

OBJECTIONS TO THE PROHIBITION OF CHILD MARRIAGE (AMENDMENT) BILL, 2021

Representation to the Parliamentary Committee set up to review the Bill

We, a wide section of civil society groups working for the achievement of gender equality in the country, **strongly oppose and demand for the immediate scrapping of the proposed amendment to the Prohibition of Child Marriage Act of 2006, which seeks to raise the legally allowed minimum age at marriage for girls from 18 to 21 years.** This representation is made by many civil society and Adivasi groups in India and we request the Parliamentary Committee to kindly take serious note of our objections which are as follows:

Implications of the Bill on Adivasi and Scheduled Tribe Communities in India – reasons for Adivasi Women and civil society groups opposing the proposed amendments:

At the outset, as Adivasi Women and civil society groups, we wish to state that we welcome any holistic empowerment approach towards gender equality that would address the layers of discrimination and exploitation being faced by women, young girls and persons of other genders. However, such a prohibitive law as this Bill proposes to bring, is likely to have more serious negative consequences than lead to real empowerment or better health and safety of girls. It would, on the contrary, lead to criminalisation and stigmatisation of girls and their families, with far reaching social and demographic consequences. That the Bill has been introduced at this current pandemic crisis is shocking and we fear that it would put more young girls at greater risk of physical, emotional and sexual exploitation.

This representation is being made because of the following ground realities and challenges:

1. The amendment is bound to impact largely Adivasi and Dalit sections of Indian society among whom the practice of child marriage is highest. Yet they have no information about this proposed Bill and have not had any opportunity to present their concerns. There is also a high variance in marriage age among Adivasis where some tribes and areas have lower child marriage rates, with food security, poverty, migration patterns and safety at work and shelter, being important determining factors and not merely cultural practices. Children of more vulnerable tribal communities are forced into adult responsibilities much before they reach puberty. Hence child labour and child marriage are tightly interlinked and any prevention of girls or boys from child marriage, is possible only if poverty, starvation and economic conditions are first addressed. Upward economic and educational mobility are empirically proven to have faster results in arresting child marriages than through any preventive/prohibitive law.
2. It is ironical that this amendment is proposed with the objective of increasing female labour participation. Among Adivasis, this is already very high among minor girls and increasing due to state induced forms of neglect, displacement and impoverishment, and more so, after Covid. Choices over age and dignity of work are not a privilege of poor Adivasi girls and changing their age at marriage will not change these choices.
3. The main reasons why poor parents choose to get their daughters married young, is ironically, for safety of the child. Marriage is perceived as the only considered option for preventing girl child abuse and teenage/unwed pregnancies. With increasing

vulnerability to seasonal migration either due to unproductivity of farming or due to losing their lands and forests for many development projects, Adivasi communities face a constant dilemma of girl-child safety. Whether they leave girls behind in the village or take them to migration sites, the risks to safety of girls is too high. Unless state instruments are geared to address these challenges and provide better safety nets for girls (and boys) in Adivasi regions, the state should not impose legal barriers. The GDP is no indicator of national growth, rather, the high rate of child marriages are a more critical indicator of economic inequalities and exploitation.

