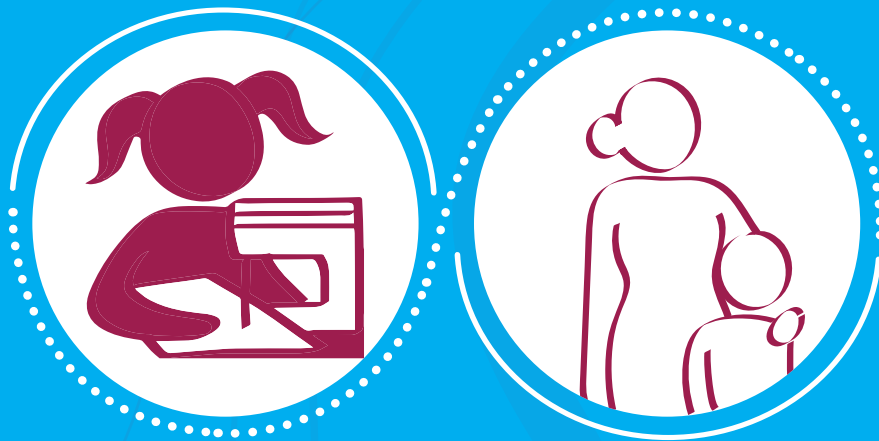


# The Relationship between Child Labour and Child Marriage: A Discourse Analysis



August 2021

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# Acronyms

<b>APRO</b>	Asia-Pacific Regional Office (UNFPA)
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CEFM</b>	child, early and forced marriage
<b>CRC</b>	Convention on the Rights of the Child
<b>CSEC</b>	commercial sexual exploitation of children
<b>ECPAT</b>	End Child Prostitution in Asian Tourism
<b>GBV</b>	gender-based violence
<b>ICLS</b>	International Conference of Labour Statisticians
<b>ILO</b>	International Labour Organization
<b>MICS</b>	Multiple Indicator Cluster Survey
<b>NEET</b>	not in employment, education, or training
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>OPSC</b>	Optional Protocol on the Sale of Children
<b>ROSA</b>	Regional Office for South Asia (UNICEF)
<b>SAARC</b>	South Asian Association for Regional Cooperation
<b>SAIEVAC</b>	South Asia Initiative to End Violence Against Children
<b>SDGs</b>	Sustainable Development Goals
<b>SNA</b>	System of National Accounts
<b>UHS</b>	unpaid household services
<b>UN</b>	United Nations
<b>UNFPA</b>	United Nations Population Fund
<b>UNICEF</b>	United Nations Children's Fund

# Introduction

## CHILD MARRIAGE IN SOUTH ASIA

Globally, the total number of girls married in childhood is estimated at 12 million per year,<sup>1</sup> and the greatest number of married children are found in South Asia, with India alone home to 15 million women aged 20–24 who were married by the age of 18. In the region, overall, 30% of girls are married or in union before the age of 18, and 8% before the age of 15.<sup>2</sup> Some countries, such as Nepal, also see a significant proportion of boys marrying before the age of 18, although there is less data available for men and boys.<sup>3</sup>

Child labour is also prevalent in South Asia, with the region accounting for slightly more than 21 million of the 160 million children engaged in labour worldwide.<sup>4</sup> Many of these children work in hazardous conditions or for long hours. In the worst cases, boys and girls are trafficked for

sexual exploitation, trapped in bonded labour, or forced into domestic servitude.<sup>5</sup>

Child marriage and child labour are both a violation of basic human rights and a deprivation of health, safety, bodily integrity, and self-determination, as set out in international law. At the global level, governments have come together to address both issues in the Sustainable Development Goals (SDGs), targeting the elimination of these practices. At the regional level, the South Asia Initiative to End Violence Against Children (SAIEVAC), an apex body of the South Asian Association for Regional Cooperation (SAARC), has led the articulation of commitments to address child marriage and child labour through a regional action plan on each issue.<sup>6</sup>

## SUSTAINABLE DEVELOPMENT GOALS ON CHILD MARRIAGE AND CHILD LABOUR

**Target 5.3:** Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation.

**Target 8.7:** Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.

- 1 United Nations Children's Fund, 'Fast Facts: 10 facts illustrating why we must #EndChildMarriage', Press Release, UNICEF, 11 February 2019, <[www.unicef.org/eca/press-releases/fast-facts-10-facts-illustrating-why-we-must-endchildmarriage](http://www.unicef.org/eca/press-releases/fast-facts-10-facts-illustrating-why-we-must-endchildmarriage)>, accessed 29 September 2020.
- 2 United Nations Children's Fund, 'Data Warehouse', n.d., <<http://data.unicef.org/child-protection/child-marriage.html>>, accessed 22 August 2020.
- 3 Ministry of Health Nepal, New ERA, and ICF, Nepal Demographic and Health Survey 2016, Kathmandu, Ministry of Health, 2017; Plan International Nepal, Save the Children, and World Vision International Nepal, *Child Marriage in Nepal: Research report*, Plan International, Kathmandu, 2012; Karim, Nidal, Margaret Greene, and Mary Picard, *The Cultural Context of Child Marriage in Nepal and Bangladesh: Findings from CARE's Tipping Point Project community participatory analysis – research report*, CARE, Atlanta, February 2016; CARE, *Dads Too Soon: The child grooms of Nepal*, CARE Nepal, Kathmandu, 2015.
- 4 International Labour Organization and United Nations Children's Fund, *Child Labour: Global estimates 2020, trends and the road forward*, ILO and UNICEF, New York, 2021.
- 5 Khan, Sherin, and Scott Lyon, *Measuring Children's Work in South Asia: Perspectives from national household surveys*, International Labour Organization, New Delhi, 2015; International Labour Organization, *Global Estimates of Child Labour: Results and trends, 2012–2016*, ILO, Geneva, 2017.
- 6 South Asia Initiative to End Violence Against Children (SAIEVAC), *Regional Action Plan for the Prevention and Elimination of All Forms of Child Labour in South Asia 2016–2021*, SAIEVAC Regional Secretariat, 2016; South Asia Initiative to End Violence Against Children (SAIEVAC), *Regional Action Plan to End Child Marriage in South Asia (2015–2018)*, SAIEVAC Regional Secretariat, Kathmandu, 2014.

