

Exploring the interlinkages between **child marriage** and **family laws** in South Asia

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About Equality Now

Equality Now is a worldwide human rights organisation dedicated to securing the legal and systemic change needed to end discrimination against all women and girls, everywhere in the world. Since its inception in 1992, it has played a role in reforming 130 discriminatory laws globally, positively impacting the lives of hundreds of millions of women and girls, their communities and nations, both now and for generations to come.

Working with partners at national, regional and global levels, Equality Now draws on deep legal expertise and a diverse range of social, political and cultural perspectives to continue to lead the way in steering, shaping and driving the change needed to achieve enduring gender equality, to the benefit of all.

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Designer: Peter Wilbourne

Photographers: Zubair Abbasi, Hadynyah, Aakansha Saxena, Rudi Suardi, Jonathan Wilson, Wirestock

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Glossary

A

Adolescent: Generally refers to individuals aged 10–19. In Bangladesh law specifically, ages 14–18 under the Labour Act 2006.

Adultery: Voluntary sexual intercourse by a married person with someone other than their spouse.

Adult suffrage: Legal voting age.

Adivasis (scheduled tribes): Indigenous communities recognised under the Constitution of India as Scheduled Tribes (STs).

Age of consent: The minimum age at which an individual can legally consent to sexual activity; varies by country.

Age of criminal responsibility: The legal capacity of an individual to be held accountable for a criminal act.

Age of majority: Legal age of adulthood, typically 18 years across jurisdictions.

Age of marriage: Minimum legally prescribed age for marriage.

Anand Karaj: Sikh wedding ceremony.

B

Baad: Baad is the exchange of girls in forced marriage in order to settle debts or family disputes.

Beti Padhau Beti Bachau/ Beti Padao Beti Bachao (Nepal/India): Initiative promoting girls' education and discouraging early marriage.

Birth registration: Legal process of documenting a child's birth; critical for preventing child marriage.

Bigamy: Contracting a second marriage while the first is still valid.

C

CEDAW: Convention on the Elimination of All Forms of Discrimination against Women is an International treaty requiring the elimination of discrimination and ensuring free consent to marriage.

Child: Generally defined as a person under 18 years, though some laws vary slightly.

Child at risk: A child subjected to forced marriage, exploitation, deliberate harm, or threats, triggering state protection mechanisms.

Child/children in difficult circumstances: Children at risk, abused, or exploited and identified in the laws of the countries.

Child marriage: Marriage where one or both parties are below the legal minimum marriage age. Definitions vary by country. Understood as marriage involving a child below 18 under international human rights law.

Child safeguarding: A framework of policies and practices intended to protect children from abuse, exploitation, and harmful relationships within institutions.

Child groom/child bride: A male or female contracting party below the legal age of marriage.

CMPO: Child marriage prohibition officer

Cohabitation: Unregistered long-term unions are sometimes used to bypass minimum-age laws.

Conciliation Division for Family Matters (the Maldives): Court-based mediation for marital disputes.

Customary Marriage Practices: Rituals, ceremonies, and norms governing matrimonial alliances within specific religious, tribal, or caste groups. Customary practices often conflict with statutory law in relation to the age of marriage.

D

Dalits (scheduled castes) (India): Communities recognised as Scheduled Castes (SCs) under the Constitution of India.

Domestic violence: Behaviours constituting physical, sexual, emotional, or economic harm within domestic relationships. Abuse within domestic relationships; recognised across all jurisdictions.

Desertion: Abandonment of one spouse by the other without reasonable cause; a ground for divorce across personal laws.

Degrees of prohibited relationship: Family relations within which marriage is not permitted under Hindu and Sikh personal laws.

E

Elopement/self-initiated marriage: Adolescents marrying without parental consent or coercion; often prosecuted if the parties are minors.

F

Family Act (the Maldives): Primary legislation governing marriage, divorce, custody, and guardianship.

Faskh (the Maldives): Court-ordered annulment of marriage on specific grounds, including disappearance of the husband, failure to provide maintenance, impotence, or chronic illness.

Fiqh: Islamic jurisprudence that includes the understanding and interpretation of Islamic law.

G

GB (Gilgit Baltistan): A province in Pakistan.

Guardian: A person legally responsible for a minor.

Grooming offence: Crime involving the manipulation of a child for sexual exploitation or to enable sexual abuse.

H

Hanafi: School of Islamic Jurisprudence.

Human trafficking: It is the act of recruiting, transporting, transferring, harbouring, or receiving individuals through force, fraud, or coercion for the purpose of exploiting them for profit. This exploitation may include forced labour, sexual slavery, or other forms of commercial sexual exploitation. It is considered a serious violation of human rights and a form of modern slavery, a crime against humanity.

I

ICT: Islamabad Capital Territory

Injunction (Child Marriage Restraint Laws): Court order preventing an impending child marriage

In-camera trial: A confidential court proceeding allowed in cases involving rape, incest, and child marriage.

J

Judicial Mauzun (the Maldives): State-appointed marriage solemniser.

Judicial Wali: Court-appointed marriage guardian.

Judicial separation: A court decree allowing spouses to live apart without dissolving the marriage.

Juvenile justice system: Specialised judicial provisions under the Act relating to Children under juvenile justice laws in countries.

K

Khul'a/Khul Divorce: Divorce initiated by the wife in exchange for compensation, in Islamic marriages.

Kaikuli (Sri Lanka): Dowry from the bride's family; may incentivise early marriage.

KP (Khyber Pakhtunkhwa): A province in Pakistan.

M

Madhhab: Any school of thought within Islamic jurisprudence.

Mahr: Dower - mandatory bridal gift in Sharia.

Maintenance: Financial support ordered for spouse or children after separation or divorce.

Marital rape: Marital rape or spousal rape is the act of sexual intercourse with one's spouse without the spouse's consent, usually done to a wife or woman by her husband.

N

Nikkah: Muslim marriage contract.

Non-bailable Offence: Offence for which bail is not a right.

O

Option of Puberty (Muslim Law): Right of a girl married before puberty to repudiate the marriage before 18.

P

Personal Laws: Religious laws governing marriage, divorce, and family relations.

Polygamy: The practice of marrying multiple spouses.

Q

Quazi/Quazi Court: Specialized, non-regular judicial body operating under Muslim personal law to handle family matters like marriage and divorce in Sri Lanka

R

Romeo and Juliet Model: Proposed legal reform allowing close-in-age exemptions for consensual adolescent relationships.

S

Sexual and Gender-Based Violence (SGBV): Violence rooted in gender inequality, including child marriage.

Sharia: Islamic law.

Shafi'i: School of Islamic Jurisprudence.

Shia and Sunni: Muslim sects.

Shiite: Adherent of the Shia sect.

Statutory Rape: Sexual intercourse with minors below the age of consent.

T

Thesawalamai law: Customary Tamil law for Northern Sri Lanka.

Thafreeq divorce (the Maldives): Court-ordered dissolution when the husband opposes the wife's request.

U

UN Convention on the Rights of the Child (UNCRC): International treaty requiring 18 as the minimum marriage age.

V

Void ab initio: Legal term that means (contract, act, etc.) void from the beginning.

Void and Voidable Marriages

- ◆ **Void:** Invalid from the beginning.
- ◆ **Voidable:** Valid until annulled. Applicability varies by country.

W

Wali (marriage guardian): Male guardian authorising a woman's marriage under Muslim law; courts may appoint a judicial wali.



Credit: Aakansha Saxena/Equality Now

Chapter 1: Introduction and regional overview

Child marriage constitutes a form of violence against girls, rooted not only in patriarchy and gendered norms but also in age-based vulnerability, religion, and cultural norms. When examined through the lens of religious minority status, the phenomenon of child marriage acquires an additional layer of vulnerability: the minority identity itself. In various South Asian contexts, girls from religious minorities are subjected to child marriage not solely because of age and gender, but also due to their socio-religious marginalisation. Socioeconomic vulnerabilities of religious minority communities (RMCs) often exacerbate the risk of child marriage, while entrenched patriarchal cultural norms further perpetuate the practice.

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The persistence of child marriage is influenced by gaps in legislation, inadequate implementation, gender-discriminatory provisions, and loopholes or inconsistencies within existing laws. The study of child marriage prevalence in practice in South Asian Countries, however, shows that even where there are adequate laws, the practice continues. This shows that though legal frameworks can serve as critical instruments to curb child marriage, the mere enactment of laws is insufficient. Personal laws applicable to religious minorities, often stipulating provisions that conflict with or undermine child protection measures, complicate the matter further.

Although all South Asian countries have populations which can be considered minorities given their lower numbers, the communities which constitute minorities differ from country to country. Whereas Muslims and Christians are minorities in India, Nepal and Sri Lanka, Hindus, Sikhs, and Christians are minorities in Afghanistan, Bangladesh and Pakistan. Hindus are also minorities in Sri Lanka. In most countries, each religious group has its own personal law which regulates marriage, including its solemnisation, registration and dissolution. At the same time, in nearly all South Asian countries, existing legislation prohibiting and regulating child marriages has general applicability across all communities. The interaction between general and personal laws often leads to legal contradictions and

ambiguities in their application. This legal ambiguity is a major loophole which undermines child protection and perpetuates the vulnerabilities of minor girls. Further, in many countries, shortcomings in the child marriage laws themselves undermine effective implementation of protection measures.

The first step toward addressing child marriage involves not only the enactment of comprehensive laws but also recognising the complex legal landscape applicable to religious minorities. In some places, RMCs are recognised as citizens with applicable but archaic minority laws, at others, they are unidentifiable or unrecognised minorities with limited or no legal protections, and in many places, these communities have minority personal laws that come in conflict with child protection statutes. Understanding these dynamics is essential for designing effective strategies to prevent child marriage and ensure the protection of vulnerable girls.

This study attempts to understand the interplay of child marriage and religious laws, along with the impact this has on child protection.

While some countries, such as Bangladesh, India and Pakistan, have specific laws that address child marriage, they also have special laws for minorities. Others, like Nepal and Bhutan, address child marriage through general civil laws and do not have any special laws for religious minorities. The Maldives has a child protection law that prohibits child marriage across the board. Sri Lanka does not have a special law for child marriage, and although it regulates marriage through its general laws, the country also has religious laws. Afghanistan has only religious laws that apply to everyone without any provisions for the RMCs. These inconsistencies in the legal frameworks impact child protection in South Asia.

Table 1.1
Religious minority communities (RMCs) in South Asia

S.No.	Country	RMCs
1.	Afghanistan	Jews, Ahmadiyya, Bahá'í, Hindus, Sikhs, Christians, and Buddhists (very small number).
2.	Bangladesh	Hindus, Christians, Parsis, Buddhists.
3.	Bhutan	Hindus, Christians and Muslims.
4.	India	Muslims, Christians, Sikhs, Buddhists, Jains, Parsis, Jews. <i>Although Dalits and Adivasis (tribals) are not religious minorities, some of them have customary laws. Sikhs, Jains and Buddhists are included within the scope of Hindu marriage, divorce and property laws.</i>
5.	The Maldives	Non-Muslim foreigners (Hindus, Buddhists, Christians, and Jews).
6.	Nepal	Buddhists, Muslims, the Indigenous Kirat religion and Christians.
7.	Pakistan	Hindus, Christians, Sikhs, Buddhists, Kalasha, Baha'is, Ahmadis, and Parsis.
8.	Sri Lanka	Hindus, Muslims, Christians.

Table 1.2

Age of marriage and laws for RMCs

Country	General law on child marriage	Legal age of marriage (female)	Legal age of marriage (male)	Age as per religious or personal laws	Applicable religious/ personal laws
Afghanistan	Sharia Law	Puberty; No fixed age	Puberty; No Fixed Age	-	No special laws. Only Islamic Law applies
Bangladesh	Child Marriage Restraint Act, 2017 (applicable to all communities)	18 (but allows child marriages without any minimum legal age in “special cases” with judicial authorisation (under Section 19 of the Child Marriage Restraint Act, 2017).	21	Muslim Marriage Law: Age at puberty, which is usually interpreted as 15 years. ¹	Muslim Marriages and Divorces (Registration) Act, 1974; Family Court Ordinance, 1985; Muslim Personal Law (Shariat) Application Act, 1935
				Hindu Marriage Law: There is no minimum age of marriage.	Hindu Marriage Registration Act, 2012;
				Christian Marriage Law: for Native Christians - 16 for boys and 13 for girls.	Christian Marriage Act 1872
				Parsi Marriage Law: No prescription of the minimum age of marriage.	Parsi Marriage and Divorce Act, 1936
				Secular (non-religious)/Persons who do not profess Buddhism, Christianity, Hinduism or Islam: 18 for men and 14 for women.	Special Marriage Act, 1872 (SMA)
Bhutan		18	18	-	Only one civil law- Marriage Act, 1980

India	Prohibition of Child Marriage Act, 2006 (PCMA) (applicable to all communities, though there are conflicting HC judgments about the applicability of the minimum age of marriage to Muslim marriages)	18	21	Muslim Marriage Laws: Age at puberty, which is usually interpreted as 15 years.	Muslim Personal Law (Shariat) Application Act, 1937; Dissolution of Muslim Marriages Act, 1939; The Muslim Women (Protection of Rights on Marriage) Act, 2019
				Hindu Marriage Laws: 21 for men, and 18 for women. (also applicable to Buddhists, Jains and Sikhs)	The Hindu Marriage Act, 1955
				Christian Marriage Law: 21 for men, and 18 for women.	Indian Christian Marriage Act, 1872
				Parsi Marriage Law: 21 for men, and 18 for women.	Parsi Marriage and Divorce Act, 1936
				Secular/inter-faith marriages/ Persons who do not profess Buddhism, Christianity, Hinduism or Islam: 21 for men, and 18 for women.	Special Marriage Act, 1954 (SMA)
The Maldives	The Protection of the Rights of Children Act 2019	18	18	-	No special laws for minorities. Civil Laws: Family Act, 2000
Nepal		20	20	-	No special laws for minorities. Civil laws: National Civil (Code) Act, 2017, Marriage Registration Act, 1971; National Criminal Procedure (Code) Act, 2017

Pakistan	ICT Child Marriage Restraint Act, 2025; Balochistan Child Marriages Restraint Act, 2025; Child Marriage Restraint Act, 1929 (KP, AJK, GB); Punjab Child Marriage Restraint Ordinance 2026; Sindh Child Marriage Restraint Act, 2013 (applicable to all communities)	18 across the country except in KP, AJK, & GB (where it is 16)	18	Muslim personal law: Age at puberty.	Muslim Family Law Ordinance, 1961, Dissolution of Muslim Marriage Act, 1939; West Pakistan Muslim Personal Law (Shariat) Application Act, 1962
				Hindu Marriage Laws: 18 for women and men.	Hindu Marriage Act, 2017; Sindh Hindu Marriage Act, 2016
				Christian Marriage Law: 16 for men, and 13 for women (Except in ICT, where it is 18 for both).	Christian Marriage Act, 1872; Divorce Act, 1869; Christian Marriage (Amendment) Act, 2024 (applicable in ICT)
				Parsi Marriage Law: No prescription of the minimum age of marriage.	Parsi Marriage and Divorce Act, 1936
				Sikh Marriage Law: 18 years	Punjab Sikh Anand Karaj Marriage Act, 2018
Sri Lanka	Marriage Registration Ordinance, 1907 (applicable to all communities except Muslims)	18	18	Muslim Marriage law: No minimum age for Muslims. Marriage of a Muslim girl less than 12 years old, only to be registered after inquiry and authorisation by the Quazi	The Muslim Marriage and Divorce Act 1951

It is apparent from the table above that the minimum age of marriage under the general child marriage laws and minority personal laws is at variance in most South Asian countries. For example, while some laws set the minimum age of marriage at 18, others allow marriage at 16, and definitions of a child also vary across different legal texts (as explained further in the country chapters below).

Apart from age, another persistent issue is the absence, or even inadequacy, of legal consequences for those who facilitate or commit child marriages (as seen in the Maldives and Pakistan). Many older laws impose minimal penalties compared to newer legislation. Also, some of the personal laws do not clarify the legal status of such marriages, leaving girls uncertain about the validity and future of their unions.

Overview of national contexts

In **Afghanistan**, child marriage persists under extreme circumstances. Under the current Taliban rule, girls as young as six have reportedly been married. The legal landscape is highly ambiguous, with no formal constitution or codified laws; governance is primarily based on the Taliban's interpretation of Sharia law. While forced marriage is formally prohibited, enforcement is weak, and women continue to face systemic vulnerabilities. For religious minorities, the situation is even more precarious. Prior to Taliban rule, codified personal laws existed only for the Shiite community, which recognised 16 as the minimum age of marriage for girls and 18 for boys. Other minorities, including Christians, Hindus, Bahais, and Ahmadiyahs, lacked any formal personal laws. Following the Taliban's rise, most minorities fled the country due to persecution, making it extremely difficult to assess the legal or social realities for these groups. Consequently, the study of child marriage among minorities in Afghanistan is severely constrained by the absence of legislation, official data, and unidentifiable minority populations.

Bangladesh has enacted the Child Marriage Restraint Act 2017 and the National Action Plan to End Child Marriage 2018-2030 to implement this law. Both define children as persons who have not reached the age of 21 years for males and 18 years for females. The Child Marriage Restraint Act, 2017, however, includes an exception, which allows children to marry earlier in "special circumstances". The Special Marriage Act, 1872 is particularly confusing, allowing children aged 14 to 21 (females) and 18 to 21 (males) to marry, provided they have the consent of their parents or guardians. The Hindu Marriage Registration Act, 2012 does not prescribe a minimum age of marriage for Hindus, but bars registration of marriage of men under 21 and women under 18 years of age. Under the Christian Marriage Act,

1872, marriage of a "minor," defined as a person under 21 years of age, is permitted with the consent of the minor's father or guardian.² It is unclear whether the Child Marriage Restraint Act 2017 overrides personal laws.

In **Pakistan**, religious minorities are legally recognised and have personal laws, though these vary significantly in terms of the age of marriage. For example, the Christians' and Parsis' personal laws remain largely archaic and do not always recognise 18 as the minimum age of marriage. In contrast, recently enacted personal laws for Hindus and Sikhs in Pakistan explicitly recognise 18 as the minimum age for marriage. Following the 18th Amendment to the Constitution, child marriage has become a provincial subject, with each province legislating its own child marriage law. Although recent legislation has largely addressed inconsistencies between provincial laws, the retention of the colonial child marriage law in Khyber Pakhtunkhwa (KP) province (where the minimum age of marriage remains 16) means that the minimum age for marriage and applicable penal schemes are not uniform across Pakistan. As a result, some perpetrators have circumvented stricter laws by arranging marriages across provincial borders.³

Furthermore, despite age prescriptions in the child marriage laws, the courts often continue to determine the legality of marriages on the basis of the Sharia-informed "puberty standard," pursuant to which capacity to marry is linked with the attainment of puberty. The adoption of this standard becomes particularly problematic in the context of forced conversion through marriages (FCM). In such cases, religious minority girls under 18 are abducted, forcibly converted to Islam, and married, following which minority personal laws usually cease to apply, and cases are argued or adjudicated under the puberty standard read with the provincial child marriage laws, highlighting a complex intersection of minority rights, gender-based violence, and child protection in the country.