4. It is well known that education for the girl child is critical to reducing child labour and child marriages. Yet, it is shocking that access even to elementary education in Adivasi areas in every state is abysmal with regressive attention to infrastructure, human resources, transport, culturally pluralistic education (tokenistically endorsed in the New Education Policy), toilets, residential facilities and many other entitlements and programmatic support. Social factors like walking through forests, mine-sites, non-tribal villages, and the constant fear of safety (from wildlife and human atrocities) prevent Adivasi girls from progressing to middle or high school. Minimum standards under the Right to Education Act are yet a far dream in tribal areas. We do not have conviction that a legal amendment of this nature will be backed by adequate resource allocations for these politically vulnerable constituencies either for education or social security, when precious little has been done so far for effecting the existing RTE Act or the Act to prevent child marriages below the age of 18.
5. Malnutrition is very high in Adivasi areas today and increasing due to the disconnection to their forests and food security. The proposed Bill claims that the primary objective is to ensure the health and well-being of girls. Marriage is not the only cause for under-nourishment of women and their children. Girls are malnourished due to lack of basic nourishment, early age at which they are burdened with extreme labour, with no access to food, potable drinking water, primary health and shelter. Child labourers suffer from occupational health problems like respiratory illnesses, tuberculosis, silicosis, musculo-skeletal ailments, endemic diseases of the forest and now, increasingly to new forms of toxicity and contamination brought by largescale industrialisation in Adivasi areas. There is no accountability to public health or environmental health and safety. Marriage and pregnancies only add to these existing health hazards of girls which is reflecting on their maternal and infant mortality rates. By merely imposing a legal restriction on marriage, without addressing the other fundamental public and environmental health concerns would serve no purpose.
6. It is practically not possible to stop child marriages just by bringing about a law. Discussions with ASHA workers in Adivasi areas revealed how awareness programmes would be futile in sensitising parents to postponing the marriage of their daughters or sons, when their daily struggles and realities do not permit them the privilege of postponing the age at marriage. Such a law would only lead to 'unwed' mothers as the law specifically mentions that it is overriding on all laws, customs and practices of marriage in the country. Besides, culturally in India, it is a practice that the age of girl is younger than that of boy when selecting a bride. However, boys who are 21 years of age would not be able to get married legally as they can only marry a girl of the same age or older than them. Trying to achieve gender equality in this distorted manner through such laws is both impractical and insincere in its objective.

7. By giving overriding powers to this law, it leads to unconstitutionality of the Fifth and Sixth Schedules of the Indian Constitution and particularly, the PESA Act and the right of tribal self-governance. The Bill has been introduced without any consultation or consent of the Gram Sabhas and does not recognise the customary laws of Scheduled Areas. As some of the Adivasi young women have raised, this amendment is a violation of their right to liberty and freedom given in the Directive Principles of the Indian Constitution and the Fundamental Right to Life by denying them their right to explore and exercise their sexual rights and choices. At the international level, while stating that India abides with the CEDAW principles on gender equality which the 66th Session of CSW would be addressing, it violates the UNDRIP and the right of Adivasis to free, prior and informed consent on all matters pertaining to them. It ironically, may increase violence against young women when the law restricts them from escaping domestic violence in the maternal home, where marriage could provide them such a freedom, in certain cases. This could also lead to trafficking among girls, female infanticide or foeticide, if parents feel burdened by having to care for girls for longer time or are faced with the uncertainties of finding a groom for older girls.
8. There is a valid fear that the amendment would criminalise Adivasi girls and boys. Adivasi communities, by and large, practice sexual rights democracy with boys and girls making their own choices. This amendment is more likely to be used against them in multiple ways. Politically, these are sensitive areas where criminalisation of Adivasi youth is common. They constantly face criminal threats as Maoists, illegal mine workers, and other kinds of criminal actions from state and corporate actors, traders and non-tribal businessmen. This law could be used against them in the backdrop of other politically motivated interests. Particularly, this could be aggravated or turn into honour killings in the context of marriage between Adivasi and non-Adivasi couples and inter-religious couples within Adivasis where inheritance laws for Adivasi girls is linked to their marital status.
9. Children and youth in Adivasi areas are already facing several challenges in availing of caste certificates, ration, welfare and education schemes due to multiple challenges of mixed marriages, migration, lack of identity cards which also prevents them from getting admission in schools and hostels. Once denied entry into educational institutions, child labour and child marriages follow. Henceforth, lack of proper proof of parents' marriage age and certificates would create further bottlenecks.
10. There is an equal fear of stigmatisation of Adivasi youth and cultural practices, thereby stigmatising children born to them. Adivasi youth question their right to sexual liberty under the Constitution when law restricts their freedom of sexual and marriage choices at an age when it is customarily permitted to enter sexual or marriage relations. Exercising this freedom would stigmatise adivasis as immoral and illegal if they continue to get married below the age of 21. Children born to them would be stigmatised as illegally born and may face several legal hurdles in proof of identity, birth and other rights. The amendment also provides an escape for boys as possibilities of abandoning a girl after marriage are high, with marriage below the age of 21 being legally null and void. The incidence of teenage abortions and suicides may actually rise due to the humiliation faced by girls who would be considered 'unwed mothers' or fail to get any justice for themselves in marital disputes. The law gives an opportunity for boys and their families to abandon girls after marriage using the age clause putting the girl in grave danger of neither being invited back in the