Child marriage has been approached in varying ways by different sectors in international development. It can be described as gender-based violence and is considered a harmful practice. Programmes to address child marriage frame it as a child protection issue, a problem of sexual and reproductive health, the result of poor access to education, or a matter of girls' empowerment. In recent years, a debate has begun about child marriage as a labour issue—potentially a form of child labour or a factor leading to child labour. There are many similarities in the pathways to, and outcomes of, child marriage and child labour. They are both more prevalent in poor, rural communities, can have negative effects on physical and psychological health, and leave children more vulnerable to additional forms of exploitation and dropping out of school. At the same time, there is great diversity in how these phenomena occur and a wide range of circumstances and conditions under which married children and children engaged in labour live and work.

The relationship between child marriage and child labour brings together a variety of actors in international development and child rights. Each field brings its own dialogue and legal and policy frameworks for thinking about its as is work. To assess the relationship between these two sets

of practices, International Labour Organization (ILO), the United Nations Population Fund Asia-Pacific Regional Office (UNFPA APRO), and the United Nations Children's Fund Regional Office for South Asia (UNICEF ROSA) commissioned this study on the relevant definitions in international law, the discourse around the topic, and how well the evidence from the lives of children fits the discourse. This paper summarizes the literature on the link between child marriage and child labour, with reference to practices in South Asia. As a foundation, the paper also sets out key terminologies and definitions relevant to the discussion, along with their basis in international conventions and multilateral agendas.

## STRUCTURE OF PAPER

This paper reviews the concepts and frameworks relevant to child labour and forced labour in general, before honing in on child labour in South Asia. Next, key concepts related to child, early, and forced marriage are presented, followed by an overview of child marriage in South Asia. Finally, the main threads in the ongoing discourse on the relationship between child marriage and child labour are examined, and suggestions made for further study.

### DEFINING THE CHILD

In legal terms, the threshold between childhood and adulthood is the age of majority. In international law, this is generally 18 years of age, as identified in the Convention on the Rights of the Child of 1989 (CRC). ILO legal standards concerning child labour are also based on this definition of the child. However, the CRC allows countries to set a younger age of majority, and many nations allow children under 18 to work with emancipation from parents or guardians or, if they are married. The age of majority is not the same as the age of consent for marriage or the age of consent for sexual relations, and not the same as the legal age for employment, all of which can, and do, differ in international and national legal frameworks.



# The world of work

The ILO predates the United Nations (UN), having been formed in 1919 as part of the Treaty of Versailles. When the UN was constituted, ILO became part of that system. Accordingly, ILO shepherds some of the earliest international conventions of public law important to international relations and cooperation in today's world. It also has had 100 years to formulate labour standards and frameworks for a shared understanding of terms related to employment and labour and how human labour should be measured. While important adaptations have been made to ILO frameworks as societies have evolved, there are some nomenclatures that are difficult for those outside the sector to quickly grasp. This section looks at some of the important terms relating to child labour (see *Appendix III* for an explanation of the use of some of these terms for statistical standards of measurement).

## CHILD LABOUR

Although working children can be said to be engaged in labour in so much as 'labour', in English, is a synonym for 'work', the term 'child labour' has a very particular meaning in international law. There is an implied negative connotation to the term and it carries the assumption that it must be 'abolished'. That is, the term 'child labour' legally and statistically means work done by children that is prohibited and, therefore, must be eliminated. It does not include those circumstances under which children are permitted to work, for example, 'youth employment', a term with a positive connotation that means permitted work for pay or profit.

Definitions of child labour emerged in international law through the adoption of ILO Conventions No. 138 on Minimum Age of Employment (1973) and No. 182 on the Worst Forms of Child Labour (1999). These conventions are legally binding on participating States. Among the eight South Asian nations, only one, Bhutan, is not a member of ILO. Of the seven South Asian member states that are members of ILO, all have ratified Convention 182, and all but Bangladesh have ratified

Convention 138 (see *Appendix II*). Globally, these two conventions are among the most universal international agreements: since India's ratification in 2017, Convention 138 covers 93% of the world's children, and Convention 182 achieved ratification by all 187 ILO member countries in August 2020.

Convention 138 establishes 15 as the general minimum age for employment or work, alternatively the minimum age is aligned with the age of completion of compulsory schooling, if that age is above 15. There are some caveats:

- Developing countries can initially place the minimum age at 14 (provided that age is at or above the age of completion of compulsory schooling) until their economies and education systems are sufficiently developed; 51 member states out of the 171 that have ratified the convention have opted to do this.<sup>7</sup>
- Light work is permissible for children up to two years under the minimum age. Light work is work that does not interfere with a child's education and that is not harmful. Countries must define what work, under what conditions, and for how many hours constitutes light work.

<sup>7</sup> International Labour Organization, *ILO Convention No. 138 at a Glance*, ILO, n.p., June 2018, p. 3. Note that in subsequent reports countries are required to either specify that the reasons for availing themselves of this provision persist or renounce the application of the provision.

- Certain other categories of work can be exempt, such as work as a contributing family member on a farm (when hired workers are not regularly employed on that same farm, that is, it is operated solely by the child's family, and the farm is producing only for local consumption); artistic work; and work done in a government-approved school or vocational training programme.<sup>8</sup>

Unpaid household services (UHS), which is work done for one's own use or own household, such as cooking, cleaning and other household chores, is permissible for children as long as it is not hazardous. Note, domestic work in a third-party household is not considered permissible UHS.

Convention 138 also sets 18 as the minimum age for work that is '**hazardous to children's health, safety, or morals**'. The CRC describes work prohibited for children as hazardous work or work that interferes with education or is harmful physically, mentally, spiritually, morally, or socially. The concept of hazardous or harmful work was reiterated in Convention 182, which specifies the following 'worst forms of child labour':

- all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;*
- the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;*
- the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;*
- work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children (hazardous work).*

Conventions 138 and 182 require ratifying countries to identify hazardous work in a list that names which industries, occupations, and tasks in their economies are hazardous and prohibited for children. Yet, Convention 138 still allows children between the ages of 16 and 18 to engage in hazardous work in some industries, if it is done under strict protections outlined in national laws. For example, learning carpentry requires the use of dangerous tools. A child apprentice may use such tools under the direction of an adult with protective equipment. Because of these exceptions, the terms 'worst forms of child labour other than hazardous work' and 'unconditional worst forms of child labour'<sup>9</sup> have come into use to indicate items (a), (b), and (c) above, which are never allowed under any circumstances. However, 'worst forms of child labour other than hazardous work' should not be taken to suggest that such forms are not harmful to, or dangerous for, children, as they are in fact very harmful to children.