In **Sri Lanka**, the General Marriage Registration Ordinance, 1908 sets the minimum age of marriage at 18 without exceptions for most communities, but specifically excludes the Muslim community from its scope. Pursuant to the Muslim Marriage and Divorce Act 1951, the age of marriage for Muslims is as low as 12 years, with a special provision for even earlier marriage with permission of the Quazi. There is no separate law for Hindus.

In **India**, except for Muslims, the age for marriage has been codified for other religions. Marriage among Muslims is based on Sharia law through the Muslim Personal Law (Shariat) Application Act, 1937. Muslim personal law remains largely uncodified, and by general interpretation prescribes puberty as the age of marriage, usually interpreted as 15 years (relying on legal commentary by D.F. Mulla).⁴ The Indian Christian Marriage Act, 1872 prohibits marriage of “minors,” and defines one as a person who has not completed 21 years. Consent of parents/guardian/mother is needed in case of a marriage of a minor. One condition for issuing a marriage certificate is that the female is 18 years old and the male is 21. Though the general law, the Prohibition of Child Marriage Act 2006, prohibits marriage under 18 and should apply across the board, conflicting court judgments have created confusion as to whether

the minimum age of marriage applies to the Muslim community.

Although religious minority populations reside in **Bhutan**, they are all subject to the general civil law regulating marriage, which prescribes 18 years as the minimum age for marriage across all groups.

In the **Maldives**, religious minorities are minimal and not legally recognised as citizens under the constitution. As a result, no personal laws exist for minorities. Although non-Muslim foreigners may reside in the country, they do not enjoy legal recognition equivalent to citizens. Nevertheless, child marriage continues among the Muslim population, largely driven by conservative and extremist interpretations of religious norms. While this phenomenon is significant from a general child protection perspective, it falls outside the scope of this study, which specifically seeks to examine the intersection of child marriage with religious minority status and personal laws. Therefore, the Maldivian context does not allow for a full application of the study’s analytical framework or the exploration of minority-specific vulnerabilities, highlighting a critical limitation in comparative analysis across South Asian countries.

The scenario across the region

- ◆ The level of child marriage varies across countries, from over 50% in Bangladesh to 2 per cent in the Maldives.
- ◆ While all countries have minority populations, not all of them have special/religious laws (Afghanistan, Nepal and Maldives).
- ◆ Practice of child marriage is rooted in legal pluralism, gender inequality, social norms, and economic factors.
- ◆ Contradictions between the child marriage prevention laws, personal laws and sometimes even other child protection laws, continue to undermine the universality of child protection in the countries (e.g age of consent and age of marriage need to be understood).
- ◆ While most countries have adequate laws specifically related to child marriage, there are special provisions within the very law, or other laws especially religious laws that create gaps in child protection.
- ◆ Child marriage laws along with laws on sexual abuse/assault/rape criminalise young people in underage marriages (most often used by parents of girls, or when inter-religious).
- ◆ There is also an issue of FCM, at the intersection of religion and gender, affecting RMC girls (in Pakistan).
- ◆ There is opposition to changes in personal laws from religious groups within the countries.
- ◆ While legal changes that protect children are needed, increasing penal prescriptions for child marriage or child sexual abuse is not the answer. There is a pressing need to harmonise laws and ensure implementation.

Reform challenges

Though recognition exists across the region of the harmful impact of child marriage for children, there remains a lot of confusion on how to tackle legal change. Resistance from religious leaders, as witnessed in Pakistan and Sri Lanka, where attempts are made to change the law to raise the age of marriage, coupled with different judicial interpretations on the application of general and personal laws (discussed in detail in the forthcoming chapters), further complicate the matter. Additionally, contradictions in often outdated colonial-era laws applicable to minority communities, and general/civil laws on child marriage, create ambiguities and confusion and impede the implementation of legal protections.

The phenomenon of self-initiated child marriages adds another layer of complexity. Strict application of the law leads to criminalisation of what are essentially consensual relations, often when parents seek to control the independent decision-making of girls by filing criminal complaints, and in most cases, target the male child. The courts tend to take a more nuanced view in some such cases, while staying with the law in others. The approach is far from consistent.

Over the years, what has become clear is that simply enacting laws is not enough. In countries where child and early marriage persist, especially in the context of minority populations, the existence of a 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. Effective implementation, however, remains a major issue.

Furthermore, the phenomenon of child marriage necessitates the concurrent application of multiple legal regimes, including laws on child marriage, child protection, domestic violence, and juvenile justice. The lack of alignment among these laws and policies creates difficulties for law enforcement and social welfare agencies.

However, since early marriage also arises from poverty and insecurity, there is a pressing need to allocate resources and create opportunities for girls most vulnerable within these contexts. It 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 opportunities available for their growth and development. Finding ways to support girls to continue in schools has proved an effective way of delaying marriages. Sex and marriage are often conflated. And while young people themselves believe that marriage is the only way to have sexual interaction, adults use marriage as a way to control the sexuality of girls. Comprehensive Sexuality Education and conversations on responsible sexual behaviour are critical interventions in this regard. Without taking a comprehensive, multi-sectoral approach, child marriage cannot be effectively addressed.

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Chapter 2: Research methodology

Research objectives and questions

The study seeks to examine how gaps between general child marriage laws and the personal or family laws applicable to religious minority communities (RMCs) in South Asian countries, viz., Pakistan, Afghanistan, the Maldives, Bangladesh, India, Sri Lanka, Nepal, and Bhutan, contribute to the persistence of child marriage. The research was guided by the following core questions:

1. What are the legal standards under general laws on child marriage operating in these countries, as compared to personal/family laws governing minority religious communities (where they exist)?
2. Is there a disparity between statutory (general) child marriage laws and the personal/family laws governing RMCs in these countries?
3. What are the key areas of conflict in case law relating to child marriage, particularly in its intersection with personal/family laws of RMCs?
4. Do the legal standards on child marriage differ in their application to religious majority and minority populations, both in theory and in practice, within specific national contexts, and how do they impact children?
5. Are there any recent reform efforts towards amending personal/family laws relating to child marriage in these countries, and how do they intersect with child protection?

The intended outcome of the research is to develop evidence-based recommendations that close legal protection gaps in the implementation of personal/family laws applicable to RMCs in relation to child marriage in South Asia, ultimately informing policy and legislative reform efforts.

Methodology

The study uses a qualitative, analytical and comparative legal research approach to examine how statutory child marriage laws interact with personal/family laws of RMCs in South Asia. Relying on recent and credible secondary sources, legislation, case law, policy documents, Law Commission reports, reports by non-governmental organizations and academic literature, it collects and reviews laws on child marriage, the personal/family laws of RMCs, judicial interpretations, and practical case studies. Data were obtained through official databases and, where unavailable or untraceable, through professional networks and in-country experts. The findings were analysed thematically and comparatively to identify inconsistencies and gaps in child marriage and family laws of RMCs across the specific South Asian countries, within national and subnational jurisdictions, offering both regional and context-specific insights.

Ethics

This study, based on secondary data, adhered to strict ethical standards by using credible, verified legal, policy, and research sources, ensuring accuracy, transparency, and proper attribution. Materials obtained through professional networks were authenticated, and all analyses were conducted with cultural sensitivity, a rights-based lens, and care to avoid the reproduction of identifying information from case studies that was not available publicly. Special emphasis has been placed on the relevance, reliability, and timeliness of all materials, with a preference for the most recent publications to ensure incorporation of up-to-date legal developments. To minimise bias, the research applied impartial review methods, and all preliminary findings were validated by country experts to ensure contextual accuracy and reliability, thus maintaining integrity and ethical rigour throughout the study.

Limits

While this study aims for comprehensive coverage, several limitations affected its scope and depth. Variations in the accessibility and transparency of legal documents across South Asian countries created gaps in the analysis of statutory texts, case law, case studies, and policy documents, particularly for older provisions. Language barriers limited engagement with materials from countries like Afghanistan and the Maldives, where official translations were scarce. While efforts were made to use officially available translated versions or to have the documents translated, this was not possible in all cases due to time and resource constraints. Even where translations or reputable legal commentaries existed, the possibility of interpretive discrepancies could not be entirely ruled out.

Reliance solely on secondary data restricted the ability to capture full enforcement realities, as direct fieldwork, stakeholder interviews, or access to actual case files were not feasible due to research scope, time, and resource constraints.

Some countries simply do not have case law available online in any database, while in others relevant laws were not available digitally, making legal analysis difficult. In some countries, there are no RMCs, or they are not legally recognised as citizens, which means the study's central focus could not be applied to those countries' chapters. Additionally, the dynamic nature of law and policy reform means that recent legislative or judicial developments may not be fully reflected in the analysis.

Despite these limitations, the study provides a detailed and systematic examination of child marriage laws, particularly in the context of religious minorities' family/personal laws, highlighting key legal conflicts and protection gaps. By analysing legislation, case law, and documented case studies, the research offers a comprehensive overview of current frameworks and identifies critical areas for future research and policy intervention.

Chapter 3: Afghanistan

In Afghanistan, the prevalence of child marriage has declined over time but remains high. In 1998, 46% of girls were married before the age of 18; by 2023, this figure had decreased to 29%. Early marriage among younger girls has also declined, with the share of girls married before the age of 15 falling from 16% in 1998 to around 10% in 2023.⁵

Afghanistan has diverse ethnic groups, including Pashtuns, Tajiks, Hazaras, Uzbeks, Turkmens, and Balochs. The country's population is overwhelmingly Muslim, majority identifying as Sunni, while the country also has Shia and other religious minorities. Afghanistan's 2004 Constitution formally recognised the Shia community for the first time by granting them the right to apply Shia jurisprudence in matters of personal status and be governed by the Shiite Personal Status Law (SPSL).⁶ After the Taliban regained power in 2021, many members of religious minority communities (RMCs) fled the country due to fear of persecution. However, small populations of Ahmadiyya, Bahá'í, Hindus, Sikhs, Christians, and Buddhists continue to live in Afghanistan.⁷ It is estimated that around 40 Sikhs and 50 Hindus currently reside in the country.⁸ Representatives of the Ahmadiyya community estimate that their members in Afghanistan number in the hundreds. Reliable figures for the Bahá'í and Christian populations are unavailable, though both are very small. No known Jews remain in the country.⁹

Recent research based on a survey and focus group discussions indicates that, according to community perceptions, incidents of child and forced marriages have increased under the Taliban regime. Respondents noted that during the Republic period, laws and regulations were in place to prevent such practices and to safeguard the rights of women and girls. However, since the Taliban takeover, respondents perceived a shift in legal and social norms, with the age of marriage and consent now being determined solely through the Taliban's interpretation of Sharia. According to respondents, this reinterpretation has effectively legitimised child and early marriages, particularly for girls.¹⁰

All institutional mechanisms for women to report violence or seek protection have been dismantled. The Taliban have closed or dissolved the Elimination of Violence Against Women (EVAW) Prosecution Units and the EVAW High Commission, which were established to ensure implementation of the 2009 Elimination of Violence Against Women (EVAW) law, pursuant to which various acts of violence against women were criminalised, including rape, forced marriage, child marriage and forms of physical violence. The Taliban also dismantled Family Courts, which had been set up to deal with family disputes, and the specialised Family Response Units, trained to deal with domestic violence and GBV cases.¹¹



Religious minorities and their legal framework in Afghanistan

All Afghans, irrespective of religion, are compelled to live under the narrow interpretation of a single school of Islamic thought, i.e. Hanafi, leaving little room for religious freedom or personal choice.¹²

Under the previous government, non-Muslim minorities did not have their own codified laws but were permitted to regulate their family affairs according to their respective religious laws. However, under the Taliban, this legal autonomy has disappeared, and there is no clear indication that these communities retain the right to apply or codify their family laws. Reports of harassment and displacement of non-Muslim minorities following the Taliban's resurgence further underscore their precarious situation.¹³

There is no legal framework in place in Afghanistan that governs matters of personal status, such as marriage and divorce, for religious minorities. As a result, it is not possible to assess the laws affecting RMCs in relation to child marriage or to examine any potential contradictions with Hanafi marriage laws as applicable in the country under the Taliban.

There is no legal framework in place in Afghanistan that governs matters of personal status, such as marriage and divorce, for religious minorities.

Legal framework around child marriage in Afghanistan

Prior to the Taliban takeover in 2021, Afghanistan had codified laws and a functioning Constitution of 2004. The Afghan Civil Code and SPSL set the legal age of marriage at 16 for girls and 18 for boys, and provided children with important protections,¹⁴ including providing minors the right to rescind the marriage upon attaining a particular *bulugh* age. The Law on Protection of Child Rights, 2019 further set the age of children at 18. Moreover, the EVAW law criminalised child marriage of girls under the age of 16,¹⁵ and accorded the victim the right to revoke the marriage. These statutory protections, however, no longer exist under Taliban rule.

Afghanistan, under the Taliban, operates without a parliament, constitution, or any representative legislature. All law-making is centralised with the Amir and his cabinet, who rule through decrees and directives. Legal decisions are based on Hanafi Islamic law, drawing on texts like the Majallah¹⁶ and Haqqani's Islamic Emirate and its Order.¹⁷

Thus, Afghanistan under the Taliban lacks a codified legal framework establishing a minimum age for marriage or regulating marital matters among its citizens. Sharia law remains the sole guiding authority in both principle and practice. Any prior legislation related to marriage, child marriage, or any other matter can only be enforced if it does not contradict Sharia.¹⁸ However, the challenge lies in the fact that Sharia and, consequently, Hanafi law itself are subject to varying interpretations. There is no consensus among Islamic jurists on the age of marriage.

The Hanafi school, similar to the other three major schools of Islamic thought, maintains that marriage can be contracted at any age. They maintain that while *bulugh* (maturity/puberty) and *rushd* (sound reasoning) are important for the execution of marital responsibilities, they are not prerequisites for the legal validity of a marriage contract itself. Thus, the execution of the marriage of a minor girl, as per these schools, is permissible, though the performance of marital obligations may commence after attaining puberty. While the contemporary Hanafi scholars emphasise psychological and intellectual maturity, in addition to physical puberty, as essential criteria for marriage, earlier interpretations have relied on historical precedents, including examples suggesting that marriage of minors could occur. The Hanafi *fiqh* allows the right of *khiyar* (option to annul) once the child reaches maturity, i.e. attains puberty.¹⁹

On the other hand, scholarship on Islamic jurisprudence also emphasises that while Islam does not explicitly forbid marriage for minors, it does not endorse it either, particularly when such marriages disregard the physical and mental wellbeing of children.²⁰

This lack of uniformity in Islamic jurisprudence means that the determination of the permissible age for marriage remains ambiguous and heavily dependent on subjective and contextual interpretations of Sharia, which, in many instances, permit child marriages on the basis of the “puberty standard,” which may be well below the age of 18. Given a stricter interpretation of Islam followed by the Taliban, reports indicate increasing marriages of girls at an “inappropriate age.”²¹ As a result, the overall legal framework governing child marriage in Afghanistan is fragmented and uncertain, with the issue largely shaped by religious interpretations, customs, and traditions rather than formal legal standards, keeping girls largely at risk of child marriage.

Please refer to Table 3.1 in Annex I, which provides a comparison of the approach to child marriage in pre- and post-Taliban Afghanistan.

The decrees on marriage

Since regaining power, the Taliban have issued several decrees related to marriage, but none specifically address the issue of child marriage. A 2021 edict banned forced marriages and prohibited *baad*, the practice of offering girls or women to settle disputes, as well as the forced remarriage of widows.²² Supreme Leader of the Taliban, Mullah Hebatullah Akhundzadeh, issued a decree on 3 December 2021,²³ which, amongst other things, stated that;

“Adult woman’s consent is necessary during Nikah/ marriage (though both should be equal with no risk of sedition).

No one can force women to marry by coercion or pressure.

A woman is not a property, but a noble and free human being, no one can give her to anyone in exchange for peace deal and or to end animosity (*baad*).”²⁴

The decree refers to the marital consent of an “adult woman,” indicating that the term applies specifically to mature women rather than minors. It further states that no individual has the right to compel “a woman” into marriage. However, while the decree affirms a woman’s

right to consent to marriage, it does not explicitly define a minimum legal age for marriage, nor does it explicitly ban child marriage. Also, the decree does not specify any penalties or legal consequences for those who violate its prohibition. The decree also remains silent on several key aspects; it does not clarify whether a woman requires the consent of a *wali* (guardian) to marry, whether she has the right to select her own *wali*, or if she may obtain court approval for marriage in the absence of such consent. Moreover, it does not specify whether women can independently negotiate their marriage rights within the contract.²⁵

While the Taliban claim to base their governance on Hanafi jurisprudence and maintain that earlier laws (only the portions of the 2004 and 1964 constitutions)²⁶ remain valid if consistent with Sharia, in practice, they impose rules derived from their own interpretations of religion and custom. Reports have also circulated of Taliban authorities nullifying women’s divorces and, in some cases, seeking lists of unmarried women and girls for marriage to their fighters. Community members from Afghanistan also highlighted that Taliban authorities’ public statements that girls should be married by 18, reinforce social pressure on families to arrange marriages early.²⁷

The Taliban’s re-establishment has dismantled legal protections for women, leaving domestic violence, child marriage, and femicide largely unpunished.

In Helmand province of Afghanistan, a case of child marriage involving a six-year-old girl forced into marriage with a 45-year-old man was reported to have taken place in July 2025. According to reports, the Taliban instructed the man to wait until the girl reached the age of nine before taking her home, effectively sanctioning the marriage despite her extreme youth.²⁸ Further, Aziz Gul’s case (from 2022) also illustrates the occurrence of child marriage under the current regime in Afghanistan. Her marriage had been arranged when she was 12, with the agreement that she would be married at 16. After a few months of her marriage, she was found dead in a nearby forest, beaten and shot. She was 17 and four months pregnant at the time of her death. Following her death, her in-laws initially claimed she had run away. However, after her body was discovered, suspicions turned toward her husband, who

was known for violent behaviour and drug use. Despite these circumstances, the Taliban's local authorities closed the case, citing insufficient evidence and advising both families to resolve the matter privately.²⁹ Thus, the Taliban's re-establishment has dismantled legal protections for women, leaving domestic violence, child marriage, and femicide largely unpunished.

