to terrorism as soon as there are signs of India and Pakistan engaging with each other. We only surrender to terrorism when we break off engagement in retaliation. Retaliation reduces engagement to a game of snakes-and-ladders, where all the ladders we climb together are extinguished in a single snake-swallow taking us back to the starting point. To break off engagement is to set us back to 'GO', obliging us to start all over again.

Fourth, to snap off engagement the minute there is a setback is tantamount to betrayal of Indians and Pakistanis of goodwill who wish to put the past behind us as we move towards the 'sunlit uplands' of the future. When talks are broken off, it is a victory for all those of ill will in both countries who prefer hostility to reconciliation. Thus far, all initiatives at starting a dialogue have invariably stalled. That is what makes it imperative that we insulate the dialogue process from inevitable diurnal setbacks to render the dialogue 'uninterrupted and uninterruptible'. The preferred expression in most circles is 'sustained'. It is immaterial which of the two expressions is adopted so long as the process is continued until the negotiators arrive at a consensus solution. This might perhaps be best achieved on a secret backchannel, as was the case with the 'four-point' formula arrived at out of public view. On the other hand, a degree of openness might make it easier to 'sell' solutions that gradually gather greater acceptability. Secrecy or openness is not the main issue, sustainability is.

Fifth, while both sides have agreed since at least the Shimla Agreement of 1972 that Kashmir is an issue that requires mutual interaction, it has never been, in the Indian view, the 'sole' core issue. The cessation of cross-border terrorism by non-state actors, as well as the concomitant cessation of all official cover to terrorism is as much a core issue as is the broader question of the future of Jammu and Kashmir. Indeed, both the core issues are intertwined which is why settling Kashmir, perhaps by some version of the 'four-point' formula, might set at rest the most contentious issue, thereby opening the door to the simultaneous or successive solution to other matters in contestation such as Siachen and Sir Creek, as well as trade and other business opportunities. Meanwhile, keeping people-to-people contacts consistently open would greatly facilitate negotiation on political and economic cooperation.

Sixth, it is precisely because China now is no longer across the 'fractured Himalaya' but on the river Indus at about the same location as Alexander was in 326 BC that we need to coordinate issues of peace and tranquillity with both countries. It is only when we create a peaceful neighbourhood that our credibility to mediate disputes in other parts of the world will rise. So long as we show ourselves incapable of settling issues that divide us from Pakistan and China in our neighbourhood, thus long does the threat to our national security last and is reinforced. Also, our hostility in our neighbourhood diminishes rather than enhances the global role we aspire to. Peace is thus in our national interest, as much as it is in Pakistan's and China's.

Centering girls, not age:

Shifting the child marriage law discourse

By Madhu Mehra

The issue of child marriage and the law is not new to South Asia given the region's shared cultural, colonial and historical past. What makes it a troubling subject in contemporary discourse is less to do with the persistence of underage marriage, and more with the overwhelming centrality of law and the shift towards punitive responses. Even as a consensus on the necessity of a law exists, the legal models being promoted to address underage marriage must be questioned. In the wake of renewed global, regional and national attention towards fulfillment of the SDG-5 target of eliminating child marriage, developments in India and elsewhere lean towards legal models that empower the criminal justice system against youth, adolescents and

Child marriage in Assam | Source: India Today

communities, especially from marginalized populations. What should have been an opportunity to explore innovative approaches to enhance life chances of girls within contexts of poverty and insecurity, both key drivers of child and early marriage, has turned into a discourse promoting strict laws to deter and delay marriage till the legal minimum age.

The primary law in India, the Prohibition of Child Marriage Act (PCMA), 2006, stipulates minimum age of marriage as 18 for women and 21 for men; allows judicial injunctions to prevent impending underage marriage from taking place; permits prosecution of adults promoting these marriages; and mandates appointment of state functionaries to raise awareness and implement the law. As a general rule, with few exceptions, child marriages that occur are treated as valid if the underage party does not annul the marriage. In effect, the minor party has the right to repudiate the marriage within two years of attaining majority, and the right to financial support and the rights of children are protected.

Even as legal solutions to child marriage are prioritized, very little investment has been made towards monitoring the implementation of this law. Accordingly, the debate rarely dwells on ways to activate and improve the machinery tasked with implementation; and instead limits itself to critiquing statutory aspects. That child marriage is held as 'voidable' though valid has long been critiqued by some, interpreting this to mean that the state condones or tacitly approves of child marriage. This growing consensus has led to state amendments in Karnataka (2017) and Haryana (2021) that have changed the status of child marriage from being 'voidable' to void ab initio, or lacking legal effect.