## STATISTICAL DEFINITIONS

With Conventions 138 and 182 as the legal foundations, ILO and the International Conference of Labour Statisticians (ICLS) (the standard-setting body of labour statisticians hosted by ILO, which convenes every five years) have adopted guidance on the measurement of child labour to facilitate national responses and international comparisons. It is important to note that statistical definitions are not legal definitions and the frameworks used to operationalize the measurement of child labour should not be used to define child labour in the legal sense, as that rests on international and national law, as explained above. Nonetheless, statistical standards aid our understanding of the scope and nature of child labour practices and are useful for thinking through the relationship between child labour and child marriage.

Resolution IV of the 20th ICLS<sup>10</sup> identifies children engaged in child labour, for the purpose of statistical measurement, as:

<sup>8</sup> However, work that is hazardous for children, including some kinds of work on family farms, cannot be exempted.

<sup>9</sup> Note ILO no longer uses 'unconditional worst forms of child labour'.

<sup>10</sup> International Conference of Labour Statisticians, *Resolution IV: Resolution to amend the 18th ICLS Resolution concerning statistics of child labour*, 20th ICLS, ILO, Geneva, 2018, paragraph 15.

Table 1 presents a grid of the statistical identification of child labour, disregarding certain exceptions for the sake of clarity.

**Table 1: Child labour as defined in international statistical standards<sup>11</sup>**

		Below age for light work (5–11)	Within age range for light work (12–14)	At or above working age (15–17)	
Economic activity (SNA production boundary)	Light work in SNA production				
	Regular work in SNA production				
	Worst forms of child labour	Hazardous work			
		Worst forms of child labour other than hazardous work			
Non-economic activity (general production boundary)	Hazardous unpaid household services				
	Other work <sup>12</sup>				

**Note:** Blue boxes indicate work that constitutes child labour; white boxes indicate work that is not child labour. SNA = System of National Accounts; see *Appendix III* for details on SNA classifications.

- Work done below the age limit for that kind of work
  - Worst forms of child labour, including hazardous work
  - Hazardous UHS
- MORE ON HAZARDOUS WORK**
- ILO Recommendation No. 190, which was adopted the same year as Convention 182, outlines criteria for determining when work is hazardous to children. Hazardous work includes:
- (a) work which exposes children to physical, psychological or sexual abuse;
  - (b) work underground, under water, at dangerous heights or in confined spaces;
  - (c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
  - (d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;
  - (e) work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

11 Adapted from: International Conference of Labour Statisticians, *Resolution IV*, 2018, Annex: Framework for statistical identification of child labour.

12 'Other work' may include, inter alia, court-ordered labour and work performed as part of school.

## HAZARDOUS UHS

'Hazardous work' and 'hazardous UHS' are distinct, non-overlapping statistical concepts in the measurement of child labour, but the same standards are applied for determining UHS that is hazardous to children ('hazardous unpaid household services') and that, therefore, constitutes child labour.<sup>13</sup> It is likely that the number of children engaged in hazardous UHS is underreported. Countries may choose to apply either the System of National Accounts (SNA) production boundary or the general production boundary in their child labour analyses and, in so doing, choose whether or not to consider UHS (which falls within the general production boundary, but outside the SNA production boundary). In addition, there are few existing mechanisms to track children's time use patterns—for this, household surveys are necessary. For these and other reasons, not all countries have data on how many children perform UHS, under what conditions, and for how long, and, therefore, children engaged in hazardous UHS may not be counted. This is a statistical issue, not a legal one, as a child doing hazardous UHS is at risk, whether or not the child's status is known to the authorities. In South Asia, not all national child labour surveys capture the number of children involved in UHS who are also involved in economic work or the number of hours devoted to UHS.<sup>14</sup>

## THRESHOLDS

Item (e) in Recommendation 190—'work under particularly difficult conditions'—includes 'long hours' and, therefore, raises the question, how much work is too much? When does work that

is otherwise permissible become harmful due to the number of hours worked? Some countries have legally established thresholds for the number of hours worked by children of various ages (see Table 3). Indeed, ILO recommends that all nations set such thresholds. The 18th ICLS, in Resolution II concerning statistics of child labour, suggests that "the effect on a child's education should [...] be considered when determining what constitutes long hours".<sup>15</sup> To answer that question, several studies have analysed the relationship between hours at work and school attendance or completion, based on the known importance of school to a child's life outcomes, and also using school performance as a proxy for other dimensions of child well-being.

Globally, these studies on the effects of children's work on school performance have estimated that economic work—work done for pay or profit or as a contributing family member in a family business—has a greater negative impact on education outcomes than UHS work (although UHS does have a negative effect on school attendance). Although the child who only studies and does not work is the most likely to succeed in school, when comparing children engaged in both economic activities and UHS to those engaged in economic work, but not UHS, children engaged in both kinds of work do better in school.<sup>16</sup> The reasons for this are not yet clear to researchers. Nonetheless, their different effects justify the creation of separate thresholds for each type of work.

The indicator guidance for SDG 8.7 on the elimination of child labour identifies thresholds for number of hours worked in a week, beyond

13 See: International Labour Organization, *Report III: Child labour statistics*, 18th International Conference of Labour Statisticians (ICLS), ILO, Geneva, 2008, Paragraph 84.

14 See, for example, Koseleci, N., and I. Kovrova, *Child Labour in Bangladesh and India: A preliminary gender-based analysis*, Working Paper, Understanding Children's Work (UCW) Programme, Rome, April 2009.

15 International Conference of Labour Statisticians, *Resolution II: Resolution concerning statistics of child labour*, 18th ICLS, ILO, Geneva, 5 December 2008, paragraph 37.