Divorce under the Taliban

Under Taliban rule, the legal framework for divorce in Afghanistan has been radically altered, leaving women with extremely limited options. A circular issued in September 2022 clearly stated that new divorce cases must be decided in accordance with Hanafi jurisprudence. Women seeking separation are now required to present reasons and evidence in accordance with Hanafi law, and the final decisions are subject to the Supreme Leader's approval. A subsequent circular in January 2024 provided partial guidance on past divorces, stating that those issued under any of the four Sunni schools of fiqh would be recognised. Divorces outside this framework are considered invalid, leaving divorced women vulnerable to challenges regarding the finality of the divorce from their former husbands. Moreover, in practice, this means that most women cannot rely on previous legal protections and must navigate a non-transparent system that prioritises the leader's interpretation of Sharia in the dissolution of marriages.³⁰

In this backdrop, community mediation and negotiation play a central role in facilitating separation. In many cases, women, despite suffering abuse and mistreatment, are unable to secure a judicial separation and are forced to negotiate a *khul*, dissolution of marriage initiated by a woman, relinquishing their *mahr* (dower), personal belongings, and paying other compensation (if required) to her husband simply to end the marriage.³¹

The case of Bibi Nazdana demonstrates the arbitrariness of the divorce framework in Afghanistan under the Taliban. She was given in a *baad* marriage at the age of seven. By the time she turned 15, she was expected to marry Hekmatullah, who was then in his twenties. Nazdana was unable to accept this marriage and approached the Afghan courts, which were operating under the US-backed government, to seek legal separation. After a two-year legal battle, the court ruled in her favour, granting her a divorce. However, the Taliban's 2021 takeover swiftly reversed her legal victory. Just ten days after they seized Kabul, Hekmatullah, now affiliated with the Taliban, appealed the divorce ruling. Under the new regime, Nazdana was barred from presenting her case in person. Taliban authorities insisted that her

brother represent her, citing their interpretation of Sharia, and threatened that failure to comply would result in her being forcibly handed over to Hekmatullah. Despite her brother's warning to the Taliban court in Uruzgan that Nazdana's life would be at risk, the court overturned the previous ruling, effectively nullifying her divorce. Nazdana was then forced to flee to avoid the marriage.³²

The Taliban say they have reviewed 355,000 cases, many involving family matters like Nazdana's, and assert that previous rulings violated Sharia, replacing former civil and penal codes with their own interpretation of Islamic law.³³

Hence, in effect, Afghanistan's child protection mechanisms regarding child marriage, especially of girls, are almost non-existent. Child marriages occur with impunity, and there are no legal safeguards related to divorce or marital rape.

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Chapter 4: Bangladesh

Child marriage has been on the decrease in Bangladesh over the years. Yet, data indicate that 51% of girls in Bangladesh marry before age 18, and 16% marry before age 15.³⁴ Early marriage is more common in rural areas than in urban areas.³⁵ Although Bangladesh has enacted a national law to address child marriage, different personal/religious laws govern different communities. Bangladesh is an Islamic country with a majority Muslim population, but has a significant minority population, including Hindus, Buddhists and Christians. According to the Census of Bangladesh, 2011- Hindus are 8.5%, Buddhists are 0.6%, and Christians are 0.3% of the total population.³⁶

In 2017, Bangladesh repealed the pre-independence Child Marriage Restraint Act, 1929,³⁷ and promulgated the Child Marriage Restraint Act, 2017, but retained the erstwhile definition of a “minor” as a person who, if a male, is under 21 years of age, and if a female, is under 18 years of age. In 2004, the amended Birth and Death Registration Act, 1886 made it essential for a bride and groom each to have a birth certificate before a marriage can be registered.

Despite legal protections, the inconsistencies in the law on the definition of a child/minor and the stipulation of exclusionary clauses in the child marriage prevention law undermine the fulfilment of the primary objective of the law to protect children from harm. The absence of procedures for seeking the voidability of marriage in the child marriage law leaves victims with the only option of seeking redressal under personal/family laws. The existence of different laws on marriage across communities continues to create ambiguity and confusion about the applicable legal standards, as described below. As a result, under Bangladeshi law, a person capable of contracting marriage under personal law may be legally termed a “child/minor” (pursuant to other laws), and the solemnisation of the marriage would constitute a criminal offence under the Child Marriage Restraint Act, 2017.

The Bangladesh government has developed several policies to address child marriage, including the National Plan of Action to End Child Marriage, aiming to end marriage of girls under 15, reduce marriage under 18 by one-third by 2021, and eliminate child marriage by 2041, and the National Child Policy, which protects adolescents (defined from 14-18 years) from violence, marriage, trafficking, and exploitation.³⁸ Other initiatives, such as the National Women’s Development Policy 2011,³⁹ the National Strategy for Adolescent Health 2017–2030,⁴⁰ and the Population

Policy 2012⁴¹ focus on enforcing laws against child marriage, promoting social norms, delaying marriage, and educating adolescents, though ambiguities in religious interpretations limit their effectiveness.

Definition of child

Bangladesh ratified the UN Convention on the Rights of the Child (CRC) in 1990. However, there is a lack of uniformity in the definition of child across various laws in Bangladesh (Refer to Table 4.1 in Annex 1). Despite the fact that the age of majority for both males and females is 18 years under distinct statutory laws, including special laws enacted for the protection of women and children, the legal age of contracting a marriage either continues to be determined by the Sharia-based puberty standard, the Special Marriage Act, 1872 or remains unregulated, leading to differences in the age of marriage for males and females in Bangladesh. It is important to point out that, based on D.F. Mulla’s commentary on Muslim law, courts in Bangladesh have generally interpreted the puberty standard as implying 13-14 years for girls and 15-16 years for boys.

Legal age of marriage and protections under various laws

The definition of child in the Child Marriage Restraint Act, 2017 and the National Action Plan to End Child Marriage 2018-2030⁴², which was passed to implement this law, both define children in the case of males as persons not reaching the age of 21 years and females who have not reached the age of 18 years. Although the Child Marriage Restraint Act, 2017 has general application, personal/family laws regulating marriage remain in force in Bangladesh and prescribe different ages for marriage.

Table 4.2
Legal age of marriage in Bangladesh

Sr.	Laws	Age of Marriage	Applicability
1.	<u>Special Marriage Act, 1872</u>	Male - 18 years, Female- 14 years. However, parties must obtain consent of his or her father or guardian if he or she has not completed the age of 21 years.	Persons who do not profess any faith Persons who do not profess Islam, Hinduism, Buddhism, Jainism, Sikhism or Christianity
2.	<u>Muslim Marriages and Divorces (Registration) Act, 1974</u> <u>Muslim Family Laws Ordinance, 1961</u> <u>Muslim Personal Law (Shariat) Application Act, 1935</u>	Age at puberty, which is usually interpreted as 15 years	Muslims
3.	<u>Hindu Marriage Registration Act, 2012</u>	There is no minimum age of marriage. Under section 19 of the Hindu Marriage Registration Act, 2012 the marriage of a Hindu man under the age of 21 years and a Hindu woman under the age of 18 years will not be entitled to registration (which is not mandatory).	Hindus
4.	<u>Christian Marriage Act 1872</u>	Marriage of a “minor,” which is defined as a person under 21 years of age; Pursuant to section 60, the minimum age of marriage for Native Christians is 16 for boys and 13 for girls, provided that for parties under 18, the consent of the father/guardian is required for the marriage	Christians
5.	<u>The Parsi Marriage and Divorce Act, 1936</u>	Does not specify a minimum age of parents, only requires consent of father/guardian for marriage under the age of 21 years	Parsis
6.	<u>Child Marriage Restraint Act, 2017</u>	18 for females and 21 for males, but allows child marriages without any minimum legal age with judicial sanction and parental consent in “special circumstances” in the “best interests of the minor” (Section 19)	All communities

The Child Marriage Restraint Act

The Child Marriage Restraint Act, 2017 (CMRA) defines a minor as under 21 for males and under 18 for females, and criminalises marrying a child with up to two years' imprisonment and fines.⁴³ The CMRA does not, however, invalidate child marriages and contains a retrogressive exception in Section 19, (which was challenged on constitutional grounds before the High Court) permitting child marriages through judicial sanction and parental consent in "special circumstances," where it is "in the best interests of the minor." The latter term remains undefined in the law, and there is no clarity regarding its meaning from judicial decisions. There is apparent concern regarding misuse of this judicial discretion, such that in 2017, the Supreme Court of Bangladesh issued a circular directing judges to undertake proper investigation before granting any sort of exemption under section 19.⁴⁴ The CMRA also allows courts to prohibit impending child marriages and imposes penalties for false reporting.⁴⁵ Although a law of general applicability, the CMRA 2017 does not itself clarify whether it has an overriding effect over personal/family laws, nor does it provide a mechanism for the nullification/revocation of child marriages. As a consequence, girls seeking to void child marriages often face restrictive and hard-to-access procedures under their personal/family laws.⁴⁶

Personal/religious laws

As indicated in Table 4.2 above, marriages between persons of different religious communities in Bangladesh are governed by their respective family/personal laws, which at times contradict the provisions of the CMRA. In addition to age prescriptions in these family/personal laws, it is important to consider the entitlement to grounds for dissolution of such marriages under the respective laws.

The permissible age for marriage for Muslims in Bangladesh continues to be determined according to the Sharia-based puberty standard, which, based on legal commentaries, is presumed to be 15 years, which may often contradict definitions of a minor/child under the country's general laws, including the CMRA. Under the Dissolution of Muslim Marriages Act 1939, a girl who was married before the age of 18 may seek dissolution of her marriage, provided that the marriage has not been consummated and the right to repudiate is exercised by the age of 19.⁴⁷ This option provides a very short window for a girl to have her child marriage dissolved, and therefore is likely to be practically unavailable to many. Muslim women may also apply for *khul* to dissolve their marriages.

In Bangladesh, Hindu marriages are governed largely by religious and customary laws⁴⁸, with no comprehensive codified law, and optional registration under the Hindu Marriage Registration Act, 2012. Hindu women can approach the Family Court for dissolution of marriage only if their marriage is registered under the Special Marriage Act, 1872 while Hindu law generally treats marriage as indissoluble,⁴⁹ offering separate residence and maintenance only on very limited grounds.⁵⁰ While the CMRA also applies to Hindu minors, it does not prescribe a clear legal framework for dissolution or maintenance, who have open to them very restrictive grounds for separate residence or support. In 2023, the High Court issued notice on the writ petitions filed by human rights organisations⁵¹ requesting directions⁵² to formulate a policy to ensure the legal rights of Hindu women in Bangladesh and remove the inconsistencies in the Hindu Marriage Registration Act.⁵³ Any such reform faces resistance from orthodox Hindu groups.

The grounds for divorce under the Christian Divorce Act, 1869 are very limited. A husband can divorce his wife on the basis of adultery,⁵⁴ whereas wives must prove adultery in addition to another ground: conversion to another religion, bigamy, incest, rape, sodomy, bestiality, desertion for two years, or cruelty. The personal law obliges a Christian husband to pay his wife maintenance if she is "chaste".⁵⁵ Pursuant to the Parsi Marriage and Divorce Act, 1936 underage marriages are not void, but parties can also file for judicial separation or divorce on grounds of failure to consummate the marriage, cruelty, adultery, etc.⁵⁶

Age of sexual consent and other laws which have a bearing on child marriage

Even as the age of marriage is 18 years for girls and 21 for boys, as per section 375⁵⁷ of the Penal Code, 1860, of Bangladesh, the age of consent for sex for a woman is 14 years. Pursuant to the exception to section 375, sexual intercourse by a man with his wife is a criminal offence only where she is under 13 years of age, implying thereby that the age of sexual consent in a marriage is 13 years. Section 9 of the Prevention of Oppression Against Women and Children Act, 2000 also reiterates that sexual intercourse with a woman under 14, regardless of her consent, is classified as rape. Section 90⁵⁸ of the Penal Code, 1860 invalidates any consent known to be given under fear or misconception or if the consent is given by a person who is under twelve years of age. Beyond this, the Penal Code does not further explain the meaning of consent. However, Section 2(17) of the Prevention and Suppression of Human Trafficking Act, 2012⁵⁹, applicable to girls who may have been trafficked into marriage, clarifies

that valid “consent” is given freely and consciously and is not influenced by his or her weak position arising out of his or her age, sex and socio-economic backwardness. It is obvious that the criminal law in Bangladesh stipulates different ages for valid consent for sexual conduct, which are much lower than the age prescriptions under the CMRA, such that sexual conduct in underage marriages is not treated as a criminal offence.

Gaps and inconsistencies in the legal frameworks

- ◆ **Lack of harmony with religious/personal laws:** The greatest barrier to child protection in Bangladesh is the conflict between national laws and personal/religious laws, which results in legal pluralism.⁶⁰ While the CMRA has a general application, its provisions do not have an overriding effect. The fact that personal laws provide different (and often lower) ages for marriage, coupled with the fact that the CMRA criminalises but does not declare child marriage void, creates major gaps in protection. No order passed by a court under the CMRA can nullify a marriage performed under the personal law.⁶¹ This makes such child marriages both valid and punishable.
- ◆ **Exception to prohibition against child marriage:** The exception in the CMRA allowing for child marriage under “special circumstances” without defining the term enables child marriages to take place. The law also imposes a two-year time limit for complaints, short of what many girls can realistically meet.⁶²
- ◆ **Potential for prosecution of children:** The possible prosecution of a minor who enters into a child marriage and the prescription of penalties for false reporting under the CMRA complicates enforcement of the law.
- ◆ **Discriminatory and inconsistent law governing dissolution of marriage:** Discriminatory personal laws governing divorce, maintenance, and marital property for Muslims, Hindus, and Christians further complicate efforts to end child marriage. As discussed above, Muslim girls may only dissolve their marriage before consummation and before age 19; Hindu law offers no room for dissolution, and Christian law provides divorce only on very limited grounds. The Law Commission has reviewed these inequalities but concluded that a uniform family code is impossible due to religious sensitivities,

leaving girls, particularly those in forced and underage marriages, with limited recourse.⁶³

- ◆ **Failure to adequately address violence in child marriage:** Violence within child marriage is also inadequately addressed. As per Section 375 of the Penal Code, non-consensual sex with a married girl above 13 is not considered rape, unlike equivalent acts outside marriage. The Domestic Violence Act does not provide special protection for girls in child marriages. These legal contradictions and gaps allow serious physical and sexual harm within child marriages to go largely unpunished, while remedies and protections remain limited and inconsistent.

The greatest barrier to child protection in Bangladesh is the conflict between national laws and personal/religious laws, which results in legal pluralism.



IMAGE

Credit: Wirestock/iStock

Chapter 5: Bhutan

Marriages in Bhutan are governed by the Marriage Act, 1980, which uniformly applies to all citizens. Recent amendments raised the permissible age for marriage from 16 for girls and 18 for boys to 18 for both genders.⁶⁴ The law forbids the performance of marriages of minors and requires all marriages to be registered.⁶⁵

As per its Constitution, Bhutan is a Buddhist country, with around 74.7% of the population being Buddhists. Hindus form 22.6% of the population, 0.5% are Christians, and 0.2% are Muslims.⁶⁶ Bhutanese of Nepali descent are predominantly Hindu and are mostly based in Bhutan's southern lowlands. They are commonly known as Lhotshampas, 'people of the south', and are the main minority group in the country.⁶⁷

According to the United Nations Children's Fund (UNICEF)⁶⁸, Bhutan is home to over 79,000 child brides, with one in four young women married in childhood. Child marriage is particularly prevalent in Samdrup Jongkhar (where 44% of women aged 20-49 were married before the age of 18), Dagana (43%), Sarpang (40%) and Mongar (37%).⁶⁹ Between 2015-2020, 15% of girls in Bhutan gave birth before the age of 18.⁷⁰

According to the United Nations Children's Fund (UNICEF), Bhutan is home to over 79,000 child brides, with one in four young women married in childhood.

The Marriage Act, 1980 criminalises child marriage, such that if an individual is found guilty of marrying a child (defined in the law as a person under 18), he will be fined Ngultrums 300–1,000 (about US\$5-18)⁷¹, and must return any properties received for the marriage. Under the Marriage Act, 1980 the marriage certificate is proof of the validity of the marriage. Pursuant to Kha 1-14 read with Kha 1-21, no marriage certificate may be issued where parties to a marriage are under the age of 18, in the absence whereof the marriage is not considered valid. The Child Care and Protection Act (CCPA), 2011 defines a child as a person under 18 years of age and penalises various forms of sexual abuse against children. The Bhutan Penal

Code treats sex with a child in an underage marriage as rape. While the existence of these laws is an important first step, enforcement remains weak in remote, rural areas. Marriage registration is still patchy, and enforcement mechanisms are unreliable, especially in regions where prevalence is higher.⁷²

A traditional courtship custom practised in the villages of eastern and central Bhutan, known as *bomena* (literally meaning going towards a girl), involves a boy stealthily entering a girl's house at night for courtship or coitus with or without prior consultation.⁷³ The National Commission for Women and Children (NCWC) has noted that while traditionally, night hunting was intended to be a practice of courtship, it is now widely accepted as putting girls and women at risk of sexual harm.⁷⁴ Adult men feared punishment for night hunting but did not appear to think that this kind of sexual activity with girls was problematic.⁷⁵ *Bomena* would be classified as rape under the Penal Code. However, pursuant to the Marriage Act, 1980 marriage/union following *bomena* may, if accepted by the parties, be recognised as a valid marriage based on customary rituals, and impregnation following *bomena* is to be compensated for along with the payment of child support. (Kha 1-8; Kha 8-11 and Kha 8-12).

Definition of child

A child/minor is generally defined as a person under the age of 18 under Bhutanese law, including the Constitution, the Child Care and Protection Act of Bhutan, 2011 and the Child Adoption Act of Bhutan, 2012. The Penal Code of Bhutan, 2004 does not define a child but classifies sexual intercourse with a child under 12 as statutory rape and sexual intercourse with a child above 12 as rape, with differing punishments. The Domestic Violence Prevention Act of Bhutan 2013 mentions the word 'minor' as a victim, but the age of the 'minor' is not specified. Refer to Table 5.1 in Annex I for more details on the definition of the child in various laws.