A new proposal to tackle early marriage through raising the minimum marriage age for women was tabled in 2020, and became the basis of an amendment bill presented in Parliament in December 2021[1], which subsequently has been referred to a parliamentary committee for review. The bill raises the minimum age of marriage for women from 18 to 21 years , to delay motherhood and address maternal mortality. If parity in minimum ages of marriage for men and women was a concern, it ought to correspond to the age of majority at 18 years for both, in recognition of the right of young adults to make personal decisions.

Meanwhile, the executive authority in the state of Assam carried out sudden mass arrests in February 2023 to crack down on child marriage, as a way of tackling high prevalence rates. The arrests and detention of husbands and family members, including for marriages that took place several years ago, were made by invoking not just the PCMA, but also the Protection of Children from Child Sexual Offences (POCSO) Act, 2012, which sets the age of consent at 18 years, on par with the minimum age of marriage for women. The prosecutions that follow as a result, are for grave offences of child sexual abuse. Not surprisingly, this action has traumatized the affected girls and women, and it is the marginalized and poor, who are most affected.[2]

The shift towards more stringent laws is not limited to India. Bangladesh amended its Child Marriage Restraint Act (CMRA) of 2017 to criminalize acts relating to underage marriages, while holding the marriage as valid. The criminalization extends equally to adults and the minor party involved in the child marriage, making no distinction between the two. Judicial sanction to avoid criminalization is available under exceptional circumstances that include parental consent, special circumstances and the best interests of the child, without extending statutory protection to the minor's right to be heard in the proceedings. In Nepal, legislative changes increased the minimum age of marriage to 20 years, while treating all underage marriages as void ab initio. The age of sexual consent is at 18 years, and has led to adolescents who married each other between the ages of 18 and 20, being prosecuted as adults for self-arranged marriages.[3]

At the global level too, what has found favour is the statutory model that denies legal validity to underage marriages, regardless of the maturity, circumstance or context of the parties. Termed as the 'no-exception' law, it is viewed as the best way to eliminate child marriage. In using 'age' of marriage as the singular factor determining legal validity, this model discounts the lived realities of girls across diverse contexts, and most worryingly, the voice of the underage person in matters affecting her life. Somewhat similarly, the framing of child marriage within the UN OHCHR has expanded to conflate distinct categories of 'child, early and forced marriages and unions' (CWFMU). According to the OHCHR, "a child marriage is considered to be a

Child marriage protests in Assam | Source: Author

form of forced marriage, given that one and/or both parties have not expressed full, free and informed consent." By discounting consent of older adolescents in both marriage and unions, the framing is inconsistent with the principles of Child Rights Conventon (CRC) of evolving capacities, decriminalization of adolescent sexuality and the right to be heard.

The joint General Recommendation 31 of CEDAW and General Comment 18 of CRC on harmful practices exemplifies the contemporary pressures that drive policy shifts. Originally adopted in 2014[4], the joint recommendation prohibited marriages below 18 years, while allowing for exceptions for those between 16–18 years, as follows: "As a matter of respecting the child's evolving capacities and autonomy in making decisions that affect her or his life, in exceptional circumstances a marriage of a mature, capable child below the age of 18 may be allowed provided that the child is at least 16 years old and that such decisions are made by a judge based on legitimate exceptional grounds defined by law and on the evidence of maturity without deference to cultures and traditions." Subsequently, following advocacy around the SDGs and the growing momentum to promote a no-exception legal model on child marriage, the CEDAW and CRC jointly voted to expunge the specific text relating to the exception in 2019, without as much as a clarification or a consultative review process.[5]

Ironically, a discourse founded on protection of child rights has taken a trajectory that overlooks evolving capacities of adolescents and their right to be heard .This is troubling if one were to consider the data from National Family Health Surveys (NFHS) in India. Although child marriage persists, it has gradually declined from 27 per cent of girls in the age group of 20–24 years married below the age of 18 years in NHFS-4 (2015–16), to 23 per cent in NHFS-5 (2019–2021). The mean age of marriage of girls has correspondingly risen. Contrary to popular assumptions, child marriage is not the cause, but the consequence of girls dropping out of schools. The NHFS-4 lists lack of interest in education, high cost of education as well as burden of unpaid housework as the main causes of early drop out. Smaller studies add lack of hygienic toilets, unavailability of sanitary napkins, sexual harassment and apprehensions of premarital sexual activity.