16 Blanco Allais, Federico, *Assessing the Gender Gap: Evidence from SIMPOC surveys*, Statistical Information and Monitoring Programme on Child Labour (SIMPOC), International Programme on the Elimination of Child Labour (IPEC), ILO, Geneva, 2009; Dayioglu, Meltem, *Impact of Unpaid Household Services on the Measurement of Child Labour*, MICS Methodological Papers, Paper No. 2, MICS and UNICEF, n.p., 2013; Lyon, Scott, Marco Ranzani, and Furio C. Rosati, *Unpaid Household Services and Child Labour*, Working Paper, Understanding Children's Work (UCW) Programme, Rome, March 2013; International Labour Organization, *Give Girls a Chance: Tackling child labour, a key to the future*, International Programme on the Elimination of Child Labour (IPEC), ILO, Geneva, 2009.

which a child can be said to be engaged in child labour (see Table 2).

**Table 2:** Hourly thresholds per week for determining child labour<sup>17</sup>

Age range	Economic activity (hours)	UHS (hours)
5–11	1	21
12–14	14	21
15–17	43	No limit

These thresholds are consistent with the major studies on the point at which school attendance is significantly affected for each age group, although separately for each category of work<sup>18</sup>—that is, for children engaged in both economic activity and UHS, the studies did not look at the total number of hours worked. Note that South Asian countries are not well represented in the available analyses due to limitations in their datasets.<sup>19</sup>

## FORCED LABOUR AND SLAVERY

Item (a) of Convention 182 identifies as a worst form of child labour “all forms of slavery or practices similar to slavery, such as [...] forced or compulsory labour [...]”. Forced labour and slavery were originally distinct concepts in international frameworks. Slavery was abolished in international law by the 1926 Slavery Convention of the League of Nations. In it, slavery is defined as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership

are exercised”. The definition of “forced or compulsory labour” in ILO’s 1930 Forced Labour Convention No. 29 is “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.<sup>20</sup>

The 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery further delineates situations that amount to “practices similar to slavery”. These include a set of phenomenon that later authors have assigned the label of ‘servile marriage’ (as well as ‘forced marriage’), in reference to Article 7(b): “A person of servile status means a person in the condition or status resulting from any of the institutions or practices mentioned in Article 1 of this Convention”.<sup>21</sup> This paper discusses forced marriage in a section below; here, it is worth noting that some forms of servile or forced marriage enter into international law under the banner of ‘practices similar to slavery’.

Debt bondage is the first practice prohibited in the 1956 Supplementary Convention, defined as “the status of condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined”.<sup>22</sup> Debt bondage is a common form of child labour in South Asia, as described later in this paper.

17 Source: <https://unstats.un.org/sdgs/metadata/files/Metadata-08-07-01.pdf>, last updated March 2019.

18 Lyon, et al., *Unpaid Household Services and Child Labour*, 2013; Dayiuglu, *Impact of Unpaid Household Services on the Measurement of Child Labour*, 2013, ch. 4.

19 Studies of this type that include South Asian nations include: Blanco Allais, Federico, and Frank Hagemann, *Child Labour and Education: Evidence from SIMPOC surveys*, International Programme on the Elimination of Child Labour (IPEC), International Labour Organization, Geneva, 2008 (includes Bangladesh and Sri Lanka among 34 country datasets); Guarcello, L., S. Lyon, and F.C. Rosati, *Impact of Children’s Work on School Attendance and Performance: A review of school survey evidence from five countries*, Working Paper, Understanding Children’s Work (UCW) Programme, ILO, UNICEF, and the World Bank, Rome, 2005 (includes Sri Lanka among 5 countries).

20 International Labour Organization, *Forced Labour Convention 1930 (No. 29)*, ILO, Geneva, 28 June 1930, Article 2(1).

21 United Nations, *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*, UN, Geneva, 7 September 1956.

22 Ibid., Article 1(a).

Two additional instruments shape the international law on forced labour. The 1957 Abolition of Forced Labour Convention No. 105 focuses on forced labour participation by the state. The 2014 Protocol to the Forced Labour Convention of 1930 (P029) emphasizes education and enforcement for the prevention of trafficking and reducing the vulnerability of migrants; it also cancels the transitional period measures in the original text.

Among South Asian nations, Sri Lanka is the only one to have ratified all five conventions on slavery and forced labour. Bangladesh, India, Nepal, and Pakistan have ratified all except the most recent Protocol to the Forced Labour Convention (P029). Afghanistan has ratified all except the Forced Labour Convention No. 29 and its subsequent Protocol. The Maldives has only ratified the Forced Labour Convention No. 29 and the Abolition of Forced Labour Convention No. 105. Bhutan has not ratified any of the five (*see Appendix II*).

## TRAFFICKING AND SALE OF CHILDREN

The 1956 Supplementary Convention also calls for measures to abolish “any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour”.<sup>23</sup> ‘Exploitation’ is an essential concept in the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,<sup>24</sup> which defines trafficking in Article 3(a) as: “The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of

abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, **for the purpose of exploitation**” (emphasis added).

Article 3(c) of the Trafficking Protocol clarifies that the means (threat, use of force, coercion, abduction, etc.) are irrelevant when children are involved: “the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article”. This language closely parallels that in the 1956 Supplementary Convention, in which it is inconsequential whether or not the child has given free consent or has a full understanding of the situation. If the purpose is exploitation, the child is a victim of forced labour, (a practice similar to) slavery, and/or trafficking, depending on which convention you apply. In South Asia, all countries except Bhutan and Pakistan have ratified the Trafficking Protocol (*see Appendix II*).

Exploitation has not been defined in international law.<sup>25</sup> The Trafficking Protocol says that exploitation includes, “at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.<sup>26</sup> In distinguishing between sexual exploitation and sexual abuse, the International Working Group on Sexual Exploitation of Children argues that, “a child is a victim of sexual exploitation when she/he takes part in a sexual activity in exchange for something (e.g. gain or benefit, or even the promise of such) from a third party,

23 Ibid., Article 1(d).

24 United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, UN, New York, 15 November 2000. Also known as the Palermo Protocol or the Trafficking Protocol.