Legal age of marriage and protections under the laws

In 2024, the Marriage Act, 1980 was amended to clarify the minimum marriageable age at 18 for both men and women.⁷⁶ The Marriage Act, 1980 prohibits the registration of marriage if the parties have not attained the age of majority and imposes a fine for performing child marriages (of up to 3 USD).⁷⁷ Without a marriage certificate, an underage marriage is not treated as valid under the law.⁷⁸ The Marriage Act, 1980 also allows for the reversal

and return of all exchanges, in any form, made during the wedding, including land, houses, property, livestock, etc.

The Marriage Act, 1980 also treats sexual intercourse with a minor as an offence punishable with a fine of USD 5.67 to USD 11.15 and imprisonment extending from one to three years.⁷⁹ If the minor dies due to the rape, the fine is USD 11.15 with an imprisonment of seven years.⁸⁰ The law also imposes fines on performing successive child marriages by fraud.⁸¹

Age of sexual consent and sexual offences

Under the Penal Code of Bhutan, any sexual intercourse with a child below the age of 12 years is statutory rape⁸² which is a felony of the second degree, and the accused faces a sentence of nine to fifteen years in jail. Any sexual intercourse of a child above 12 and below 18 years comes under the definition of rape,⁸³ is a felony of the third degree, and the accused faces a maximum sentence of five to nine years in jail. The consent of the victim may be a defence⁸⁴ under the law, if the victim is capable of giving consent.⁸⁵ The provisions of statutory rape and rape apply to both girls and boys, and to both men and women who are accused.

Other laws that have a bearing on child marriage

The Child Care and Protection Act of Bhutan, 2011⁸⁶ and the Child Care and Protection Rules and Regulations of Bhutan 2015⁸⁷ create a uniform child justice system and legal framework with adequate provisions for dealing appropriately with all aspects of children in the context of the changing economic, social and cultural conditions prevailing in the country.

However, they do not directly address the issue of child marriage. The Child Care and Protection Act of Bhutan, 2011 lists a separate category of Child in difficult circumstances⁸⁸ but does not specifically include survivors of child marriage in the definition (though it includes a child who is being or likely to be abused or exploited for immoral or illegal purposes, which could be considered as covering child marriage) as a child in difficult circumstances. Chapter 14 - Offence Against Child does not cover child marriage, which, unlike other crimes committed against a child, is not covered under this Act, and is to be dealt with under the Penal Code of Bhutan.⁸⁹

It is unclear whether children who self-initiate their marriages are subject to the penal consequences

under Kha 8-20 of the Marriage Act, 1980, which refers to “persons performing such child marriages in contravention of the prescribed law.” If so, they may be treated as children in Conflict with the Law under the Child Care and Protection Act and the Bhutan Penal Code (Sections 114-117).

The Domestic Violence Prevention Act of Bhutan 2013⁹⁰ and the Domestic Violence Prevention Rules and Regulations⁹¹ do not mention child marriage. However, complaints of injury and abuse sustained during the course of a child marriage may be made under the aforementioned laws, which covers physical abuse⁹² and sexual abuse⁹³ and provides a range of remedies including protection orders, access to health care and counselling.

Gaps and inconsistencies in the legal frameworks

- ◆ **Hidden prevalence of child marriage:** Although declared illegal, child marriage in Bhutan is said to be surrounded by a culture of silence and acceptance.⁹⁴
- ◆ **Lack of effective implementation:** Lack of precise data,⁹⁵ sub-standard collection and analysis of data, weakened measures to prevent and address the root causes of child marriages, ineffective training of relevant professional groups, and failure to provide equal safeguards for the effective implementation of the law lead to the continued prevalence of child marriage in Bhutan.⁹⁶
- ◆ **Absence of regional or community-specific data:** There is little or no information available on how other religions ‘behave’ on this issue, except that the regions that have been identified as having a higher number of underage marriages, such as Samdrup Jongkhar, Dagana, Sarpang, and Mongar, have a significant Hindu (Lhotshampa) population. There seems to be no data available for other minority religions: Islam and Christianity.
- ◆ **Possibility of prosecution of consensual adolescent relationships:** The strict law in Bhutan on rape is unable to address consensual sex between adolescents where no coercion or abuse occurs. This is so, even though, as per the Penal Code of Bhutan, the consent of the victim may serve as a defence.⁹⁷

- ◆ **Gaps in child protection legislation:** Child protection legislation does not specifically include a child who is at imminent risk of child marriage and whose parents, family members, guardian and any other persons are likely to be responsible for the solemnisation of child marriage, in the definition of “Child in difficult circumstances,”⁹⁸ thereby limiting the applicability of protection measures.
- ◆ **Need for capacity building and training:** Sensitisation and education on the practice of child marriage, as well as law enforcement training for members of the judiciary, police personnel, community leaders and other law enforcement personnel, especially in remote, rural areas where the incidence of child marriage is higher, is highly recommended.
- ◆ **Review of system of marriage registration:** The government needs to review and strengthen its marriage registration and monitoring system and find more effective ways of registering unions, especially in poor, rural areas where the prevalence of child marriage is highest.⁹⁹

Although declared illegal, child marriage in Bhutan is surrounded by a culture of silence and acceptance.

Chapter 6: India

Child marriage is becoming less common in India, but the country still accounts for one in three of the world's child brides.¹⁰⁰ Child marriage prevalence declined from 47.4% in 2005–06 to 26.8% in 2015–16, a 21% decline over the decade. Between 2019–21, child marriage prevalence was 23.3% in the 20–24-year age group of women, and 16.3% in the 18–19-year age group.¹⁰¹

Child marriage is becoming less common in India, but the country still accounts for one in three of the world's child brides.

In India, the Prohibition of Child Marriage Act, 2006 (PCMA) prohibits the solemnisation of child marriages. The enactment of the PCMA repealed the Child Marriage Restraint Act, 1929,¹⁰² but retained the minimum age of marriage prescribed in the earlier law, namely 18 years for women and 21 years for men. The new law did not make child marriage void, but voidable by the parties involved.¹⁰³ Despite the age prescription in the PCMA, confusion persists about the minimum marriageable age, as some personal laws set the minimum marriageable age below 18 years.

India is home to many religions and ethnic groups. The largest population is those who identify themselves as Hindus (79.8%). India is also home to a large number of Muslims (14.2%). Christians account for 2.3% of the population; Sikhs, 1.7%; Buddhists, 0.7%; and Jains, 0.4%; and Parsis and Jews constitute a very small percentage. It is important to mention that 16.6% of the population are Dalits and 8.6% are adivasis (tribals).¹⁰⁴ Each of these groups has its own customary marriage rituals/ceremonies, and rules. However, several are also clubbed together under the major personal laws for Hindus (including Buddhists, Sikhs, Jains), Christians, Parsis, and Muslims.

Definition of child

The disharmony between the laws on the defined age of the child has significantly contributed to lacunae in child protection with regard to child marriages, sexual violence

against children and adolescent relationships. Table 6.1 in the Annex presents stipulations on a child's age under different laws. Most laws define a child as a person under 18. Importantly, the Bharatiya Nyaya Sanhita 2023 (which replaced the Indian Penal Code) defines a child as a person under 18 years, and section 63 of the law treats 18 as the minimum age for valid sexual consent. Labour laws, however, adopt a lower age standard, and define a child as someone 14 years and below; the Right of Children To Free And Compulsory Education Act, 2009 also adopts this standard.

Legal age of marriage and protections under the law

Marriage laws of all religious communities in India attach central importance to the consent of parties to the marriage. Under the Hindu Marriage Act, 1955, which governs all Hindus, Sikhs, Jains, and Buddhists, the parties to the marriage must have the capacity to consent, and a marriage where consent is obtained through force is voidable and can be annulled by a decree of nullity.¹⁰⁵ Under Islamic Sharia law, both the bride and groom must consent to the marriage and express their consent verbally and in writing. The Special Marriage Act, 1954, which allows inter-caste and interreligious marriage, contains provisions similar to the Hindu Marriage Act, 1955.¹⁰⁶

However, there is a lack of uniformity regarding the minimum age at which the law recognises the capacity to consent. While the PCMA prescribes the minimum age of marriage, family/personal laws in India also prescribe minimum ages, some of which contradict the PCMA. As described in Table 6.2 below, applicable laws for Hindus, Christians and Parsis define the permissible age of marriage for men as 21 years and for women as 18 years of age. The age for marriage for Muslims, which is governed by Sharia law, has not been codified as in other religions. As per the Islamic scholar, Sir Dinshah Fardunji Mulla, who is widely quoted by the different High Courts in India, a person who has attained puberty may enter into a contract of marriage, usually interpreted as 15 years for girls.¹⁰⁷

Table 6.2
Legal age of marriage in India

Sr.	Statute	Age of the child	Applicability
1.	<u>The Prohibition of Child Marriage Act, 2006</u>	18 years for females and 21 years for males *Himachal Pradesh passed a law to raise the minimum age of marriage for women from 18 to 21 years. ¹⁰⁸	All communities
2.	<u>The Special Marriage Act, 1954</u>	18 years for females and 21 years for males	Persons who do not profess any faith, or who do not profess Islam, Hinduism, Buddhism, Jainism, Sikhism or Christianity Persons who enter into interfaith marriages (without the need for faith conversion) or marriages without a religious ceremony
3.	<u>The Indian Christian Marriage Act, 1872</u>	18 years for females and 21 years for males. Consent of the parent/guardian is needed for marriages of 'minors' under the age of 21	Christians
4.	<u>The Parsi Marriage and Divorce Act, 1936</u>	18 years for females and 21 years for males.	Parsis
5.	Interpretation under Muslim law <u>Muslim Personal Law (Shariat) Application Act, 1937, Dissolution of Muslim Marriages Act, 1939, and the Muslim Women (Protection of Rights on Divorce) Act, 1986</u>	Age at puberty, which is usually interpreted as 15 years ¹⁰⁹	Muslims
6.	<u>The Hindu Marriage Act, 1955</u>	18 years for females and 21 years for males.	Hindus, Sikhs, Jains and Buddhists
7.	<u>The Foreign Marriage Act, 1969</u>	18 for females and 21 for males.	Two Indian citizens marrying abroad An Indian citizen marrying a foreign national abroad
State Law			
1.	<u>The Uniform Civil Code Uttarakhand, 2024</u>	18 for females and 21 for males.	All communities

Laws governing child marriages and the dissolution of marriages in India

The Prohibition of Child Marriages Act, 2006 (PCMA)

The PCMA defines a child as a male below 21 and a female below 18,¹¹⁰ making child marriage voidable at the option of the contracting party. In 2024, the government of the State of Himachal Pradesh raised the age of marriage to 21 years for women.¹¹¹

Further, under PCMA, a child or their guardian, with the Child Marriage Prohibition Officer, can petition for annulment of the marriage within two years of attaining majority. The PCMA provides for maintenance and residence of the female child until remarriage, by the male contracting party or his parents/guardian (where he is a minor).¹¹² The Act criminalises adults marrying children, performing¹¹³ or promoting¹¹⁴ child marriages, and trafficking¹¹⁵ for marriage, though women are exempt from punishment. Karnataka is the only State in India which has declared all child marriage void *ab initio*.¹¹⁶ It also enhances applicable penalties and enables concerned police officers to take notice of an offence suo motu. This was the culmination of efforts at the state level, including a specific recommendation of the Justice Shivaraj Patil Committee (2011), which was set up to review the status of child marriage in Karnataka.¹¹⁷ Referring to Karnataka's amendment of child marriage law at the state level, Haryana too drafted a bill suggesting the same, though it has not been passed as yet.¹¹⁸

An order of the Supreme Court of India in 2017 aligned the age of consent in the rape and sexual assault legislations with the PCMA, and held that under applicable penal law, sexual intercourse or sexual acts, with or without consent, by a man with his own wife below 18 years is rape.¹¹⁹ In 2024, the Supreme Court of India in *Society for Enlightenment and Voluntary Action (SEVA) & Anr versus Union of India & Ors* issued guidelines for stronger enforcement of the PCMA, including implementation of awareness programmes, appointment of CMPOs, and community-driven prevention strategies, emphasising the illegality of child marriage and betrothals and urging coordinated implementation across agencies.¹²⁰

The Kerala High Court, in a suo motu action, relied on the community change approach to address child marriage in the Tribal Community of Wayanad, and directed the Kerala State Legal Services Authority to collaborate with non-governmental organisations to conduct awareness programs about children's rights and the harms of child marriage.¹²¹

Religious/personal laws regarding marriage

The PCMA has a general application, though there is a lack of clarity regarding whether it has an overriding effect over personal laws. The High Courts in India also seem divided on the interpretation of personal laws that conflict with the PCMA. The High Courts in Kerala,¹²² Gujarat,¹²³ and Karnataka¹²⁴ have held that the PCMA, 2006 overrides personal laws, citing the social and health harms of child marriage. On the other hand, on similar matters, the Andhra High Court (Pre-Telangana),¹²⁵ the High Court of Patna,¹²⁶ the Punjab¹²⁷ and Haryana High Court,¹²⁸ the High Court of Jharkhand,¹²⁹ and the High Court¹³⁰ of Delhi¹³¹ has observed that a Muslim girl who has attained puberty i.e. 15 years can marry and such a marriage, despite violating the PCMA, would not be a void marriage.

In 2024, the Supreme Court of India acknowledged this conflict and suggested that the PCMA should prevail over personal laws, but did not give a final decision on the matter, leaving it to the discretion of the legislature.¹³² The PCMA (Amending) Bill 2021 aims to clarify its overriding effect over all personal laws. States like Assam have taken proactive steps by repealing older Muslim marriage laws and aligning the minimum age of marriage with the PCMA (18 for girls, 21 for boys), paving the way for uniform enforcement and stronger child marriage prevention.

In 2025, Assam, with a considerable Muslim population and also one of the states with a high incidence of child marriage, repealed the Muslim Marriage and Divorce Act and enacted the Assam Compulsory Registration of Muslim Marriages and Divorces Act, 2024, and it prescribes the same age of marriage as PCMA (18 for girls and 21 for males).¹³³ This sets in motion the pathway for similar changes in law in the other states of India.

Grounds for dissolution of marriage under personal laws

The Hindu Marriage Act, 1955 does not declare an underage marriage as void or voidable,¹³⁴ but allows a woman to seek dissolution of such a marriage through a decree of divorce where the marriage was solemnised before she turned 15, provided that the application is submitted before she turns 18 (regardless of whether the marriage was consummated or not).¹³⁵ Other grounds for divorce under the Hindu Marriage Act, 1955 include adultery, cruelty, desertion, unsoundness of mind and conversion to another religion.¹³⁶ Under the Dissolution of Muslim Marriage Act, 1939, a Muslim girl married before the age of 15 years can seek dissolution of her marriage on grounds of not yet having attained puberty, provided

that she does so before turning 18 and if the marriage has not yet been consummated. This decision must be confirmed by a court.¹³⁷ Muslim women may also apply for *khul* to dissolve their marriages. Pursuant to the Parsi Marriage and Divorce Act, 1936 underage marriages are not void, but parties can file suits for judicial separation or divorce on grounds of failure to consummate the marriage, adultery, unsoundness of mind, cruelty, etc.¹³⁸ The Christian Marriage Act, 1872 does not declare an underage marriage as void, but such marriages are not entitled to a grant of a certificate of marriage. The Divorce Act, 1869 governs the dissolution of Christian marriages on the grounds of adultery, ceasing to be Christian, being incurably of unsound mind, suffering from communicable venereal disease, not being heard of as being alive for a period of seven years, etc.

Age of sexual consent and sexual offences

Over the years, there has been debate surrounding the age of sexual consent and the age of marriage. Since 1940, the Indian Penal Code has prescribed 16 years as the age of sexual consent for women. With the enactment of the gender-neutral Protection of Children from Sexual Offences Act, 2012 (POCSO Act), the age of consent was raised to 18 years for both males and females. The Criminal Law Amendment Act of 2013 also increased the minimum age of sexual consent to 18 years in the Indian Penal Code, thereby classifying underage penetrative sexual activity as “statutory rape”, a crime where consent simply does not matter. The Bharatiya Nyaya Sanhita, 2023 (BNS), which replaced the Indian Penal Code, maintains this age in Section 63 (d)(vi) (BNS, 2023), criminalising sexual intercourse with girls under 18, regardless of marriage, and prescribing enhanced penalties for victims under 16 and 12.¹³⁹

In the context of trafficking¹⁴⁰ of the child under the BNS, 2023, the consent of the child/victim is also immaterial. Linking child marriage to trafficking, the PCMA declares a child marriage to be null and void, where the marriage is procured by taking or enticing the minor from the custody of the guardian, compelling a minor, through use of force or by deceitful means, to go from one place to another, or where the minor was sold for marriage.¹⁴¹

Given the age of sexual consent is set at 18 under the POCSO Act, any form of penetrative and non-penetrative sexual assault, with or without the consent of a child, is a criminal offence.¹⁴² Although, as per the PCMA, a child marriage, once solemnised, is legal and voidable, the Supreme Court of India has held that consummation of a child marriage constitutes a punishable sexual

offence under POCSO.¹⁴³ However, courts have delivered conflicting rulings, with some upholding marriages of minors under personal or cultural norms while others strictly enforcing POCSO, thereby highlighting tensions between child protection and social realities.¹⁴⁴ For instance, the Supreme Court of India¹⁴⁵ set aside the conviction for aggravated sexual assault under POCSO of the maternal uncle of the child, both belonging to the Valayar community, citing local custom and family circumstances where the accused had later married the minor girl. In a similar case in Delhi, the High Court refused to quash proceedings despite the girl’s consent and pregnancy, emphasising that statutory child protection under POCSO remains unaffected by subsequent developments.

The Gauhati High Court questioned POCSO’s applicability during Assam’s crackdown on child marriages,¹⁴⁶ which included repealing the Muslim Marriage and Divorce Act,¹⁴⁷ while the Supreme Court¹⁴⁸ upheld the Punjab & Haryana High Court’s¹⁴⁹ approval of a Muslim girl’s under-18 marriage and emphasised reconsidering criminalisation of consensual adolescent relationships. In fact, the Chief Justice of the Supreme Court of India has urged the Government of India to decriminalise adolescent relationships under POCSO.¹⁵⁰ In another matter, the Senior lawyer Indira Jaisingh,¹⁵¹ the amicus curiae appointed by the court, has told the court that consensual sexual relationships between adolescents should not be criminalised. She has urged the court to read a close-in-age exception into the law. These calls for de-criminalisation are in part based on the fact that enforcement of POCSO has disproportionately targeted boys in consensual adolescent marriages and treated them as perpetrators,¹⁵² often to enforce parental or societal control over the choices of adolescent girls.