The decline in early marriage prevalence rates is aided by an expansion of middle-class population, and the availability of affordable quality education, higher standard of living and employment opportunities to them. The national data shows that in India, the prevalence of early marriage is observed in older adolescents belonging to resource deprived, largely rural communities. Since poverty is highest among the socially marginalized groups, the girls within these communities are at highest risk.

Further, consider the findings of a series of three studies undertaken by Partners for Law in Development in India on how the law works within social realities. An analysis of case-law related to child marriage prosecutions (2008–2017)[6] showed that 65 per cent of the cases involve parents using the law against self-arranged marriages by their daughters, often invoking offences of kidnapping and rape, while the remaining 35 per cent mostly involve nullification of arranged marriages that have broken down, as a civil remedy. The law is selectively used by parents against daughters who marry against their wishes, to prosecute for offences attracting sentences upto 10 years. This is enabled by POCSO which sets age of consent at 18 years, and resultantly criminalizes adolescent sexuality. A multistate qualitative study[7] of girls in romantic relationships shows that girls often elope as a last resort, to escape forced marriage, domestic violence or conflict, or parental wrath on discovery of romantic relationship. Under these circumstances, the law serves to re-victimize them. For girls seeking to prevent or exit a forced marriage, access to law is risk-laden and unfruitful according to the study based on accounts of 13 community organizations that work with adolescent girls across six states.[8] Going to the police not only risks having their plans revealed to parents, it also places girls and social workers at risk, and criminalizes the girls' parents. Instead, frontline workers prefer to mediate with the backing of the district administration, child welfare committees, and the police to secure long term goals for girls seeking to prevent a marriage, or nullify one.

These findings on how the law works underscore research gaps, without which an informed, evidence-based, contextually relevant policy discussion is not possible. The focus of most of the policy discourse is normative standard setting, its articulation in the text of the statute, without attention to ways to minimize harmful consequences of the law. The age of marriage debate is blinkered to the intersectional concerns of adolescent sexuality, age of consent, and in some countries, criminalization of non-marital sex. As a result, the proposals for strict child marriage laws tend to empower the state, law enforcement and the relatively more powerful. When the landscape of underage marriage is varied and heterogeneous, a flat 'no-exception' law will infantalize older adolescents, by denying them the right to be heard. Proposals to increase the minimum age of marriage beyond the age of majority into early adulthood, renders young women more vulnerable to community and parental controls.

Law cannot be a primary agent of change, and certainly not when it shuts out the agency and voices of the girls it intends to respond to. The spike in child marriages following closure of schools and job losses in wake of the COVID pandemic in India was reportedly one of the highest in Karnataka, which has a no-exception law.[9] Even a law with differentiated responses, that factors in the wishes of the minor, among other things, can only complement not substitute girl-centred programmes, that must be the main pathway for change. Interventions ranging from education access to vocational training, livelihoods and safety for girls and women, must be part of the solution. The gaps in delivery of quality welfare benefits contribute to the prevalence of child marriage. This gap cannot be short circuited by criminalization responses that define it in terms of an individual

offence. The goal in contemporary times cannot be one seeking to delay marriage, but one which builds sufficient capacities in girls and women to decide if, when and whom to marry.

Endnotes

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Child, early and forced marriage and unions in Pakistan:

Complexities of legal reform

By Sheena Hadi

There is now irrefutable evidence that child marriages have a detrimental impact on development outcomes for girls, their children and families, and the community at large. The scale of this impact is often measured in terms of potential GDP lost to a nation or poor maternal health statistics, but ultimately, ending child, early and forced marriages and unions (CEFMU) is a simple question of protecting and fulfilling the human rights of girls. The debate on how to address the complex challenge of CEFMU has been a long and tenuous one with legal reforms often shaping the crux of the agenda. On one hand, child rights and women's activists, as well as advocates in the human rights field, have argued that country laws must uphold that children (broadly defined as under 18 years of age) cannot give consent to make decisions regarding their marital partner and other associated reproductive health decisions. Supporting this perspective, a number of international organizations, including the United Nations, have established global development indicators and streamed significant quantities of funding aid towards organizations and activists whose agenda has been to end CEFMU through legal reforms focused on the minimum age of marriage.

On the other hand, there is a novel, emerging critical conversation on the impact of legal reform in the sphere of sexual and reproductive health and rights (SRHR) which suggests that legal reforms penalizing CEFMU practices, are not playing the kind of favorable role that was anticipated. The polarization of this debate can best be witnessed in Pakistan, which has a long history of placing importance on criminalization, perhaps as a vestige of a long colonial past where penal codes were implemented ruthlessly to maintain control over indigenous populations in South Asia. For decades, women's rights groups have advocated for a change in the law on child marriage, which currently allows girls to be married