25 Plant, Roger, *Modern Slavery: The concepts and their practical implications*, ILO, Geneva, 2014.

26 Trafficking Protocol, Article 3(a).

the perpetrator, or by the child her/himself”.<sup>27</sup> The benefit is not necessarily monetary, but the giving and receipt of that benefit constitutes an exchange, which is lacking from the concept of sexual abuse.

The **element of exchange** is also part of the definition of the sale of children in the 2000 Optional Protocol on the Sale of Children (OPSC), although the child her or himself is being exchanged: “Any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration”.<sup>28</sup> But note that the purpose of exploitation does not need to be present for an act to qualify as the sale of a child.<sup>29</sup> All countries in South Asia have ratified the OPSC (see *Appendix II*).

Instead of focusing on the distinctions among trafficking, forced labour, debt bondage, sexual exploitation, the sale of children, slavery-like practices, forced sexual exploitation of adults, and related phenomena, ‘modern slavery’

has emerged as an umbrella term for these practices. As presented by the Walk Free Foundation, modern slavery encompasses slavery, forced labour, and slavery-like practices, including forced marriage and servile marriage.<sup>30</sup> Modern slavery appears in SDG Target 8.7: “Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms”.<sup>31</sup> There is no definition of modern slavery in international law, and not all UN agencies recognize it as meaningful. Note that a small number of national governments use the term to mean trafficking or sex trafficking and forced labour, but forced marriage is generally excluded.<sup>32</sup> In later sections, we will discuss arguments that link slavery, the sexual exploitation of children, the commercial sexual exploitation of children (CSEC), trafficking of children, and sale of children for child marriage.

27 International Working Group on Sexual Exploitation of Children, *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse*, ECPAT International, Luxembourg, 28 January 2016, p. 24.

28 United Nations, *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, UN, Stockholm, August 1996, Article 2(a).

29 United Nations Children’s Fund, *Handbook on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*, UNICEF, Florence, February 2009, p. 10.

30 Walk Free Foundation, *The Global Slavery Index 2018*, The Minderoo Foundation Pty Ltd., n.p., 2018.

31 <https://unstats.un.org/sdgs/metadata/>

32 For example, the US government equates modern slavery to sex trafficking and compelled labour (see [www.state.gov/what-is-modern-slavery/](http://www.state.gov/what-is-modern-slavery/)). In the UK, the Modern Slavery Act of 2015 covers slavery, servitude, forced labour, and trafficking (see [www.legislation.gov.uk/ukpga/2015/30/contents/enacted](http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted)).

# Child labour in South Asia

More than 21 million children in South Asia are estimated to be engaged in child labour. Rates are highest in Nepal with over 15% of all 5 to 17-year-olds engaged in child labour. Bhutan (15%), Bangladesh (12%) and Pakistan (12%) follow closely; there is insufficient data for Afghanistan to make a good estimate.<sup>33</sup> This section looks at child labour in South Asia.

## LEGAL FRAMEWORK

Appendix II gives a summary of which South Asian countries have ratified key conventions related to child labour. Most have applied the

exceptions allowed in Convention 138 related to the minimum age for work (see Table 3).

**Table 3:** Minimum ages of work, hourly limits, and hazardous work lists in South Asian countries<sup>34</sup>

	Minimum age of employment	Limits on hours for children	Provision for light work	Minimum age for hazardous work	Hazardous work lists
Afghanistan	15 <sup>35</sup>	Yes, 35 hours/week	15	18	Yes
Bangladesh	14, from 12 in domestic work with parental permission	Yes, 7 hours/day; 5 hours/day for factory and mine work	No	18	Yes, omits garment work; factory and mine work allowed for 30 hours/week
Bhutan	13	No	Yes	18	Yes
India	14	Yes	Yes, no age given	18	Yes, omits agriculture, domestic work, garment work, hospitality
Maldives	16	No	Yes, no age given	18	No
Nepal	14	Yes, 6 hours/day	No	18	Yes, omits brickmaking
Pakistan	14 (15 in Punjab)	Yes, 7 hours/day (8 hours/day in Gilgit-Baltistan)	No (Yes in Khyber Pakhtunkhwa from age 12, for 2 hours/day)	18	Yes, some provinces omit brickmaking, domestic work
Sri Lanka	16	Yes	Yes, no age given	18	Yes

33 Khan and Lyon, *Measuring Children's Work in South Asia*, 2015; International Labour Organization and Central Bureau of Nepal, *Nepal Child Labour Report 2021*, ILO, Kathmandu 2021.

34 Sources: NATLEX Database of ILO ([www.ilo.org/dyn/natlex/natlex4.home](http://www.ilo.org/dyn/natlex/natlex4.home)); United Nations Children's Fund, *The Legal Framework for Child Protection in South Asia*, UNICEF, Kathmandu, 2020; and US Department of Labor, *2018 Findings on the Worst Forms of Child Labor*, US Department of Labor, Bureau of International Labor Affairs, Washington, DC, 2018.

35 Article 63(2), *Law on Protection of Child Rights*, Extraordinary Issue No. 1334, Official Gazette of the Islamic Republic of Afghanistan, Ministry of Justice, 11 March 2019.



## PATTERNS IN CHILD LABOUR

Beyond the minimum age for employment, a working child is either involved in developmentally appropriate and safe work (decent youth employment) or harmful work (child labour). Using international standards, a significant proportion of 15 to 17-year-olds working in South Asia are involved in hazardous labour.<sup>36</sup>

As is the global pattern, the likelihood of working goes up with age in all countries in South Asia. Older children are also more likely to find work away from their families.<sup>37</sup> Among workers in the 7 to 14-year-old bracket, the proportion engaged in family businesses ranges from 92.5% in Nepal to 23.4% in Maldives, many of them in agriculture.<sup>38</sup> Only in Bangladesh are children more likely to work for wages as employees than as contributing family members, largely due to girls' employment in urban areas.<sup>39</sup>