The Juvenile Justice (Care and Protection of Children) Act, 2015, complements POCSO by treating children at risk of child marriage as needing care and protection, enabling rehabilitation, shelter, medical, and legal support via Child Welfare Committees. Despite these protections, prosecutions under POCSO and the PCMA are frequently used to control adolescent behaviour rather than prevent harm, disproportionately affecting self-initiated, inter-caste, or inter-faith unions.

Law reform efforts

The Government of India proposed the Prohibition of Child Marriage (Amendment) Bill, 2021,¹⁵³ to raise the minimum age of marriage for women to 21 and amend the personal laws of Christian, Parsi, Muslim, Hindus and the Special Marriages and the Foreign Marriages Act, 1969

following a similar move by Himachal Pradesh. However, this has sparked debate over whether raising the age of marriage beyond 18 ensures women's empowerment,¹⁵⁴ with critics arguing that social change, health infrastructure,¹⁵⁵ education, and protection mechanisms are more effective. Concurrently, several states¹⁵⁶ have introduced laws targeting interfaith marriages, termed "love jihad" laws,¹⁵⁷ imposing severe penalties for alleged forcible or dishonest religious conversions for marriage, with Maharashtra forming a committee in 2025 to study and recommend measures on such cases. Civil society organisations, like Bharatiya Muslim Mahila Andolan, have also called for comprehensive codification of Muslim family laws, which includes clarifying that 18 is the minimum age of marriage for the Muslim community.¹⁵⁸

Gaps and inconsistencies in the legal frameworks

- ◆ **Gaps in the Prohibition of Child Marriage Act, 2006:** The defined age of a child in most laws is 18 years. The different age prescriptions for males and females in PCMA lead to confusion in the law, as the male continues to be considered a 'minor' till 21 for the purposes of marriage, but can, as per the Supreme Court, marry an adult woman over 18 years without being liable to any penalties.¹⁵⁹ PCMA also creates a legal dichotomy as Section 3 permits a male contracting party to file a 'voidable' petition in court until he turns 23, while Section 10 makes it a punishable offence for any male adult over 18 to marry a child.
- ◆ **Difference between national and state laws:** Independent legislative amendments by state legislatures further complicate the issue by rendering the law inconsistent across states. In Karnataka, child marriages are declared void ab initio, and Himachal Pradesh has raised the age of marriage for women to 21 years.
- ◆ **Declaration of child marriages as void/voidable:** Under the PCMA, a child marriage is not a 'void marriage' but voidable. This is to ensure that survivors of existing child marriages are not adversely impacted by the automatic invalidation of the marriage. In contrast, under the Special Marriage Act, 1954 any solemnisation of a marriage between a male under 21 years and a female under 18 years is declared null and void by a court decree. The State of Karnataka has amended the law by declaring all child marriages void, a change that the Supreme Court¹⁶⁰ has suggested the other States adopt as well. The newly enacted Uniform Civil Code of Uttarakhand also makes child marriage voidable, not void. Although the PCMA, 2006, forbids child marriages in general, it leaves room for judicial and administrative interpretation, as can be seen from the different and often contradictory case law that has emerged. The PCMA ignores India's diverse religious, cultural, and customary practices, which continue to be used for marriage.
- ◆ **Lack of harmony with religious/personal laws:** The lack of harmony between the PCMA and religious and personal laws persists. Hindu, Christian and Parsi family laws do not address whether child marriages are void/voidable and lack clarity on procedures for declaring marriages as invalid. Muslim Personal Law continues to allow for marriage below the age of 18 years. The various interpretations by the High Courts on PCMA vis-à-vis with age of puberty show the judiciary's uncertainty regarding this law. A Muslim girl can marry, after attaining puberty, as per the orders of some High Courts, and not others.
- ◆ **Lack of a uniform system for marriage registration:** Further, India lacks a uniform system for marriage registration, leading states to implement their own rules, guided by Supreme Court directives.¹⁶¹ Court orders, like in *Seema v. Ashwani Kumar* (2006),¹⁶² have mandated compulsory registration for all marriages, and states such as Delhi¹⁶³ and Assam have enacted legislation to register marriages under personal laws, including Muslim marriages, ensuring greater legal clarity and enforcement.
- ◆ **Conflation of age of consent to sex and age of marriage:** This has led to the criminalisation of adolescents for cases of consensual, non-coercive sex. The child marriage law has also been weaponised by parents against self-initiated marriages of adolescents, particularly where they are inter-caste or inter-faith.
- ◆ **Gaps in implementation:** The most important gap lies in the implementation of the laws and schemes that the government has designed. This is because in many societies, child marriage is still completely acceptable and is seen as an important way to preserve the morality and chastity of girls. In other words, marriage is used as a means to control their sexuality and ensure that caste and ethnic purity are maintained. Child marriages have even received political patronage.¹⁶⁴

Chapter 7: The Maldives

The Maldives is constitutionally defined as an Islamic nation, with Islam declared the official state religion.¹⁶⁵ Citizenship is restricted to Muslims under Article 9(d) of the Constitution, making the country often described as “100% Muslim.”¹⁶⁶

In the Maldives, the application of *fiqh* (Islamic jurisprudence) does not differ among various sects within Islam. Both in political and legal practice, it is presumed that all Maldivians are followers of Sunni Islam, adhering primarily to the *Shafi'i madhhab* in religious and legal matters. Further, the country does not have a parallel court system, and all family law matters are governed and administered in accordance with Islamic law, which applies uniformly to everyone under the State's jurisdiction.¹⁶⁷

Foreign workers in the country represent a mix of faiths, including Muslim, Hindu, Buddhist, Christian, and

Jewish, though no precise figures exist of their religious affiliations.¹⁶⁸ There are no separate personal laws for religious minorities in the Maldives, and therefore, such frameworks cannot be examined in the context of child marriage. Consequently, this chapter will focus on the issue of child marriage solely from the perspective of the Muslim population and the relevant national laws governing matters around child protection and family laws.

In the Maldives, child marriage has declined significantly over the past few decades. Child marriage prevalence dropped from 51% in 1991 to just 2% by 2017.

Credit: Aakansha Saxena/Equality Now



In the Maldives, early marriage has declined significantly over the past few decades. Child marriage prevalence dropped from 51% in 1991 to just 2% by 2017, the most recent year for which data is available.¹⁶⁹ Moreover, the country now records the lowest prevalence of child marriage in South Asia. Nevertheless, there are indications of localised reversals in this trend. In particular, Hulhumalé experienced a reported 16% rise in child marriages between 2015 and 2016; this has been linked to the growing influence of conservative interpretations of Islam.¹⁷⁰ With respect to marriages involving girls under the age of 15, 11% were married in 1992; by 2017, this proportion had declined to zero.¹⁷¹

Legal framework around child marriage in the Maldives and the discrepancies

In the Maldives, there have been cases of unregistered child marriage with ages of girls as low as nine¹⁷² and fifteen.¹⁷³ Both state institutions and civil society organisations in the Maldives have voiced serious concerns about the increasing number of unregistered marriages in the country. Reports suggest that certain hardline religious groups have issued fatwas discouraging official marriage registration, branding it as contrary to Islamic principles, while also framing child marriage as an acceptable religious practice.¹⁷⁴

The Family Act (2000) of the Maldives establishes the fundamental legal framework governing marriage, divorce, maintenance, custody, guardianship, legitimacy, paternity, and other family-related matters in the country. It sets the minimum marriage age at 18 for both men and women. However, the Registrar of Marriages may, in exceptional circumstances, permit a marriage below this age if the applicant has reached puberty, is physically fit, capable of supporting a livelihood, and has legitimate reasons for seeking marriage.¹⁷⁵

The Protection of the Rights of Children Act (PRCA), 2019, explicitly prohibits child marriage (section 25), as children have not yet attained full physical and psychological maturity and require special care and protection as guaranteed under Article 35(a) of the Constitution. The Act also contains strong measures to protect children from sexual exploitation and abuse. However, there are no penalties for child marriage under this law.

Though the child protection law comes in conflict with the Family Act (2000), which permits marriage of minors with judicial approval or the guardian's consent, section 25 of the Protection of the Rights of Children Act, 2019 gives the law overriding effect by clearly stipulating "that marriage

shall not be contracted for children under 18 years of age, even though it may be stipulated otherwise in another law."¹⁷⁶

The Family Act (2000) does not declare child marriage as void, but instead, at section 13, stipulates that marriages performed in violation of the conditions under Sharia will be void. This declaration would apply to the violation of the puberty standard in child marriages. Reports indicate that in Census 2022, no marriages were recorded in the Maldives among children between the ages of 15-17 years, on the basis that the PRCA prohibits child marriages.¹⁷⁷ Absence of registered child marriages is not necessarily an indicator of the absence of incidence.

Family laws governing marriage and its dissolution

Under Maldivian family law, marriage must comply with Islamic rules, meaning Maldivian women cannot marry non-Muslim men, and their non-Muslim spouses must convert to Islam for the marriage to be registered.¹⁷⁸ Marriage requires the bride's free consent and approval of her male guardian, with courts able to appoint a judicial guardian¹⁷⁹ or grant judicial consent if consent is withheld or unavailable.¹⁸⁰

Divorce in the Maldives is governed by unequal procedures: men can divorce freely, without any restriction through an application made before a court,¹⁸¹ while women may seek divorce only on limited grounds, including cruelty, compulsion to commit a sin, injuring the integrity of the wife, or abstinence from performing sexual intercourse with the wife for a period exceeding four months.¹⁸² Regulations framed under the Family Act (2000) enable men to initiate divorce outside the court, specifying that the requirement is to submit a divorce application within three days of initiating divorce. However, non-judicial divorces by men continue to remain valid, though there is a penalty imposed for failure to comply with the prescribed procedure.¹⁸³

The parties must undergo mandatory reconciliation in both cases, which is often used to delay or obstruct separation, especially outside Malé, where formal mechanisms are weak.¹⁸⁴ The Family Act (2000) also provides for dissolution of marriage through *khula*¹⁸⁵ or *faskh*¹⁸⁶ (judicial annulment), but does not allow for dissolution solely on the basis that the marriage occurred before age 18. Offences such as unregistered marriages, forced marriages, false information, or divorcing otherwise than through an application to the court carry fines or detention, and child marriage may

be penalised only under general violation clauses in the Family Act, 2000¹⁸⁷ due to the absence of explicit penalties in child-protection laws. However, the Domestic Violence Prevention Act, 2012 recognises *thafreeq* (woman's right to judicial divorce) in cases of domestic violence.

The courts' decisions on divorce in the Maldives show that they consistently favour men and marital preservation over women's rights, often ignoring abuse or neglect, treating financial support as sufficient to deny divorce, and making it difficult for women to obtain divorce while men can end marriages easily, reflecting systemic gender bias.¹⁸⁸

Other laws that have a bearing on child marriage

The Special Provisions to Deal with Child Sexual Abuse Offenders Act (2009) establishes a comprehensive framework for handling child sexual abuse cases. A 'child' is defined as anyone under 18, and also includes individuals older than 18 who have special needs or mental disorders.¹⁸⁹ The Sexual Offences Act (2014) also establishes a legal framework that defines and criminalises various sexual crimes and outlines the procedures for handling such offences. The First Amendment to the Sexual Offences Act (25/2021) fully criminalised marital rape without any exceptions.¹⁹⁰

The Juvenile Justice Act, enacted in 2019, raised the minimum age of criminal responsibility to 15 years.¹⁹¹ The Domestic Violence Act (2012) comprehensively defines domestic violence as encompassing a wide range of abusive behaviours, including sexual abuse and impregnation of a woman who wishes to remove herself from a marriage.¹⁹² Moreover, the 2012 Act includes a child in the definition of a victim, and defines a child, with reference to the Protection Of The Rights of Children Act, as anyone below the age of 18 years.¹⁹³

The Penal Code (2014) of the Maldives defines a minor as a person under 18 years of age. Section 130 of the Code criminalises sexual intercourse without consent. It classifies engaging in sexual intercourse with a minor as rape or aggravated sexual assault, depending on the circumstances, and treats other forms of sexual engagement with a minor as aggravated sexual contact. Section 134(a) does not recognise consent of a woman under 18 as valid.¹⁹⁴

Furthermore, the Special Provisions to Deal with Child Sexual Abuse Offenders Act (2009) criminalises sexual assault against children under the age of 13 regardless of consent, and for those aged 13 to 18, it presumes that consent has not been given unless proven otherwise. At the same time, the Penal Code's recognition that consent to sex from a minor is invalid contradicts the 2009 Act's age caveat of 13 to 18, further exposing inconsistencies across the legal framework and undermining the protection of minors from sexual exploitation within marriage.

Table 7.1
Legal framework around child marriage in the Maldives

Sr.	Law	Consent for marriage or sexual acts	Child marriage or marital rape	Discrepancies or alignments
1.	<u>Protection of the Rights of Children Act, 2019</u>	Children under 18 lack the capacity to marry. Grooming is criminalised.	Prohibits all marriages under 18; strong protection against grooming and sexual exploitation.	No explicit penalties for child marriage under this Act.
2.	<u>Special Provisions to Deal with Child Sexual Abuse Offenders, 2009</u>	Under 13: consent invalid. 13–18: presumed not consenting unless proven otherwise.	Provides clear protection against sexual exploitation; defines consent strictly by age.	Aligns with child rights law (under 18 age limit), but contradicts Penal Code (which allows marital consent exceptions).
3.	<u>Juvenile Justice Act, 2019</u>	-	-	The age of criminal responsibility is aligned with the Protection of the Rights of Children Act, 2019
4.	<u>Family Act, 2000</u>	Requires free consent of both parties and approval of the <i>wali</i> .	Age of marriage set at 18. However, an exception allows child marriage via the registrar's discretion. No provision to annul child marriage.	Contradicts the PRCA, 2019 (marriage under 18 not allowed). Exception clause to the age of marriage inapplicable after 2019 Act.
5.	<u>Domestic Violence Prevention Act, 2012</u>	Consent is not explicitly addressed for marriage, but it recognises coercion and control as violence.	Prohibits various forms of abuse but doesn't mention sexual abuse or marital rape.	Aligns with the Family Act divorce process.
6.	<u>Sexual Offences Act, 2014 (amended 2021)</u>	Defines consent as "autonomy to choose freely."	Fully criminalised marital rape.	Contrary to the Penal Code (2014), which still presumes spousal consent.
7.	<u>Penal Code, 2014</u>	Consent by a minor, under 18, is invalid for the purposes of sexual relations.	There is a rebuttable presumption that the spouse has consented to sex, provided that the spouse is at least 18 years of age.	Contradicts the Sexual Offences Act (Amendment) 2021 (which criminalised marital rape).

Chapter 8: Nepal

Nepal is home to five million child brides. Of these, 1.3 million girls are married before age 15.¹⁹⁵ According to the Nepal Demographic and Health Survey 2022 (NDHS), women in Nepal tend to marry earlier than men. The median age at first marriage among women aged 25–49 is 18.3 years.¹⁹⁶ 40% of women aged 20 to 24 years were first married or in a union before age 18, and 7% before age 15.¹⁹⁷ Recognising the pressing need to address this issue, Nepal, in its Civil Code, 2017¹⁹⁸ raised the legal marriage age for both men and women to 20, and has pledged to end child marriage by 2030.¹⁹⁹ Nepal does not have a separate law on child marriage.

Nepal is home to five million child brides. Of these, 1.3 million girls are married before age 15.

Nepal is a Hindu-majority country, with minority populations of Buddhists (8.2%), Muslims (5.09%), followers of the indigenous Kirat religion (3.17%) and Christians (1.76%).²⁰⁰ The Civil Code, 2017 applies uniformly to all these minority communities, who, unlike in other South Asian countries, do not have any separate personal/family law regimes. According to reports by international child rights organisations²⁰¹ the rates of child marriage are higher among Muslims and Hindus than Buddhists and Christians in Nepal. The Muslim community in Nepal has the highest incidence of underage marriages (60.5%).²⁰²

Even though under the laws of Nepal, a child is uniformly defined as a person under the age of 18, the Civil Code, 2017 has declared 20 as the minimum age of marriage, and stipulated that any marriage in violation of this age prescription is void.²⁰³ (See Table 8.1 in Annex I on the definition of a child under various laws in Nepal). It is, however, reported that the Government of Nepal was debating lowering the minimum age for marriage to 18 in 2025.²⁰⁴

Pursuant to the National Penal Code, 2017 the act of entering into a marriage with or organising the marriage of a person under 20 years of age is a criminal offence.²⁰⁵ Child marriage is listed as an offence in the State Cases

Act, 1992, thus obligating the government to initiate investigation and prosecution.²⁰⁶ Significantly, the National Penal Code, 2017 also criminalises marital rape, though subjects it to lesser penalties. Article 39 of the Constitution of Nepal,²⁰⁷ guarantees that no child shall be subject to child marriage and establishes the victims' right to compensation. Once viewed as a culturally embedded and legally ambiguous practice, child marriage is now understood and adjudicated as a grave violation of the rights and dignity of children.²⁰⁸

Age for marriage and sexual consent

Pursuant to the Civil Code of Nepal, 2017 the age of marriage is 20 years. In contrast, the age of sexual consent is set at 18 under the National Penal Code, 2017. Section 219 of the Penal Code, 2017 declares sexual intercourse with a girl child below 18 years of age as statutory rape, subject to a gradation of penalties depending on the age of the victim. Section 225 of the Penal Code criminalises child sexual abuse, and section 226, which prohibits unnatural sexual intercourse, treats the consent of a child to engage in such acts as immaterial. In 2011, in the case of Laxmi Maya, the Supreme Court of Nepal declared²⁰⁹ that having sex with a minor, below 18 years, with or without consent, is statutory rape and the consent of the minor is immaterial. Again, keeping the stringent law of the land in the context, the apex court of Nepal in the case of Krishna BK (2017) declared all sexual relations within minor marriages as rape and as punishable conduct.²¹⁰

Such statutory prescriptions and judicial decisions have narrowed the space for adolescents in consensual sexual relationships. During a session of the Law, Justice, and Human Rights Committee in March 2025, the Home Minister Ramesh Lekhak, in response to this situation, proposed two potential changes to Nepal's marriage age laws which include setting the legal marriage age at 18 and adopting the Romeo-Juliet model, which would allow consensual relationships between persons aged 16 to 18 without criminalising them as statutory rape. This model is premised on mutual consent and no coercion,²¹¹ but has not been adopted so far.