maternal home nor being able to sustain on their own. Domestic violence, abandonment, widowhood at a very young age due to occupational health problems faced by men are very high in many of the tribal belts in the northern states of India. Single women struggle to raise their daughters alone or take care of their safety, and hence choose to get them married at a young age. The government, instead of providing safety nets and entitlements for single women and their daughters, would end up criminalising single women for their acts of early marriage to their daughters. The entire mining and Adivasi belt of Rajasthan, Gujarat, Madhya Pradesh and Maharashtra, for example, have these glaring ground realities for Adivasi single mothers.

11. Especially, as the amendment is to be effected in two years from the time of assent, without adequate institutional framework, resources or outreach to these remote areas, it would be practically impossible to legally 'educate' Adivasis and force them to abide by this law. When the government is apparently struggling for resources since Covid 19 and reeling under the economic burden caused by the pandemic, we are not assured that many other necessary programmatic and development interventions will be implemented to effectively prevent child marriages, when such resources or actions were not put in place in the pre-pandemic times.
12. The sex ratio for Adivasi communities has mostly remained healthy, with many tribes demonstrating higher female population, even if marriage age was at 18 or less. There is a need to study what implications increasing the marriage age would have on the sex ratio if female infanticide increases as a result of the new legislation. Bringing in such laws without proper assessment of social consequences in these remote communities could lead to demographic risks.
13. Similarly, the definition of the age of the child is being arbitrarily shifting between 14-16 years age as eligibility for labour in apprenticeship; 18 years for voting rights and now 21 for marriage. If girls' bodies are not suitable for reproductive activities until 21, their bodies are also unsuited for the burden of labour in both hazardous and non-hazardous activities they are forced into, with serious negative consequences on their health and nutrition. This also has implications especially in the Adivasi context for land acquisition procedures related to resettlement, compensation, employment and legal heir rights. Currently, girls aged 18 years are eligible for separate compensation in national parks and other project induced displacement contexts. This law with its new definition of the child leaves grey areas for compensation, employment of girls, settlement of inheritance rights or even in the case of sexual abuse-whether they would be considered as minors until the age of 21 and whether the JJ Act would be aligned accordingly.
14. In western countries, the women's movement is also struggling for abortion rights and adoption rights, even if child marriages are not a social issue there. As this law combines legal age at marriage with sexual and reproductive health concerns, other corresponding legal rights for young women, like the right to abortion, rights to adoption, property rights of unwed mothers and their children, and sexual freedom are other legal interlinked rights as the child marriage law cannot be a stand-alone entity. Therefore, we believe that this Bill would bring more harm to women than any kind of gender equality.

Our Demands:

With the serious challenges we foresee from this proposed amendment, we collectively represent our demands to the government as follows:

1. That the Parliamentary Committee which was announced to have been set up for review of this Bill, call for a wider consultation of affected groups and civil society representatives to review and assess the needs and implications of this proposed amendment. As Adivasi communities and their Gram Sabhas have no access to this information, we request that this draft Bill be translated into local Adivasi languages and put in the public domain for Gram Sabhas to submit their opinions, with sufficient time and access to submit their representations.
2. This is also an emergency situation of the Covid pandemic which is ill-timed for bringing a legislation of this nature, especially when the government is constrained with financial and human resources. We request that prioritisation of needs of the girl children from Adivasi communities be assessed so that resources are allocated for more pressing needs of addressing malnutrition, medical and education infrastructure and human-resources in these remote areas.
3. For a holistic and responsible approach towards **Gender Equality and Empowerment for Adivasi Women and Girls** we believe that there are many more critical actions and state responsibilities that are urgently needed for overcoming maternal and infant mortality, malnutrition, reproductive health crisis of Adivasi Women and Girls which require legislative, financial, regulatory and programmatic mechanisms like:

A) Legal Empowerment over land, forests and property for Adivasi Women is fundamental to Gender Equality:

We demand that the Fifth Schedule laws be reviewed from the perspective of the Adivasi girl child, particularly in the context of land and forest laws that need to be strengthened on behalf of Adivasi women. Implementation of the PESA Act and the FRA Act (both individual and collective forest rights), particularly where pattas for women and widows are concerned have more long term potential for women's empowerment and gender equality than increasing the age at marriage. Further, bringing formal land rights to Adivasi women through amendments to inheritance and property laws in favour of women would ensure social and economic empowerment for women, bringing down domestic violence and maternal mortality. The proposed Bill specifically states that it overrides all customs and practices and Personal Laws for the purpose of marriage age which alone does not assure women of equality. Such a uniform law is not being implemented for Adivasi women's property rights. The demand of many Adivasi groups for preventing violence against Adivasi women like witch hunting practices by enacting and implementing the Dayan Pratha (Prohibition and Prevention) Act has not been addressed by most states. Tenancy and tenure rights for Adivasi women and recognising them as farmers and cultivators, as head of the household and such other legal rights are absent. Gender equality and parity needs to be addressed in these more critical areas both through legal land rights and women farmer support programmes that recognise Adivasi women farmers' knowledge practices and food systems and bring more state investments to promote their traditional sustainable farming. Further, the legal definition of a

child has to have a uniform application across labour, marriage, electoral participation and education if we need to protect our daughters holistically.

B) Development Policies:

Alienation from land and forests is increasing in Adivasi areas and this is leading to greater threat of food insecurity, malnutrition, lack of livelihood and correspondingly with increase in child labour and child marriages. Large scale development projects are creating internal refugees among Adivasis and the more severe impacts are borne by women and girl children who are working as landless bonded labour, unorganised, migrant and 'illegal' labour with no guarantee of wages or minimum working conditions. Illiteracy, maternal and infant mortality are very high among Adivasis due to these factors of labour and landlessness. Protecting their land tenurial rights and guaranteed employment generation in their own village are more urgently required for women's health and social security through customary safety nets in the village. The MGNREGS Act is poorly implemented in most Adivasi areas. Basic entitlements like ration, pensions, housing and toilet schemes are inaccessible to women. Sporadic welfare schemes or nutrition programmes that are ill-implemented are ineffective and hence, unless the state approach to development and empowerment of Adivasi women and children shifts out of the 'welfare schemes' approach to rights and entitlements approach which are backed by strong and accessible administrative and regulatory institutional guarantees, there is no real empowerment for women.

C) Displacement and resettlement processes are mainly focussed on monetary compensation and neglect the long term support for proper rehabilitation of Adivasi communities. Forced relocation leads to girls dropping out of school, not having a school in their relocated colonies, not having the requisite caste certificates, aadhar cards and ration cards to get admission into educational institutions. Constant migration for basic survival is denying Adivasi children their access to basic education or nutritional programmes. Many Adivasi women and children fail to have any proof and basic entitlements of citizenship. Their lack of state support for proper long term rehabilitation is causing maternal and infant mortality and this has to be prioritised over secondary issues like increasing the age at marriage. Development projects should be critically reviewed from a gender impact assessment lens and shift to alternate plans for more sustainable and non-displacing approaches. Accountability mechanisms and funds for rehabilitation like the District Mineral Funds, mine worker welfare funds, schemes and funds under the Biodiversity Boards and MGNREGS as some examples, have to be implemented with a direct revival and rehabilitation of these affected populations and not as a one-time compensation without follow-up.