Whether or not children combine work with schooling differs according to the country. Among 7 to 14 year-olds, children in Nepal are far more likely than in other places to be both studying and working (representing 31.3% of working children), while Pakistan has the highest percentage of that age group employed but not in school (11.4%).<sup>40</sup> Among 15 to 17-year-olds, 40.4% of Bangladesh's children are out of school and working, followed by 30.3% of Pakistan's youth and 23.5% of Nepal's. Work is less likely

to mean dropping out of school for children of that age in Nepal and Bhutan (where 41.7% and 19.6%, respectively, combine work and school). Each country in South Asia has a significant proportion of children across age groups who are deemed to be not in employment, education, or training (NEET).<sup>41</sup> Sex-disaggregated data shows that in the age range 15–17, girls are more likely to be neither working nor studying than boys in every country except Bhutan; and in Bangladesh, India, and Pakistan, the disparity between girls and boys is wide.<sup>42</sup> This does not mean that girls who are NEET are not working; it is much more likely that girls are engaged in UHS in their natal or marital homes. Data on UHS for Bangladesh, India, and Nepal show that girls are several times more likely than boys to be performing UHS.<sup>43</sup> In Nepal, more than a quarter of girls spend between 15 and 42 hours per week in household work.<sup>44</sup> Other reasons why children are NEET include health issues, disability, and failure to find work on leaving school.<sup>45</sup>

Trend analysis of data on child labour in South Asia is scarce. One study included Bangladesh and India among 19 countries that had data from two points in time, using Bangladesh surveys from 2002–2003 and 2006–2007 and India surveys from 2004 and 2009–2010.<sup>46</sup> In India, surveys asked children to indicate their main activity only, and employment went down and schooling went up in all age groups.<sup>47</sup>

36 Khan and Lyon, *Measuring Children's Work in South Asia*, 2015, p. 15.

37 Reasons for this include lack of access to secondary schools and the increasing opportunity cost of education as a child's age increases.

38 Khan and Lyon, *Measuring Children's Work in South Asia*, 2015, pp. 16–17.

39 Ibid., p. 16; Bangladesh Bureau of Statistics, and International Labour Organization, *Report on Child Labour Survey (CLS), Bangladesh 2013*, Bangladesh Bureau of Statistics, Dhaka, 2015.

40 Khan and Lyon, *Measuring Children's Work in South Asia*, 2015, p. 18.

41 Ibid., p. 18.

42 Ibid., p. 22.

43 Koseleci and Kovrova, *Child Labour in Bangladesh and India*, 2009.

44 International Labour Organization and Central Bureau of Statistics of Nepal, *Nepal Child Labour Report: Based on data drawn from the Nepal Labour Force Survey 2008*, ILO, International Programme on the Elimination of Child Labour (IPEC), Kathmandu, 2012.

45 Biggeri, M., et al., *The Puzzle of "Idle" Children: Neither in school nor performing economic activity. Evidence from six countries*, Working Paper, Understanding Children's Work (UCW) Programme, Rome, October 2003.

46 Guarcello, L., S. Lyon, and C. Valdivia, *Evolution of the Relationship between Child Labour and Education Since 2000: Evidence from 19 developing countries*, Background Paper for the Education for All Global Monitoring Report 2015, Working Paper, Understanding Children's Work (UCW) Programme, ILO, UNICEF, and the World Bank, Rome, March 2015.

47 Ibid., pp. 20–21. Note that asking only about a child's main activity, children are likely to report school as their main activity if they both work and study and to report work as their main activity if they do not attend school.

In Bangladesh, the proportion of children excluded from schooling fell between the two surveys, but for some age groups this was due to an increase in the share of children combining work and school.<sup>48</sup> The Bangladesh survey also asked how many hours children were engaged in employment. Among children in Bangladesh who were only employed (not in school), the average hours of work per week increased in all age groups, from 26 to 43 hours for 7 to 11-year-olds, from 31 to 41 hours for 12 to 14-year-olds, and from 36 to 50 hours for 15 to 17-year-olds.<sup>49</sup> Those combining school and work had a drop in average number of hours worked across age groups.<sup>50</sup> A more recent Child Labour Survey from Bangladesh in 2013 found that 65% of children in hazardous child labour were working more than 42 hours a week, 66% of boys and 63% of girls.<sup>51</sup> Outside the home, children are found working across sectors. In Pakistan, children are involved in dangerous work in agriculture, cotton-growing, date palm farming, livestock, palm leaf mat production, brickmaking, stone crushing, small repairs, waste scavenging, and restaurants.<sup>52</sup>

Although these are forms of ‘hazardous’ child labour, they are not the ‘worst forms of child labour other than hazardous work’. Measuring the worst forms of child labour other than hazardous work presents a real challenge in relation to data reliability, given the hidden nature of much of this work. For example, we know that there are children in armed groups in active conflicts in Afghanistan, India, and Pakistan, but they are difficult to contact and track.<sup>53</sup>

## DEBT BONDAGE

Many children involved in the worst forms of child labour in South Asia are in debt bondage. Debt bondage in South Asia is linked to certain industries, notably garments and craft production, agriculture, brickmaking, and extractive industries such as mining. In some of these sectors, bondage involves the whole family as men, women, teenagers, and small children work to pay off debts that persist after months and years, often because wages are manipulated and abusive subsistence costs deducted. In Nepal, groups of bonded agricultural labourers—the *kamaiya* (males) and *kamalari* (females)—were released from their debts by law and civic action in 2000, as were the *haliya* in 2008.<sup>54</sup> Unfortunately, years later, the children of some of those families have returned to the *kamaiya/kamalari/haliya* system due to lack of alternatives, the desire to leave home, and/or the promise of receiving an education. Aged 8 to 18 years, some children have found it difficult to sustain a combined workload of school and agricultural labour, and others have not been allowed to attend school often enough to pass. Some girls have reportedly suffered sexual abuse.<sup>55</sup>

Another sector with considerable numbers of bonded labourers is brickmaking.<sup>56</sup> Brick kiln workers in India, Nepal, Bangladesh, Afghanistan, and Pakistan suffer entrapment in a cycle of survival and debt that denies their children education and harms their health.<sup>57</sup> A study in Pakistan found that children raised in

48 Ibid., pp. 6–7.

49 Ibid., pp. 13–14.

50 Ibid., pp. 13–14.

51 Bangladesh Bureau of Statistics and International Labour Organization, *Report on Child Labour Survey (CLS), Bangladesh 2013*, 2015, p. 86.