Following an amendment in July 2022, Nepal's National Assembly repealed the earlier limitation period of one year for filing a complaint of rape, to two years from the date of the incident for adult survivors, while stipulating

that child survivors may file a case within three years of them turning 18. In 2008, the Supreme Court of Nepal also issued a directive asking the government to amend laws considering the victim's psychological status in this matter and extend the limit.²¹²

Laws addressing child marriage

There is no separate law addressing child marriage in Nepal. It was only in 2015 that, for the first time, the Constitution of Nepal included child marriage as a violation of child rights. **Article 39(5) of the Constitution of Nepal (2015)** states that no child shall be subjected to child marriage. The legal marriage age of 20 prescribed under the Civil Code, 2017 together with the declaration that such marriages are void, applies equally to both males and females and does not vary by caste, religion, or community. In 2023, the Supreme Court of Nepal, while declaring “Triple Talaq”²¹³ as invalid, clarified and restated that the unified civil code is applicable to all communities and sects.²¹⁴

Many Muslim marriages in Nepal remain unregistered due to the belief that marriages must follow Islamic Sharia.²¹⁵ Unregistered marriages also fuel out-of-court divorces like triple talaq²¹⁶ and have contributed to reports of families taking minor girls to India to give them in marriage for fear of getting caught in Nepal.²¹⁷

The National Penal Code, 2017 (article 173) criminalises child marriage, and subjects it to a penalty of up to three years imprisonment and a fine of up to rupees 30,000. Children aged between 10-18 years involved in child marriages may be treated, under the law, as perpetrators,²¹⁸ subject to prosecution for solemnising a marriage or for making a false statement under the Marriage Registration Act, 1971 to the Marriage Registration Officer. The penalties prescribed for child perpetrators vary as per their age.²¹⁹ The Act relating to Children 2018 defines a child as a person under 18, and criminalises the act of arranging or entering into a child marriage as an “act of violence against the child” punishable with imprisonment for up to three years and a fine of up to 75,000 Nepali rupees.²²⁰ Despite the commonality in the penal prescriptions, there is an apparent disconnect between the National Penal Code, 2017 and the Act relating to Children, 2018 in the definition of child marriage, as the National Penal Code is being used to prosecute children themselves, who are considered as victims of violence under the Act Relating to Children.

The courts in Nepal have been wary of handing down convictions for sexual violence in child marriage cases. In *Government of Nepal v. Bogatan* (2021),²²¹ the Court

applied juvenile justice principles, ruling that punishment for a minor involved in child marriage must prioritise age, maturity, and the child's best interests. In the *Government of Nepal v. Bimal Shrestha et al.* (2023),²²² the Court convicted the husband for abetment of a minor's suicide but reaffirmed that sexual relations within a child marriage should be prosecuted only under child marriage provisions, not statutory rape,²²³ due to lack of criminal intent. In *Government of Nepal v. Balaju*²²⁴ (2023), the Supreme Court held that consensual adolescent elopement does not meet the criminal intent required for rape, upholding a conviction only for child marriage.

Other laws that have a bearing on child marriage

Following the repeal of the Marriage Registration Act, 1971, marriages are primarily regulated under the National Civil Code, 2017, with registration handled through local government/vital registration frameworks. The National Criminal Procedure (Code) Act, 2017 allows in-camera trial in the matter of rape and incest, which includes child marriage.²²⁵

Marital rape is a punishable offence under Section 219 (4), National Penal (Code) Act, 2017 subject to imprisonment for a maximum term of five years. On the other hand, rape is punishable with imprisonment for a term of 10 to 20 years, depending on the age of the victim.²²⁶ Provisions of the National Penal Code, 2017²²⁷ criminalising kidnapping, are often misused by parents/guardians in cases of self-initiated child marriages, where families of underage girls file cases of kidnapping and hostage-taking against their husbands, without any regard to the the girl's consent to leave the parental home.²²⁸

Crossing of borders in cases of self-initiated child marriages is a common phenomenon, with young couples crossing into India to avoid familial anger or community surveillance. Persons involved in such marriages may be subject to possible prosecution under the Human Trafficking and Transportation (Control) Act, 2007, which also allows for payment of compensation to and rehabilitation of victims.²²⁹

Despite a general proscription against child marriage, an analysis of judicial decisions in 48 cases in 10 district courts, undertaken in 2025, has found that courts mostly prosecute cases of self-initiated child marriage, and in particular the groom.²³⁰ 93% of the cases analysed were self-initiated ‘love marriages’, while only 4% were cases of forced marriages. In these adolescent relationships, the groom was prosecuted in all cases, and the girl bride in 75% of them. Relatives of the groom and the priests were

occasionally prosecuted. All convicted marriages in the study were annulled, but compensation was awarded in only 12.5% of cases. Despite the high rate of child marriage among Muslims otherwise reported, this study recorded that of the 48 cases analysed, only one case involved a Muslim.

The CEDAW committee has recognised a link between birth registration and child marriage, noting that, “the persistence of the practice of early marriage may be perpetuated further by the non-registration of births.”²³¹ The Civil Code 2017 grants all children the entitlement to get a birth registration certificate, and prescribes punishment for false registrations, provisions that are expected to help discourage child marriage.²³²

The Domestic Violence (Crime and Punishment) Act, 2009 includes physical and sexual abuse in the definition of domestic violence, allowing a victim of such abuse in a child marriage to file a complaint with the police, National Women Commission, or local government judicial committee.²³³ It subjects perpetrators of domestic violence to fines ranging from NPR 3000-25,000 or 6 months of imprisonment or both.

The Supreme Court of Nepal has played a vital role in advancing legal reform and, in a number of cases, has emphasised that any practice “that prevents women from enjoying their rights creates barriers to their development and empowerment, and thereby promotes inequality”.²³⁴

Gaps and inconsistencies in the legal frameworks

- ◆ **Lack of harmony between the legal age of majority and marriage:** The gap between the legal definitions of a child and the “marriageable age” in Nepal’s laws presents significant legal and societal complexities. There is a disparity between the age at which a person is considered a child (under 18 in several laws) and the legal marriageable age (20). This discrepancy raises confusion, particularly regarding individuals aged 18 and 19, who may no longer be classified as children but are not yet eligible to marry under the law.
- ◆ **Criminalisation of consensual relationships:** The National Penal Code does not differentiate between self-initiated child marriages and those undertaken without the minor’s consent, subjecting them to the same degree of culpability. Further, Section 219 of the Penal Code, 2017 classifies all sexual relationships under 18 as statutory rape, regardless of consent, sparking concerns regarding criminalising teenage relationships.²³⁵ Of particular concern is the criminalisation and prosecution of minors in child marriage and statutory rape cases. Given that a large proportion of child marriages are self-initiated in recent times, the child marriage law leads to the criminalisation of the minors involved in it. Apart from raising concerns from the child rights’ perspective, this situation has created an unintended burden on the juvenile justice system in Nepal.²³⁶ Children who are married and held as offenders are liable to further victimisation. Prosecutions are commonly seen, particularly in inter-caste relationships, highlighting the deeply rooted caste-based discrimination prevalent in society. Further, the misclassification of children as offenders hampers their access to compensation and justice.
- ◆ **Absence of reparative mechanisms:** Legal mechanisms meant to support victims are underutilised, especially when the system does not fully recognise them as survivors. Although the Constitution mandates compensation, the inconsistent application of laws means that many child marriage survivors are left without adequate reparations. The absence of clear guidelines or the failure of judicial systems to recognise children as victims prevents proper compensation in most cases.²³⁷
- ◆ **Absence of adequate support mechanisms:** While the National Penal Code, 2017 declares an underage marriage a void marriage,²³⁸ the law is unclear on the aftermath of a ‘void’ marriage. The law does not mandate post-marriage support. If child marriage is to be tackled, it is important to provide comprehensive support systems for children whose marriages are declared void. This could include access to education, counselling, including career counselling, legal aid, and financial support to help them rehabilitate and reintegrate into society. The law should also make the State accountable for post-marriage support to the survivors of child marriage.²³⁹
- ◆ **Lack of harmony with religious/personal laws:** While Nepal’s national law applies universally, there is a divergence between civil law and community interpretations of Islamic (Sharia) law. Marriages of Muslim children continue to be solemnised unofficially under the Muslim religious law, and therefore, the protections available to other children are not available to these children, especially in the case of polygamy, which is illegal under Nepal’s Civil Code.



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- ◆ **Gaps in marriage and birth registration:** Although married, underage couples are unable to register their marriages. As a result, children who are born from child marriages often struggle to get birth certificates, which can cause difficulty accessing various public goods and lead to significant issues in cases of separation or divorce later. To effectively address this challenge, it is crucial to leverage legal frameworks and strategies to ensure accountability in ending child marriage and to remove practical barriers to birth registration even for children born out of void marriages.²⁴⁰
- ◆ **Weak law enforcement:** Law enforcement is weak, and there exist procedural gaps in the handling of cases of child marriage, even when the case is a genuine one. Because of the interference of pressure from families, child marriage prosecutions are biased towards the adolescents who are involved in self-initiated child marriage.²⁴¹ Married adolescents find themselves prevented from seeking help when they are at risk. Married girls often live in extended households where they lack power and are vulnerable to violence. In *Gaighat v. Til Kumar Shrestha*, it was found that girls had been placed in safe houses after experiencing domestic violence, and even as victims, they were subjected to prosecutions for child marriage-related offences by legal authority. This reflects the failure of the current system to provide safe exits from abusive or forced marriages and may further criminalise those seeking help.²⁴²
- ◆ **The need to incorporate a survivor-centric approach:** In all cases of child/adolescent marriages, whether self-initiated or not, a survivor-centric approach should be adopted throughout the judicial process for the protection of the rights of the children, treating them as survivors rather than as offenders. The law must incorporate a survivor perspective that protects children's rights and provides them with psychosocial, educational, and economic support. A survivor-centric approach would focus on addressing the root causes of child marriage and rehabilitating survivors, instead of treating them as criminals.²⁴³

If child marriage is to be tackled, it is important to provide comprehensive support systems for children whose marriages are declared void. This could include access to education, counselling, including career counselling, legal aid, and financial support to help them rehabilitate and reintegrate into society.

Chapter 9: Pakistan

Pakistan's population is overwhelmingly Muslim,²⁴⁴ while the remaining population comprises smaller religious communities, including Hindus, Christians, Sikhs, Buddhists, Kalasha, Baha'is, Ahmadis, and Parsis. The personal affairs of these religious minorities are governed under their respective personal laws. However, not all minorities possess codified legal frameworks regulating marriage and family matters. Following the devolution of power through the 18th Constitutional Amendment, provinces have the authority to enact their own personal laws for religious minorities, including laws regulating marriages, resulting in distinct legal frameworks across different provincial jurisdictions.

In Pakistan, the child marriage prevalence amongst girls was 41% in 1991, as compared to 18% in 2018 (the most recent year for which data is available). For girls married before the age of 15, the incidence of child marriage reportedly reduced from 10% in 1993 to 4% in 2018.²⁴⁵

Pakistan's general laws on child marriage, the colonial-era Child Marriage Restraint Act, 1929, set minimum ages at 16 for girls and 18 for boys. Following the 18th Constitutional Amendment, provinces have independently legislated on the matter,²⁴⁶ leading to significant progress. The province of Sindh took the lead in 2013 to repeal the 1929 law and stipulate the minimum age of marriage for both boys and girls as 18. The relevant legislatures²⁴⁷ for the Islamabad Capital Territory (ICT), Balochistan and Punjab have recently followed suit.²⁴⁸ The province of Khyber Pakhtunkhwa is the only one that currently retains the colonial law, though efforts to reform it are underway.

Definition of child

The Majority Act, 1875 sets the age of majority at 18 in Pakistan but explicitly excludes matters of marriage, dower, divorce, adoption, and religious customs, matters governed by family/personal laws or special legislation.²⁴⁹ However, courts have referenced the Majority Act in certain cases, such as in *Mst. Mumtaz Bibi v. Qasim*,²⁵⁰ to underscore the doctrinal contradiction in the law, which at one end adopts the 18-year standard to establish majority or the capacity to contract under the Contract Act of 1872,²⁵¹ but at the other grants minors the standing to enter into marriages, which, particularly under Sharia, are a form of contract.²⁵²

Various federal and provincial laws in Pakistan on the subject of child welfare and protection of women consistently define a child as any person under the age of 18 years.

The Criminal Law (Second Amendment) Act, 2016, amends Section 83 of the Pakistan Penal Code, 1860 (PPC) and exempts children between the ages of 10-14 years from criminal liability,²⁵³ if the child "has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion."²⁵⁴ Labour laws, on the other hand, describe a child as someone below the age of 14 or 15. See Table 9.1 in Annex 1 for the definition of a child under various laws.

Child marriage laws in Pakistan

The law regulating child marriage in Pakistan has been subject to recent reform. The colonial Child Marriage Restraint Act, 1929, still applicable in KP,²⁵⁵ AJK,²⁵⁶ and Gilgit-Baltistan²⁵⁷, defines a child as a male under 18 years of age and a female under 16 years of age. The provinces of Sindh, Balochistan and Punjab and the ICT have passed new legislation setting the minimum age of marriage for both boys and girls at 18.²⁵⁸ These laws impose penalties on persons involved in performing, conducting, or parents or guardians who promote or permit or are negligent in stopping a child marriage, and on male adults above the age of 18 who enter into the child marriage. The language of Section 4 of the recent Punjab Child Marriage Restraint Ordinance, 2026 however, appears to leave open the prosecution of an adult female who may marry a minor male.

These laws allow courts to issue injunctions to stop an imminent child marriage, but do not declare such marriages as void or voidable. The subject of the legal status of such marriages is not provided for in these laws, leaving girls in uncertainty on how to seek legal relief. Victims/survivors are compelled to seek redress under personal/family laws, which often contradict age-prescriptions provided under the child marriage restraint laws, provide limited grounds for annulment, and are silent on victim support and rehabilitation mechanisms. The Balochistan Child Marriages Restraint Act, 2025 is an exception in this regard, and declares a child marriage as *void ab initio* if the child is taken, forced, deceived, sold, or trafficked for marriage.²⁵⁹

The child marriage restraint laws in Pakistan have general application, but they do not have an overriding effect over other family/personal laws that regulate marriage. The Balochistan Child Marriages Restraint Act, 2025 is again an exception, clearly stating that it has an overriding effect over other laws (Section 9), though it is unclear how any conflict between the provisions of this law and family/personal laws may be judicially determined.

Despite the age prescriptions in these laws, judicial decisions continue to treat these underage Muslim marriages as valid on the basis of the puberty standard, where they have been solemnised/undertaken with the consent of a pubescent girl/boy. The judgment of the Islamabad High Court in *Mst. Mumtaz Bibi v. Qasim and*

others is an exception in this regard. Here, the court held that a marriage involving a child under 18 is *void ab initio* because it contravenes mandatory criminal provisions on sexual intercourse/sexual relations with minors (Sections 375 & 377A of the PPC) and cannot be legally recognised or enforced.²⁶⁰

Personal/family laws of religious minorities related to marriage and divorce

Legal prescriptions on the minimum age of marriage vary under the applicable family/personal laws of different communities.

Table 9.2
Age of marriage under the personal laws of minorities

Sr.	Laws	Jurisdiction	Religious minorities	Age of marriage
1.	Christian Marriage Act, 1872	Whole of Pakistan except ICT	Christian	Minor: 21 for (non-native) Christians, to be married with guardian consent; 13 for Native Female Christians and 16 for Native Male Christians with guardian consent or if guardian absent, otherwise 18
2.	Christian Marriage (Amendment) Act, 2024	ICT	Christian	18 for both genders. However, an exception allows such a marriage with guardian/parent consent
3.	Hindu Marriage Act, 2017	KP, Punjab, Balochistan, & ICT	Hindus	18 for both genders
4.	Sindh Hindu Marriage Act, 2016	Sindh	Hindus, Jains, and Sikhs	18 for both genders
5.	Punjab Sikh Anand Karaj Marriage Act, 2018	Punjab	Sikhs	18 for both genders
6.	Parsi Marriage and Divorce Act, 1936	Whole of Pakistan	Parsis	21 for both genders; exception allows marriages below 21 with guardian consent

As noted in the table above, the colonial-era Christian marriage law still includes discriminatory provisions differentiating between “native” and “non-native” Christians and providing lesser protections to native Christians. Violating the minimum age and parental consent requirements under this law can lead to imprisonment and fines for ministers or registrars. However, as per judicial decisions, an underage Christian marriage is not treated as void on account of the age of minority of the parties or failure to obtain the consent of a guardian. This is seen in the case of *Nasreen Bibi v. Station House Officer* (2024),²⁶¹ where the Lahore High Court held a 13-year-old Christian girl’s marriage valid under the Christian Marriage Act but criminally punishable under the Child Marriage Act applicable in Punjab.²⁶²

The Christian Marriage Act allows interfaith marriages, but at Section 4 implicitly provides that such marriages may not be solemnised by Muslim clerics.²⁶³ This restriction can create procedural and consent-based hurdles when a Christian girl is coerced into marrying a Muslim man, as Christian clergy would, as per the law, not solemnise a marriage lacking the guardian’s consent. Consequently, perpetrators may find it easier to circumvent these procedural protections by forcibly converting the girl to Islam prior to marriage, thereby eliminating the need for the Act’s procedures and guardians’ consent for solemnising the marriage.

The Divorce Act, 1869 is the primary legislation governing the dissolution of Christian marriages in Pakistan. The Act includes matters such as divorce, judicial separation, nullity, or restitution of conjugal rights, but does not stipulate underage marriage as a ground for dissolution.²⁶⁴

The Hindu Marriage Act, 2017 declares a child marriage as voidable, which may be annulled under section 11 through a court decree. Pursuant to section 12(2), a woman married before the age of 18 may submit an application for termination of the marriage, regardless of whether it has been consummated, provided that she does so before turning 18. Following an amendment in 2018, the Sindh Hindu Marriage Act provides that a wife may also seek termination of marriage if she was married before the age of 18 and repudiates the marriage before reaching that age.

Other laws, such as the Punjab Sikh Anand Karaj Marriage Act, 2018, are silent on whether a child marriage is void or voidable. The Parsi Marriage and Divorce Act, 1936, on the other hand, prohibits the enforcement of marriage contracts where the husband is under 16 or the wife under fourteen years of age.

