standing Committee (that reviewed the Prevention of Child Marriage Bill 2004) espoused the same view of UN Human Rights Office's Convention on Consent

to Marriage, Minimum Age for Marriage and Registration of Marriage that sought a state commitment to take all appropriate measures to establish a “civil or other register in which all marriages will be recorded”. Marriage registration by itself does not render a marriage legal or valid. Child marriages in India are voidable—an option that may be exercised by the parties to the marriage within two years of attaining the age of majority—but are not void *ab initio* (invalid from the start).

ALSO READ: [A new web series focusses on child marriage](#)

However, in April 2017, Karnataka became the first State to declare that every child marriage solemnised would be treated as void *ab initio*, with Haryana following suit. There are no studies yet to support the efficacy of this step in addressing child marriage. However, activists in Karnataka have stated that till there is further development of safety and support services, it endangers the girl in the marriage further.

While a policy to universalise marriage registration can contribute to efforts to prevent child marriage, it cannot by itself have a substantive impact on preventing or reducing the prevalence of child marriage unless accompanied by larger efforts. These include interventions with communities to change discriminatory norms; and improving girls' access to education, healthcare, and work opportunities.

In conclusion, we quote Madhu Mehra, Head, Research and Training, Partners for Law in Development: “The crackdown on child marriage in Assam is an approach to child marriage in which the welfare and empowerment of the girl/young woman is no longer relevant. The girl/woman is collateral damage in an intervention based on criminalisation alone.

“That the entire project was conceived of and implemented without prior mapping of the types of marriages, the age groups, differentiation between older and recent marriages, or even a parallel component to secure the wellbeing and security of the young women and their children reveals a new approach where managing child marriage figures trumps concern about the girl's welfare. Any strategy that addresses child marriage through fear and punishment rather than social transformation defeats the very objective of the project. It is contrary to the spirit of the Constitution, the legal status of child marriage in India and Indian jurisprudence, and is inconsistent with the Convention on the Rights of the Child.”

Vidya Reddy and Sannuthi Suresh work with Tulir Centre for the Prevention and Healing of Child Sexual Abuse, Chennai.

The Crux

- The Assam government's crackdown on child marriage has raised serious concerns from activists, health professionals, and policymakers across the country.
- The Protection of Children from Sexual Offences (POCSO) Act, 2012, and the Prohibition of Child Marriage (PCM) Act, 2006, were invoked to justify over 3,000 arrests in two weeks.
- While the purported rationale is to reduce maternal and infant mortality rates, doctors and activists assert that retrospective arrests are not the answer to long-term health issues.

- There is no refuting that child marriage is a traditional practice that is harmful and needs to be prevented. Nevertheless, the Assam government's carceral approach is not a solution.
- Experts opine that the prevention or reduction of the prevalence of child marriage cannot work unless accompanied by larger efforts such as improving girls' access to education, healthcare, and work opportunities.
- Any strategy that addresses child marriage through fear and punishment rather than social transformation defeats the very objective of the project and is contrary to the spirit of the Constitution.

(This story was published in the print edition of Frontline magazine dated Mar 10, 2023.)

Comments

×

The Frontline Newsletter

Subscribe to our newsletters to enjoy free, exclusive access to Frontline's eclectic mix of reportage, archives and more!

SIGN UP

Suggested Stories for you



India is ignoring its deadly snakebite crisis



The Great Land Grab in Jammu and Kashmir



'Ayali' focusses on child marriage in Tamil Nadu



Ajanta's treasures



Why women get fewer jobs and earn lower wages than men in India



Rahul Gandhi in search of a Bidenesque solution



Uniform Civil Code Bill in Parliament a step forward for Sangh Parivar agenda



New BBC documentary puts Narendra Modi back in the dock



ChatGPT: Disruption or fantasy?