52 International Labour Office, International Programme on the Elimination of Child Labour (IPEC), *The Effect of Work on Children’s Health: Report of research on ten occupational sectors in Pakistan*, Geneva, ILO, 2013.

53 Khan and Lyon, *Measuring Children’s Work in South Asia*, 2015, p. 10; United Nations, *Report of the Special Representative of the Secretary-General for Children and Armed Conflict to the Human Rights Council of the United Nations General Assembly*, 24 December 2019, A/HRC/43/38, United Nations General Assembly, New York, 2019.

54 Lohenoja, Camilla, ‘From Subordination to “Own Work”’: Perceived life changes of former haliya bonded labourers after their liberation,’ *Asia in Focus*, no. 1, 2015, pp. 31–38; Giri, Birendra R., ‘The Bonded Labor System in Nepal: Exploring haliya and kamaiya children’s life-worlds,’ *HIMALAYA*, vol. 29, no. 1, 1 December 2010, pp. 28–41.

55 Giri, ‘The Bonded Labor System in Nepal,’ 2010, pp. 28–41.

56 Ibid., p. 40.

57 International Labour Office, International Programme on the Elimination of Child Labour (IPEC), *Toil in Soil: Impact of work at brick kilns on health of children and youth – Report of research in 5 districts of Pakistan*, ILO, Geneva, 2013; Anti-Slavery International and Volunteers for Social Justice, *Slavery in India’s Brick Kilns & the Payment System: Way forward in the fight for fair wages, decent work and eradication of slavery*, Anti-Slavery International, n.p., September 2017; International Labour Organization and United Nations Children’s Fund, *Breaking the Mould: Occupational safety hazards faced by children working in brick kilns in Afghanistan*, ILO, International Programme on the Elimination of Child Labour (IPEC), Geneva, 2015.

kiln families start helping with the work “as soon as they are able to lift a brick”.<sup>58</sup> Where families are resident on the kiln property, the working children can be considered to be engaged in unpaid family work.<sup>59</sup> Bachpan Bachao Andolan (BBA), an Indian NGO, found that 21% of children younger than 15 rescued from child labour were working with their families.<sup>60</sup>

Debt bondage is also experienced by adolescent girls and young women in garment and fabric production. The *sumangali* system in some parts of India, which targets girls aged 13 to 17, promises girls a large lump sum on the completion of three years of work, in addition to regular small payments. Families feel safe sending their daughters under such a contract, as the girls are rarely let out of the hostels. Advertised as a way to generate a dowry, it often fails as girls fall sick from the hazardous conditions.<sup>61</sup>

## OTHER WORK

Although not all cases can be clearly classified as child labour, overall, agriculture claims the highest proportion of young workers in nearly every South Asian country. Boys and girls are both similarly engaged in agricultural work in Sri Lanka, Pakistan, and Nepal, up to age 14. In India, girls are more likely than boys to be working in agriculture; in Bangladesh, the reverse is true, with girls more likely to be involved in domestic work, manufacturing, and services. Urban areas have more children in commerce, service delivery, and manufacturing than rural areas.<sup>62</sup>

## REGIONAL RESPONSE

SAARC’s SAIEVAC launched the South Asia Strategy against Child Labour in 2013 with the support of the South Asia Coordinating Group on Action against Violence against Children (SACG). The Regional Action Plan for the Prevention and Elimination of All Forms of Child Labour in South Asia for 2016–2021 prioritizes the effective enforcement and awareness building of labour laws, support for improved response systems such as labour inspections and child helplines, and advocacy with national lawmakers. Recognizing the social and economic conditions that enable child labour, the Plan also calls for strengthening national education systems, mainstreaming child labour issues across national and regional development plans, improved social protection schemes for vulnerable children, and better data collection. There are also commitments to build capacity for response and prevention through skills building and exchanges with national partners.<sup>63</sup>

At the national level, most countries in South Asia have made progress in building legislative frameworks and designing initiatives to stop child labour, even if it is difficult to measure that progress. The US Department of Labor, in *2018 Findings on the Worst Forms of Child Labour*, reports that India has made significant advancements in preventing child labour, Bangladesh, Nepal, Pakistan, and Sri Lanka have made moderate advancements, Bhutan and the Maldives have made minimal advancements, and Afghanistan has made no advancements in recent years.<sup>64</sup>

58 Ali, Mohammad Abbas, Mohammad Vaqas Ali, and Faiza Abbas, ‘Hidden Hazardous Child Labor as a Complex Human Rights Phenomenon: A case study of child labor in Pakistan’s brick-making industry,’ *Cogent Social Sciences*, vol. 3, no. 1, 24 August 2017, pp. 1–23, p. 9.

59 Ibid.

60 Bachpan Bachao Andolan (BBA), *Employment of Children in Hazardous and Family Run Business*, BBA, n.p., n.d., p. 8.

61 Anti-Slavery International, *Slavery on the High Street: Forced labour in the manufacture of garments for international brands*, Anti-Slavery International, n.p., June 2012.

62 Khan and Lyon, *Measuring Children’s Work in South Asia*, 2015.

63 SAIEVAC, *Regional Action Plan for the Prevention and Elimination of All Forms of Child Labour in South Asia 2016–2021*, 2016.

64 US Department of Labor, *2018 Findings on the Worst Forms of Child Labor*, 2018 (individual country reports available at [www.dol.gov/agencies/ilab/resources/reports/child-labor/\[country name\]](http://www.dol.gov/agencies/ilab/resources/reports/child-labor/[country name]))

# The world of marriage

Common definitions of marriage state that it is the binding of spouses in a familial union that is recognized legally, contractually, religiously, and socially.<sup>65</sup> The validity of a marriage may differ from the perspectives of statutory versus customary law, and while marriage is regulated by international and national laws, in most societies moral rather than legal authorities are the ones looked to for legitimating a marriage. That is why, for example, religious leaders often conduct weddings. In the discourse on child, early, and forced marriage, informal union is often included under the umbrella of marriage, so that cohabiting partners are included regardless of legal marital status.