Other than the personal laws, the National Commission for Minorities Rights Act, 2025 provides safeguards to the RMCs against human rights violations, but does not specifically address the issue of child marriage or forced marriage by conversion.²⁶⁵



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Age of sexual consent and puberty

There is a contradiction in the law regarding the age of sexual consent. Section 375 of the PPC prescribes 16 as the age of sexual consent, treating penetrative sexual relations below such age as statutory rape. Section 375 clarifies that consent means an unequivocal voluntary agreement by words or gestures or any form of verbal or non-verbal communication, communicating willingness to participate in a specific sexual act.²⁶⁶ However, section 377A PPC classifies non-penetrative sexual activity with a person under the age of 18 as sexual abuse, regardless of whether it is consensual or not. The law states that anyone who employs, coerces, persuades, or induces a child to engage in or assist in acts such as fondling, touching, exhibitionism, voyeurism, or any other obscene or sexually explicit behaviour, whether simulated or real, commits the offence of sexual abuse.²⁶⁷ Section 377A thereby treats 18 as the age of non-penetrative sexual activity, thus creating a contradiction with the age prescription under section 375. See Table 9.3 in Annex 1 below for further details on the age of consent and puberty as defined under various laws in Pakistan.

Despite these prescriptions regarding the age of sexual consent and concomitant criminalisation of sexual relationships below the specified age, the prosecution of sexual relations in child marriage is rare. Particularly in cases of Muslim marriages, courts continue to validate child marriages on the basis of the puberty standard and legalise sexual relations which would otherwise, under the PPC, be considered criminal offences. The case of *Mumtaz Bibi v. Qasim*,²⁶⁸ is an anomaly in settled Pakistani jurisprudence, in which the Islamabad High Court highlighted the internal inconsistency and absurdity of this judicial approach.

The Dissolution of Muslim Marriages Act, 1939, grants women married before the age of 16 the right to repudiate their marriage before they turn 18, provided it has not been consummated.²⁶⁹ This leaves girls married between the ages of 16-18 unprotected and without a specific mechanism to repudiate their marriages.²⁷⁰

Sharia law within the context of child marriage in Pakistan

Pakistani courts have consistently upheld child marriages on the basis of the puberty standard, holding that under Islamic law, a female child, upon reaching puberty and thereby mental maturity, attains the legal capacity to consent to a marriage. In reliance on D.F. Mulla's legal commentary, courts in some cases presume 15 years as

the age of puberty,²⁷¹ or, upon submission of medical evidence, a much lower age, in others.²⁷² However, it is important to emphasise that in a recent judgment, the Federal Shariat Court has held that the legal commentary by D.F. Mulla, titled "Principles of Muhammadan Law," is only a reference book, having no force of law and cannot therefore be relied upon as such.²⁷³

On the other hand, courts have also continued to decry the practice of child marriages as amounting to a violation of the fundamental rights of a female child, in particular the rights to life, dignity and equality before the law.²⁷⁴ The courts have rejected challenges to the child marriage restraint laws on the basis of repugnancy with Islam, recognising the State's entitlement to set a minimum legal age for marriage, as confirmed in *Farooq Omar Bhoja v. Federation*²⁷⁵ and *Ali Azhar v. Province of Sindh*,²⁷⁶ which upheld the provisions of the Child Marriage Restraint Act, 1929 and Sindh Child Marriages Restraint Act, 2013, respectively. Courts have also clarified that some Muslim jurists oppose the marriage of minor girls, while others deem it permissible; hence, both viewpoints on the matter exist.²⁷⁷ Further, judgements also maintain that valid marital consent²⁷⁸ and a healthy marriage²⁷⁹ require full moral, intellectual and legal capacity, freedom from coercion, and awareness of the responsibilities and consequences of marriage, meaning that simply reaching puberty and sanity is insufficient; to attain capacity for marriage the person must be capable of making a responsible decision. The difference of opinion on Sharia permitting marriage of minors also creates inconsistencies in judicial rulings on such cases, making the child marriage legal framework fragmented in the country. It is, however, important to point out that none of these judgments unequivocally call for rejection of the puberty standard, which is firmly embedded in Sharia law.

Forced Conversion through Marriage (FCM)

With regard to RMCs in Pakistan, the issue of child marriage is inextricably linked to the phenomenon of forced conversion through marriage (FCM). According to the All Pakistan Parliamentary Group for the Pakistani Minorities, around 1000 women from RMCs are subjected to forced conversion and forced marriage every year.²⁸⁰ A minor girl or a woman from an RMC is abducted, through pressure or force (grooming has been a common tool to lure girls) is converted to Islam, married to a Muslim man and under duress is compelled to make a statement before a court of law or media regarding her consent to conversion and marriage. Where any minor girl abducted has attained puberty, the court, relying on Islamic law (and in disregard of legal prescriptions

on the minimum age of marriage), often accepts such a statement, granting its approval, and thereby legal cover, to both the conversion and the marriage.²⁸¹ As discussed in the previous section, the courts retain the discretion to consider both the moral and intellectual development of a pubertal child to determine capacity, and to ascertain whether such statements are made with free and informed consent. Where evidence indicates likelihood of coercion, courts have placed RMC girls in shelters, as the trial proceeds. Where coercion is established, the courts can in principle declare the marriage void, though such approach is rarely adopted in practice. Past attempts to legislate on forced conversions have been met with strong opposition and eventually abandoned (as described in the section below on reform efforts).

According to the All Pakistan Parliamentary Group for the Pakistani Minorities, around 1000 women from RMCs are subjected to forced conversion and forced marriage every year.

In the case of *Shahnaz Masih v Additional Sessions Judge (F.C.P.L.A. No. 536/2025)* the Federal Constitutional Court in March 2026 upheld the marriage of a 12-year-old Christian girl (who had allegedly converted to Islam) to a Muslim man, relying on her statement that the conversion and marriage were undertaken of her free will. The Court held that the law does not bar a Muslim man from marrying a Christian girl, and that Islam does not prescribe specific rituals for religious conversion from another faith. The Court held that under the Child Marriage Restraint Act, child marriage is an “unlawful and impermissible practice,” and a crime, but ruled that the law does not “expressly declare such a marriage to be void or voidable.

The case of *Raveena and Reena* exemplifies the difficulty of prosecuting and preventing FCM cases. In March 2019, armed men reportedly kidnapped Reena, a Hindu girl who was 14 years old at the time, and her sister Raveena, who was 15 years old at the time, from their home in Ghotki district, Sindh province. At a later date in March 2019, the two girls were converted to Islam and married to Muslim men. Reena’s age was registered as 18 and Raveena’s 19 on the conversion and legal documents, though their families alleged they were much younger. They were reportedly married in Punjab province, where the legal

age to marry at the time was 16, whereas in Sindh it was 18. The marriages they entered into were polygamous, the men having been married before.²⁸² The absence of birth certificates for the two girls meant that their ages could not be verified through court records.²⁸³ In 2019, the Islamabad High Court ordered that the girls be placed in a women’s shelter after their family filed a first information report (FIR) alleging the two had been abducted for conversion purposes. On the basis of the statements made by the girls in court, the Islamabad High Court ruled that the girls had not been forced to convert religions and allowed them to continue living with their husbands, without questioning why and how girls from a remote city in Sindh ended up marrying already married men, with children, in a different province.²⁸⁴

Recent reform efforts to amend family and child marriage laws in Pakistan

Recent reform efforts in Pakistan aim to set the minimum age of marriage at 18 for both girls and boys. These include the Khyber Pakhtunkhwa Child Marriage Restraint Bill, 2019,²⁸⁵ the AJK Child Marriage Bill,²⁸⁶ and the Kalash Marriage Bill.²⁸⁷ The Christian Marriage and Divorce Bill, 2019, sought to modernise Christian marriage laws by, for instance, expanding the available grounds of dissolution beyond proof of adultery, but was rejected by various Christian groups as having been proposed without proper consultation.²⁸⁸ The Protection of Persons Against Forced Religious Conversion Bill, 2019²⁸⁹ and the Protection of the Rights of Religious Minorities Bill, 2020, also seek to address FCM among religious minorities.²⁹⁰ The former bill was rejected by the Ministry of Religious Affairs and Interfaith Harmony on the basis of concerns over prescribing a minimum age limit of 18 years for persons converting to another religion.²⁹¹ The Protection of the Rights of Religious Minorities Bill, 2020, which sought to regulate interfaith marriages, has also not been enacted. The National Commission for Minority Rights Act 2025, which has been passed, institutes a framework for promoting and safeguarding the rights of RMCs, but makes no reference to FCM or forced conversions.

Gaps and discrepancies in the legal frameworks

- ◆ **Differing ages of marriage in personal laws:** The Christian Marriage Act of 1872 is notably archaic and outdated, failing to establish a standard minimum age for marriage, differentiating between natives and non-natives, and allowing native girls to marry from 13 (except in ICT, where the law has been

amended). Such age prescriptions render this law not only internally inconsistent but also in conflict with present legal norms that recognise individuals as adults at 18 years and with the child marriage restraint law. The Parsi Marriage and Divorce Act also remains outdated and defines minors as individuals below 21 years of age and allows their marriage only with the consent of a guardian. It also invalidates only marriages involving boys and girls under 16 and 14, respectively. This conflicts with general laws on child marriage, including the Sindh Child Marriage Restraint Act, 2013, which sets the minimum age of marriage at 18 (particularly significant as Sindh hosts a relatively large Parsi population).

◆ **Lack of uniformity in applicable penalties:**

Following recent amendments, the various penal structures for child marriage have largely been reconciled. Under the child marriage laws in KP, GB, and AJK, the penalty is limited to a few months or a fine. In contrast, the child marriage laws in Sindh, Balochistan, ICT, and Punjab prescribe rigorous imprisonment of 2–3 years and classify offences as non-bailable and non-compoundable, ensuring stricter enforcement. This contrasts with the minor penalties prescribed under Hindu and Parsi personal laws. Also, the personal laws governing Parsis and Christians do not explicitly criminalise child marriages but offer protection against the marriage of minors by prescribing penalties for officiants who fail to follow the required procedures for obtaining guardian consent as outlined in the respective Acts. Mainly, these variations in penalties across provinces and between personal and provincial laws create legal ambiguities and potentially weaken protections against child marriage. See Table 9.4 in Annex 1 for penal prescriptions under the various laws discussed in this section.

◆ **Discrepancies in divorce and annulment provisions:**

The provincial child marriage laws provide no annulment rights for child brides, except Balochistan's law, which permits conditional nullity based on sexual offence or trafficking. With regard to family laws, the Hindu Marriage laws allow marriages below 18 to be dissolved, while the Muslim family laws allow children married under 16 to repudiate their marriages before they turn 18 (on the condition that the marriage has not been consummated). However, Christian marriage laws fail to recognise coercion, underage marriage, or marital rape as grounds for annulment or divorce. Likewise, the Parsi and Sikh laws do not dissolve marriage on the grounds of age (though Parsi law

invalidates marriages involving boys under 16 and girls under 14).

- ▶ The absence of explicit statutory clarification regarding the void or voidable status of child marriage creates uncertainty regarding their validity. This issue is even more concerning in cases involving girls from RMCs who are victims of FCM, as their marriage with the perpetrator stays intact, creating serious challenges for Hindu, Sikh, Christian girls who are victims of child and forced marriages. See Table 9.5 in Annex I on the provision of annulment of child marriages under various laws.

- ◆ **Continued use of the age of puberty to justify child marriage:** Pakistani Courts continue to validate child marriages, relying on Sharia principles, which allow marriage from the age of puberty, despite the conflict with existing child marriage laws in many provinces that recognise 18 as the legal age of marriage. The adoption of the puberty standard also contradicts the Majority Act, 1875 and the Contract Act, 1972 as explained above.

- ◆ **Conflicting provisions on age of sexual consent and protection from sexual offences:** The definition of rape under the PPC adds another layer of inconsistency. Section 375 of the PPC sets the age of sexual consent at 16, declaring intercourse with a girl below this age as rape even if she consents. However, Section 377A of PPC criminalises sexual abuse involving any person under the age of 18, with or without consent, leading to legal inconsistency between the two provisions. Additionally, despite the possibility of prosecution for marital rape, there is no clear judicial decision to such effect, and courts have appeared reluctant to tread in such a direction.²⁹²

- ◆ **Differing definitions of the child:** Modern child protection statutes, such as the Juvenile Justice System Act, 2018, the Zainab Alert, Response and Recovery Act, 2020, and various provincial child protection laws, uniformly define a child as anyone under 18. Yet, the coexistence of such progressive laws with outdated family/personal laws leads to contradictory outcomes. For instance, a seventeen-year-old married girl may be recognised as a child under the Zainab Alert Act if she is abducted, but treated as an adult wife under marriage law. This dual identity within the same legal system not only confuses the application of justice but also weakens protection for vulnerable minors, especially in cases of FCM of RMC girls in Sindh and Punjab,

where abduction is a common part of the modus operandi.²⁹³

- ◆ **Difficulties in accessing justice:** In Pakistan, child marriages among religious minorities, often linked to FCM, also reveal systemic bias in the justice system, where courts frequently prioritise perpetrators over victims, police obstruct FIR registration, and influential actors like shrine custodians enjoy protection and impunity. Judicial decisions routinely return minor girls to their husbands or guardians aligned with the perpetrators, disregarding consent or parental rights, while social, political, and legal pressures, including lawyer intimidation, reinforce this institutional failure and leave victims without meaningful protection or recourse.²⁹⁴

- ◆ **Multiple, conflicting legal frameworks:** Overall, the coexistence of multiple, conflicting legal frameworks, colonial-era laws (1929, 1872, 1936), provincial amendments, and religion-based personal laws has created a hierarchy of protection among Pakistani citizens. Girls from various faiths in KP, GB, and AJK provinces remain the least protected, as their child marriage laws still validate marriage below 18. In other provinces, the fact that the child marriage restraint laws do not generally have an overriding effect means that family/personal laws continue to regulate the question of the validity of a child marriage. Such marriages are classified as a criminal offence under the child marriage laws and may be prosecuted, while being treated as valid unions under family/personal laws.
 - ▶ Ultimately, Pakistan's overlapping legal definitions of "child," "puberty," "consent," and "marriageable age" reveal a structural contradiction that undermines the coherence of its justice system. Unless Pakistan harmonises its statutory and religious laws under a unified age threshold of 18 for all purposes, marriage, consent, and majority, its child protection framework will remain fractured, leaving minors vulnerable to systemic injustice.

Ultimately, Pakistan's overlapping legal definitions of "child," "puberty," "consent," and "marriageable age" reveal a structural contradiction that undermines the coherence of its justice system.

Chapter 10: Sri Lanka

Sri Lanka has made great strides in reducing the rate of child marriage in the country through legislative action and enforcement, bringing the percentage of marriages involving girls below the age of 18 years down to 10% of overall marriages, and those before the age of 15 to 1%.²⁹⁵ Child marriage rates are higher in some parts of the country, particularly in the Ampara and Puttalam districts, where the occurrence of child marriage was 50.8 and 35.7% respectively.²⁹⁶ The median age at first marriage is lowest in Batticaloa.²⁹⁷

According to the 2024 census, Buddhists make up 70.1% of the population, Hindus 12.6%, Muslims 10.7% and Christians 7.6%.²⁹⁸ The Marriage Registration Ordinance 1908²⁹⁹ specifies the legal age of marriage as 18 years and declares underage marriages void. Although the Ordinance is meant to have general application, it makes an exception for Muslims who are governed by their family/personal law through the Muslim Marriage and Divorce Act 1951, which does not specify a minimum age for marriage. Kandyan Sinhalese, an ethnic Buddhist community, may marry under the Kandyan Marriage and Divorce Act, 1952, which, until 2022, permitted minors to marry upon fulfilment of certain conditions. However, after the amendment, the only community for which child marriage is permitted in Sri Lanka is the Muslim community.

In Sri Lanka, child marriage can frequently take the form of long-term cohabitation, which is a union recognised by the community as equivalent to being married but is not legally registered.³⁰⁰ Cohabitation in Sri Lanka, however, seems different from ‘customary child marriage’ solemnised according to local rituals, customs and religious practices in other parts of South Asia. In Sri Lanka, cohabitation between children under the legal age of marriage is recognised as a union that is not a legally registered marriage, and is a response to teenage sexuality and or pregnancy, and the preference for a continuing relationship if legal marriage is not possible.³⁰¹

Despite the reduction in the incidence of child marriage, the existence and operation of parallel and contradictory legal regimes under the general and family/personal laws

of Sri Lanka leave girls from Muslim communities at risk of child marriage.

Definition of child

Sri Lanka ratified the UN Convention on the Rights of the Child (UNCRC) in 1991. Almost all laws in Sri Lanka uniformly declare the age of the Child as 18 years, such as the Age of Majority Ordinance, 1865,³⁰² the National Child Protection Authority Act, 1998,³⁰³ the Children and Young Persons (Amendment) Act, 2022³⁰⁴ and the Prevention of Domestic Violence Act, 2005.³⁰⁵ Like other South Asian countries, however, labour laws set a lower age for the definition of a child. The Children and Young Persons (Amendment) Act in 2022 deals with children below the age of 18 years who may have committed offences.³⁰⁶ The laws allow children aged 12 to be held criminally responsible, though children aged 12-14 may be held liable only if a Magistrate determines they have achieved sufficient “maturity of understanding”. Refer to Table 10.1 in Annex 1 for the definition of a child under various laws in Sri Lanka.

Legal age of marriage and protections under these laws

The Sri Lanka Marriage Registration Ordinance 1908,³⁰⁷ as amended in 1995, increased the minimum age of marriage to 18 years and removed earlier provisions that permitted child marriages with parental consent. The Marriage Registration Ordinance, 1908 has a general application, but does not apply to Muslim marriages. It invalidates the marriage unless both parties are 18 years of age. However, Section 22 of the Ordinance adds confusion by allowing consent of parents/guardians to marry a minor, under 18 years of age (this provision was left unamended even after the age of marriage was raised to 18).³⁰⁸ The Supreme Court of Sri Lanka in *Guneratna v Registrar General* has clarified that “no party under the age of 18 years could contract a valid marriage in Sri Lanka. Parental authority or consent to such marriage would be invalid in law as this was an absolute prohibition to marriage”.³⁰⁹

The Kandyan Sinhalese may marry under the Kandyan Marriage and Divorce Act, 1952³¹⁰ or the Marriage Registration Ordinance, 1908. The Kandyan law defines a lawful marriage as one where the parties are 18 years of age. Prior to an amendment in 2022, the Kandyan law allowed marriage of minors or where one party is a minor with the consent of a competent authority.³¹¹ The possibility of child marriages under this law has now been removed.³¹²

The Kandyan law offers broader grounds for dissolution of marriage on the basis of mutual consent or irretrievable breakdown of the relationship, where the parties are unable to live together happily,³¹³ which are not available to other women in Sri Lanka who, as per the Marriage Registration Ordinance, 1908 may seek dissolution only on the grounds of adultery, desertion, or impotency.³¹⁴

The Thesawalamai Code, promulgated by the Dutch in 1707 and later provided statutory force by the British through the Thesawalamai Regulation No. 18 of 1806, applies to most Tamils in northern Sri Lanka. The law is personal in nature, and governs matters of property, inheritance, and marriage, but does not specify a minimum age of marriage.³¹⁵

The Muslim Marriage and Divorce Act 1951 (MMDA) governs marriages among Muslims. The MMDA does not specify a minimum age of marriage and provides that a child may be married at any age, provided that where

the girl child is below 12, permission of the Quazi must be obtained for the marriage.³¹⁶ These provisions in the MMDA contradict not only the Marriage Registration Ordinance 1908 but also the definition of a child as a person under 18 in various other laws in Sri Lanka.