D) Primary Health and Education:

Immediately improvement in quantity and quality of primary education and primary health facilities in all tribal areas should be urgently addressed for protecting the girl child. Majority of Adivasi villages do not have even a high school or college student where enrolment in primary school is in lakhs and, in high schools, it is in a few hundreds, in each state. Adivasi children study in residential schools which are geographically far away from their homes, have very poor infrastructure, nutrition and educational facilities. Social security of adolescent girls is a serious concern for parents and the state has to invest adequately in infrastructure and human resource facilities to ensure safety of the girl children. Most Adivasi girls studying in these

educational institutions are anaemic. They do not have any access to the diversity of wild-food that is available in their village from the forest. Unless adequate and wholesome, locally procured food is provided to girls and boys in hostels, maternal and infant mortality will not be addressed.

Women's Labour:

- D) Majority of Adivasi girls and women are burdened with collection of water and firewood, leaving them with no time for education or skills development. We demand that state invest in giving communities more ownership of and access to forests so that communities can protect their forests and harness them for their daily needs of nutrition, medicine and economics. We also urge that the focus on renewables for sustainable energy is centred around decentralised and community managed renewable projects where women are trained and supported in setting up their own solar, wind and other renewable systems for their local needs and income generation. This would be more empowering for women, prevent girls from dropping out of school to fetch firewood and other resources for their families.
- E) The purpose of the draft Bill is laid out as increasing the female work force participation. It is not through repressive legal measures that a skilled and dignified female labour force can be created but through an enabling and holistic environment of resource rights, opportunities for forest based livelihoods, skills building and community owned and managed enterprises. It does not happen in an environment of landlessness, exploitative labour conditions, conflict and non-implementation of existing laws. Increasing the age at marriage is far from holistic and distracts the public, burdens the ground level administrative staff and fulfils no gender equality goals either at the national or global level.

Culture and Identity:

- F) Adivasi women are bestowed with rich scientific knowledge of their habitats and eco-systems which are the source of their food, spirituality and cultural identity. This eco-system is also the agency for women's social safety and security. Violence against women in traditional Adivasi societies has been negligent due to a strong social and economic status that women enjoy in their customary structures of land and forest management. Women's economic role and workforce participation are fundamental to Adivasi economy and well-being. Women are the custodians of this economy and hence have enjoyed, in most communities, a greater degree of autonomy, decision-making and consultative role in social and economic life which further translated into safer spaces and support systems. Customary rituals and spiritual practices provided cultural identity and customary legal frameworks of social behaviours. Marriage and sexual relations were regulated by these strong social structures. But the disintegration of these structures due to forced migration and displacement from their habitats have resulted in increase in domestic violence, trafficking, child marriages and sexual abuse of girls and women. The lack of impetus given to Adivasi farming, environmental contamination of water resources due to high industrialisation and the high level of political conflict induced by these industrialisation processes have dismantled the peace and identity of Adivasi social security for women and girls. Their empowerment cannot happen in the absence of their cultural identity, language and spiritual knowledge practices. Child marriage prohibition and prevention cannot be implemented in Adivasi society through a mere

tweaking of the law by changing the age at marriage. To protect Adivasi daughters, the state has to deliver more than such a law.

We therefore, collectively demand for this Bill to be immediately scrapped, keeping in view the well-being and security of Adivasi girls and women in India. We demand that the minimum age at marriage continues to be recognised at the age of 18 years while we strengthen our efforts to improve the higher education, health and safety of girls. This would lead to an organic increase in the age at which girls have opportunity to take informed decisions regarding marriage and reproductive health. We extend our support to the government in working towards Gender Equality on the more critical areas for women's empowerment as enumerated above.

Signed:

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