Section 16 of the MMDA further clarifies that the validity or invalidity of Muslim marriages may be determined only under the Muslim law of the sect to which the parties belong, and not by reason of the marriage's registration or non-registration. It empowers the Quazi to not register the marriage of a girl below the age of 12 years while also granting him discretion to allow such marriage, after inquiry. Any violation of the abovementioned provision is a punishable offence with an imprisonment not more than six months and a fine not exceeding 100 rupees (0.33 USD) only.³¹⁷ The lack of mandatory registration of Muslim marriages under the MMDA has also led to practical challenges faced by women and girls in claiming maintenance, child custody and other rights arising out of the marriage.

The MMDA does not refer to the requirement to obtain consent of the parties to a marriage, though it requires the consent and permission of a male guardian or *wali* for a woman or girl to enter into a marriage. The Supreme Court of Sri Lanka has held that marriage without the consent of the *wali* is a void marriage.³¹⁸ In cases where the *wali* has refused to give consent without a valid justification, a judge may act as a *wali* and provide consent to the marriage.³¹⁹

Table 10.2
Age of marriage under general and personal laws

Sr.	Statute	Age of the child	Applicability
1.	<u>The Marriage Registration Ordinance 1908</u>	18 years	All communities except Muslims
2.	<u>The Muslim Marriage and Divorce Act 1951</u>	No minimum age prescription Marriage of the girl less than 12 years only to be registered after inquiry and authorised by Quazi.	Muslims
3.	<u>The Kandyan Marriage and Divorce (Amendment) Act, 1952</u> (amended in 1995 and 2022)	18 years	Sinhalese Kandyan

Furthermore, a clawback provision in Article 16(2) of the Sri Lankan Constitution grants an exception to the fundamental rights guaranteed by the Constitution, allowing pre-existing laws that might otherwise infringe upon those rights to continue to operate. This means that Muslim women and men are unable to seek remedy and redress for any violation of their fundamental rights that occurs under the MMDA. According to the Muslim Personal Law Reform Action Group (MPLRAG), an independent advocacy group of Muslim women, in the years 2014 to 2016, there were a total of 5491 marriages registered in which the bride was between 12 and 18 years, representing 9% of the total number of Muslim registered marriages.³²⁰ MPLRAG has demanded that the minimum age of marriage of 18, without exceptions, be introduced to the MMDA. This recommendation, it asserts, is in keeping with the national minimum age of marriage for all other Sri Lankan communities, addresses the lived realities of Muslim girls and reflects Islamic values of protecting education and learning, and the State's obligation to protect the best interest of children.³²¹

The Muslim Marriage and Divorce Act 1951 (MMDA) governs marriages among Muslims. The MMDA does not specify a minimum age of marriage and provides that a child may be married at any age, provided that where the girl child is below 12, permission of the Quazi must be obtained for the marriage.

Age of sexual consent and laws related to child marriage

Section 363 of the Penal Code of Sri Lanka stipulates 16 years as the age of sexual consent. Sexual intercourse with a woman under the age of 16 years is treated as statutory rape, subject to a penalty of imprisonment of 10 to 15 years and a fine. Section 363(e), however, provides that sexual intercourse by a man with his wife, provided she is above the age of 12, does not classify as statutory rape. Although this exception is expressed in general terms, the introduction of the provision was driven by pushback from mainly Muslim religious leaders and politicians during the 1995 amendment of the Penal Code. Practically, the exception applies only to Muslims since they are the only community in the country which is allowed to legally marry under the age of 18. This exception leaves Muslim girls vulnerable to sexual violence in child marriages.

The definition of Child in Need of Care and Protection in the Penal Code is limited to sexual exploitation of children, punishment for rape, incest and unnatural offences, and such victims are entitled to particular protection of the law.³²² It does not include the victim of a child marriage as a child in need of care and protection, which is who the child in a marriage would be.

The National Child Protection Authority Act, 1998³²³ includes violation of various provisions of the Penal Code and the Children and Young Persons Ordinance as child abuse, but does not address child marriage as child abuse. A review of the National Policy Framework and National Plan of Action to address Sexual and Gender-based Violence (SGBV) in Sri Lanka 2016- 2020 by the government in collaboration with UNDP does not mention child marriage in the report.³²⁴

Legal reform efforts

There have been various efforts, led by Muslim women's groups, over the last few decades to amend the MMDA to establish 18 as the minimum age of marriage without exceptions; allow adult women to marry without requiring the consent of the guardian/*wali* and to sign their marriage registration documents; and grant equal rights of divorce to both men and women, including fair and just procedures for divorce. Such efforts have consistently been blocked by conservative Muslim members of Parliament.

Government committees to reform the MMDA were set up in 1970, 1984, 1990, 2009, and 2020, without making much progress.³²⁵ In 2021, the Advisory Committee on Muslim Law Reforms had recommended setting the minimum age of marriage at 18 for Muslims in line with laws applicable to other communities, despite strong resistance from religious leaders.³²⁶ Women's groups report that a progressive draft bill was prepared by the Ministry of Justice in 2023, the progress of which was blocked by conservative Muslim Members of Parliament who proposed their own set of regressive amendments.³²⁷ In October 2023, the UN Working Group on Discrimination against Women and Girls issued a communication to the Sri Lankan government expressing strong concern that the MMDA in its current state and the adoption of the Muslim MPs' recommendations "would significantly restrict women's and girls' rights and put Sri Lanka in violation of its obligations under international law".³²⁸

Gaps and inconsistencies in the legal frameworks

- ◆ **Inconsistent provisions in the General Marriage Registration Ordinance:** While child marriage is not allowed in Sri Lanka (except under Muslim religious law), there is confusion in regards to whether parental consent can be validated for underage marriage; due to the continued existence of section 22 of the GMRO.³²⁹ While the Supreme Court of Sri Lanka has clarified that all child marriages are invalid, it is important to amend the law to remove inconsistent provisions and ensure clarity.
- ◆ **Child marriages allowed under Muslim personal law:** The exclusion of Muslim marriages from the General Marriage Registration Ordinance; as well as provisions in the MMDA which allow marriage of muslim girls of any age (and marriage under the age of 12 with the permission of the quazi) have resulted in Muslim girls remaining unprotected from child marriage; as well as rape and sexual violence within such marriage. The law is also unclear regarding the minimum age of marriage for boys. At the same time, it is recognised that contending with the socio-political pressures of gender stereotyping and Islamophobic political sentiments is extremely challenging and makes it near impossible for those affected to reject or speak against the practice of child marriage.³³⁰
- ◆ **Discrimination and ill-treatment faced by Muslim women and girls in the Quazi court system:** The Quazi system is widely criticised as it is outside of Sri Lanka's formal judicial structure. Women are not allowed to be Quazis. Litigants are not allowed to be represented by lawyers. Quazis are reported to have passed discriminatory decisions as well as humiliate litigants, including subjecting them to verbal abuse.³³¹ The system favours practices like polygamy, and quazis have been seen to have a biased treatment towards women seeking divorce or maintenance orders, as well as often dismissing cases of domestic violence.³³² There is also no formal, structured and mandatory training about the MMDA or code of conduct for Quazis by the Judicial Service Commission.³³³
- ◆ **Low reporting of cases:** Reporting of incidents of child marriage and statutory rape is inconsistent, which definitely affects child protection. Families sometimes sought the police's help, but there were instances in which they did not report the incident due to fear of the legal process. Other instances have drawn attention of the authorities through the health system when a pregnant girl sought medical attention. In some cases, families reported the incident after some time, if they were unable to seek some sort of settlement from the perpetrator or if the perpetrator abandoned the girl or refused to take responsibility for a pregnancy.³³⁴
- ◆ **Unregistered marriages and informal unions:** With awareness of the legal age of marriage, there appears to be falsification of age in records at the time of marriage registration, or pressure to enter into long-term cohabitation, which is described as "customary marriage". Early marriage and cohabitation are thus documented as "marriages" when records are maintained by health and social welfare workers. This leads to problems in data collection and analysis of information on early marriage.



Credit: Aakansha Saxena/Equality Now

Chapter 11: Conclusion and recommendations

According to UNICEF, one in four young women in South Asia was married before their 18th birthday.³³⁵ The incidence of child marriage varies across countries, from over 50% in Bangladesh to 2% in the Maldives. Based on the current pace of reform, it would take 55 years to end child marriage in South Asia. There are disparities within the countries, too. For example, some states in India are more prone to child marriage than others, while in Afghanistan, there is a tenfold difference in prevalence across provinces. Even in low-incidence countries like Bhutan, regional differences in the incidence of child marriage are reported.

The country studies have shown that while most countries have adequate laws specifically related to child marriage, there are special provisions within the very law, or other laws, especially religious family/personal laws, that have contradictory provisions which create gaps in child protection. While there are some common strategies that all countries can plan, the gaps that are identified in each country require specific interventions.

The persistence of the practice is rooted in legal pluralism, gender inequality, and social norms. Contradictions between the child marriage prevention laws, personal laws, and sometimes even other child

protection laws continue to undermine the universality of child protection in the countries.

While legal changes that protect children are needed, an increasing penal approach is not the answer. Experience shows that it pushes these practices underground, making it even more unsafe for children. Instead, what is needed is better and more efficient implementation of birth and marriage registration laws, ensuring girls are retained in schools and protected there, ensuring life-skills and sex-education programmes for all children and adolescents, across religions. But there are no shortcuts or quick fixes to women's empowerment. The sustainable pathways lie in ensuring better nutrition, better health services, relevant and affordable education, and the chance of decent job opportunities to make later marriage a genuine option.

Recognising the principle of the evolving capacities of the child, there is an increasing need for systems to develop the capacity to discern between a forced marriage where a child is asking for help and a consensual, self-initiated marriage, and to be able to inquire carefully where lines between consent, exploitation and manipulation blur. If they are truly to be protected, we cannot delay systemised conversations on agency, consent, sexuality, reproductive health and sex education.

General recommendations

- ◆ **Set the minimum age of marriage at 18, without exceptions**, across all applicable laws, including state/provincial laws, general laws on child marriage, and family/personal laws, in compliance with national and international human rights standards.
- ◆ **Ensure that laws relating to child marriage are harmonised across constitutional, civil, family, and customary law** and international legal standards and equal protections for girls are applicable across communities.
- ◆ **Review and reform the overlapping yet incompatible legal regimes applicable to cases of child marriages**, to resolve contradictions arising in the different laws with respect to the age of marriage.
- ◆ **Ensure that the age of sexual consent is not conflated with the minimum age of marriage** and that adolescents are not criminalised for engaging in non-coercive, consensual sexual activity with persons of similar ages.
- ◆ **Limit the application of criminal laws on child marriage to ensure that minors and survivors of child marriage are not prosecuted**, and that child marriage laws are not weaponised to target interfaith and intercaste marriages.
- ◆ **Provide clear provisions on the legal validity of child marriages**, which allow child survivors to easily access annulment or to void these marriages and ensure that such annulment/dissolution processes centre the voice of the child in decision-making.
- ◆ **Ensure the effective implementation of laws and programmes relating to child marriage through a multisectoral approach** to engagement and coordination with key state and non-state actors, with adequate budgetary allocation for programmes that prioritise prevention and response measures.
- ◆ **Sensitise and train members of the judiciary, police personnel, community leaders and other law enforcement personnel** on the practice of and the regulatory regime applicable to child marriage.

Country-specific recommendations

Recommendations for Afghanistan

- ◆ Establish a formal and recognised de jure government to facilitate the drafting of a constitution and the systematic codification of laws.
- ◆ Prescribe 18 years as the minimum age of marriage, applicable uniformly across all regions and in all communities.
- ◆ Engage with progressive and inclusive interpretations of Sharia, drawing upon diverse Islamic schools of thought and scholarly opinions, to align national laws with global child protection norms.
- ◆ Protect the rights of religious and sectarian minorities, including Shia communities, who should be given the right to develop and enforce their own family laws consistent with international child protection principles.
- ◆ Restructure the judicial system to ensure independence, inclusivity, and gender representation.

Recommendations for Bangladesh

- ◆ Amend the Child Marriage Restraint Act, 2017 (CMRA) to remove the exception in section 19, which permits child marriages under “special circumstances” in the best interests of the child, a term which is not defined to make provision for annulment or voidability of marriage.
- ◆ Amend the CMRA to include provisions on the voidability/annulment of child marriages, and to give it an overriding effect in case of conflict with any family/personal laws.
- ◆ Amend personal laws, including the Hindu Marriage Registration Act, 2012; Christian Marriage Act 1872; Parsi Marriage and Divorce Act, 1936; and the Special Marriage Act, 1872 to specify the minimum age of marriage at 18 years and to remove provisions which allow children to marry with the permission of the parent/guardian.
- ◆ Bring uniformity in the laws regarding the age of sexual consent and clarify whether sexual relations in child marriages constitute an offence.
- ◆ Amend the Children’s Act, 2013 to include child marriage as amounting to cruelty to a child.

Recommendations for Bhutan

- ◆ Ensure enforcement of the Marriage Act, 1980 and the Child Care and Protection Act (CCPA) of Bhutan, 2011, especially in remote, rural areas.
- ◆ Amend the Child Care and Protection Act of Bhutan 2011 to include a child in imminent risk of child marriage in the definition of a “child in difficult circumstances.”
- ◆ Institutionalise accessible marriage registration mechanisms across the country, especially in remote regions, to facilitate the registration of marriages.
- ◆ Collect data to document and analyse the incidence of child marriage generally, and particularly amongst minority communities.

Recommendations for India

- ◆ Bring uniformity across national and state-level child marriage laws on the legal minimum age of marriage and the legal status of child marriages.
- ◆ Apply a uniform age of marriage for both genders, since differential marriage ages for boys (21) and girls (18) weaken enforcement and perpetuate discrimination.
- ◆ Explicitly clarify that the Prohibition of Child Marriage Act, 2006 has an overriding effect over family/personal laws, to ensure consistency and equal protection of law to all citizens.
- ◆ Extend the time limitation for survivors to annul child marriages under the PCMA.
- ◆ Lower the age of sexual consent from 18 to ensure that adolescents are not criminalised for consensual, non-coercive sexual activity with persons of similar ages.
- ◆ Reconsider the criminalisation of self-initiated child marriages from a child rights perspective.
- ◆ Expand the right to free and compulsory education to senior secondary schooling (Class 12), to ensure girls are in school for longer and to provide them with transportation, as a means to delay marriages.

Recommendations for The Maldives

- ◆ Amend the Family Act (2000) to clarify the legal status of and the process for dissolution of child marriages.
- ◆ Amend divorce laws to ensure equal rights for both spouses, particularly to protect girls married as minors who may otherwise remain trapped in coercive relationships due to procedural or evidentiary barriers for accessing dissolution of the marriage.
- ◆ Permit and promote the appointment of women as marriage solemnisers (mauzun), as it may increase accountability in child marriage cases and provide safer avenues for girls to disclose coercion before marriage.
- ◆ Amend the Maldivian Constitution to align with the principles of inclusion and diversity by granting citizenship to non-Muslims and providing for the possibility of enacting personal laws for religious minorities.

Recommendations for Nepal

- ◆ Ensure that child marriage and sexual offences laws are not used to criminalise adolescents in self-initiated and consensual unions.
- ◆ Mandate the registration of all marriages and, in particular, ensure registration of Muslim marriages under the National Civil Code, 2017.
- ◆ Harmonise laws defining childhood and marriage to ensure that minors in child marriages are treated as survivors rather than offenders, and provide comprehensive support, including legal aid, psychosocial care, and education.
- ◆ Reconsider the criminalisation of consensual adolescent relationships from a child rights perspective.

Recommendations for Pakistan

- ◆ Prescribe a uniform minimum age of marriage for boys and girls across all provinces at 18 without exception and harmonize penal provisions.
- ◆ Amend the child marriage laws to clarify the legal status of child marriage as void or voidable and provide mechanisms for annulment and repudiation of child marriages.
- ◆ Amend laws to bring uniformity in the definition of the child, and remove exceptions which allow and enable marital rape within child marriages
- ◆ Amend the Christian Marriage Act, 1862; the Christian Divorce Act, 1869; and the Parsi Marriage and Divorce Act, 1936, to align with modern child protection principles, setting the minimum marriageable age at 18 and prohibiting and criminalising child marriage, with clarity on the legal status of such marriages.
- ◆ Pass specific legislation to address forced conversion and forced conversion through marriage.
- ◆ Promulgate laws for the registration of Sikh marriages for all areas in Pakistan.
- ◆ Harmonise the contradiction in the age of sexual consent in sections 375 (rape) and 377A (sexual abuse) of the Pakistan Penal Code. Amend the PPC provision on the sexual abuse of children to recognise 'grooming' as a distinct offence, as it is a common tactic in FCM cases.

Recommendations for Sri Lanka

- ◆ Clarify that parental consent cannot validate a child marriage by repealing section 22 of the GMRO
- ◆ Amend the Muslim Marriage and Divorce Act 1951 to specify a uniform minimum age criterion for marriage for boys and girls at 18 without exceptions, and allow adult women to marry without requiring the consent of the guardian/wali
- ◆ Review the Quazi system to identify and address gender biases and lack of adequate training and capacity of Quazis, including by allowing women to become Quazis.

Endnotes

- 1 This interpretation is based on the legal commentary of D.F. Mulla, "Principles of Mohammadan Law," which is often relied upon by the courts in determining the age of consent to marriage.
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Africa Office Nairobi | Kenya

Bishops Garden Towers, 1st Floor
Bishops Road, Nairobi, KENYA

Americas Office New York | USA

PO Box 7160, New York,
10008-7160, USA

Europe Office London | UK

Mailing address: c/o SeeSaw, 86
Princess St, Manchester, M1 6NG
Registered Office: c/o Azets
Holdings Ltd, Burnham Yard,
London End, Beaconsfield,
Buckinghamshire, HP9 2JH, UK