## SERVILE MARRIAGE

The 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery includes three points related to marriage to be considered 'practices similar to slavery':

- i. *A woman without the right to refuse is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or*
- ii. *The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or*
- iii. *A woman on the death of her husband is liable to be inherited by another person.*

Although the Convention does not use the term 'servile marriage', this term has been used to refer to these situations collectively. These also clearly fit within the rubric of 'forced marriage'. The Special Rapporteur on contemporary forms of slavery, in her 2012 thematic report on servile marriage, calls child marriage 'domestic servitude'.<sup>66</sup>

## FORCED MARRIAGE, EARLY MARRIAGE, AND CHILD MARRIAGE

The treatment of marriage in international law consistently stresses a threshold of **eligibility** for marriage and **consent** to marriage. Marriage is addressed in the earliest of UN conventions, the Universal Declaration of Human Rights of 1948. Article (16) of this convention states that, "marriage shall be entered into only with the full and free consent of both parties". The 1962 Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages requires nations to set a minimum age of marriage and effectuate marriage registration. The minimum age is not prescribed. It also calls for the abolishment of customs and practices that do not involve complete freedom about the choice of spouse, "eliminating completely child marriages and the betrothal of young girls before the age of puberty". Notably, the only South Asian nation that has ratified the Convention on Consent to Marriage is Bangladesh,<sup>67</sup> and it did so noting two reservations in relation to the first two articles, both of which relate to age of marriage:

65 [www.merriam-webster.com/dictionary/marriage](http://www.merriam-webster.com/dictionary/marriage); [www.dictionary.com/browse/marriage](http://www.dictionary.com/browse/marriage)

66 United Nations, *Report of the Special Rapporteur on Contemporary forms of Slavery, including its Causes and Consequences*, Gulnara Shahinian, Thematic Report on Servile Marriage, A/HRC/21/41, United Nations, New York, 16 July 2012, Paragraph 74.

67 Sri Lanka signed the convention, but did not ratify it.

**Articles 1 and 2:**

*The Government of the People's Republic of Bangladesh reserves the right to apply the provisions of articles 1 and 2 in so far as they relate to the question of legal validity of child marriage, in accordance with the Personal Laws of different religious communities of the country.*

**Article 2:**

*The Government of the People's Republic of Bangladesh, in acceding to the Convention will not be bound by the exception clause of article 2 viz. except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.*<sup>68</sup>

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) of 1979 again establishes the right to freely choose a spouse and to enter marriage with 'free and full consent'. Article 16(2) states that "the betrothal and marriage of a child shall have no legal effect"—but without defining a child. Several States have objected to Article 16, notwithstanding more recent strictures from the UN prohibiting nations from holding reservations on specific articles of conventions to which they are signatories.<sup>69</sup> However, in South Asia, only India has registered a reservation in relation to Article 16(2), although it related to marriage registration, not age of marriage; Bangladesh and the Maldives have registered reservations about other parts of Article 16 related to equality within marriage (see *Appendix II*).<sup>70</sup>

Each of these conventions was agreed upon before the Convention on the Rights of the Child defined a child as a person below the age of 18. The CRC makes no mention of marriage, although it does call for the abolishment of

"traditional practices detrimental to the health of children". In 1994, the CEDAW Committee, in General Recommendation 21, called for a minimum age of marriage that is the same for both sexes and, referring to the CRC, states that that age should be 18 for both men and women. Article 16(2) adds that, "In some countries, the betrothal of girls or undertakings by family members on their behalf is permitted. Such measures contravene not only the Convention, but also a woman's right to freely choose her partner".<sup>71</sup>

The CEDAW Committee also explains why premature marriage can be harmful: "When men and women marry, they assume important responsibilities. Consequently, marriage should not be permitted before they have attained full maturity and capacity to act. According to the World Health Organization, when minors, particularly girls, marry and have children, their health can be adversely affected and their education is impeded. As a result their economic autonomy is restricted".<sup>72</sup>

In 1999, the CEDAW Committee included 'marriage of girl children' under 'gender-based violence' (GBV) in its General Recommendation 24.<sup>73</sup> It also linked 'betrothal and marriage of children' to the 'physical and emotional harm which arise from early childbirth'.<sup>74</sup> More recently, the CEDAW has discussed child marriage as a 'harmful practice', rather than a form of GBV.<sup>75</sup>

While the term 'child marriage' had been introduced as early as the 1962 Consent to Marriage convention, 'early marriage' first appeared in the CRC General Comment 4 (2003) on adolescent health and development, with a recommendation to set the minimum

68 [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVI-3&chapter=16&clang=\\_en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVI-3&chapter=16&clang=_en#EndDec)

69 [www.un.org/womenwatch/daw/cedaw/reservations.htm](http://www.un.org/womenwatch/daw/cedaw/reservations.htm)

70 [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en)

71 CEDAW, General Recommendation 21, Paragraph 38.

72 *Ibid.*, Paragraph 36.

73 *Ibid.*, Paragraph 15.

74 *Ibid.*, Paragraph 28.

75 See the Joint General Comment No. 31 from the CEDAW/No. 18 from the CRC Committee.

age of marriage to 18, with or without parental consent.<sup>76</sup> In the 2011 Resolution 66/140 on the Girl Child, the United Nations General Assembly (UNGA) references ‘early marriage, including child marriage’ in the preamble, but otherwise refers to ‘child and forced marriage’.

In 2014, two documents attempted to clarify the terms child marriage, early marriage, and forced marriage. Joint General Comment No. 31 from the CEDAW/No. 18 from the CRC Committee states that: “Child marriage, also referred to as early marriage, is any marriage where at least one of the parties is under 18 years of age [...]. A child marriage is considered to be a form of forced marriage, given that one and/or both parties have not expressed full, free and informed consent”.<sup>77</sup> Note that the Committees make an allowance for highly capable children: “As a matter of respecting the child’s evolving capacities and autonomy in making decisions that affect her or his life, in exceptional circumstances a marriage of a

mature, capable child below the age of 18 may be allowed provided that the child is at least 16 years old and that such decisions are made by a judge based on legitimate exceptional grounds defined by law and on the evidence of maturity without deference to cultures and traditions”. Forced marriages are also defined as “marriages in which one and/or both parties have not personally expressed their full and free consent to the union”.<sup>78</sup>

Also in 2014, the Office of the High Commissioner for Human Rights (OHCHR) issued a report on Preventing and Eliminating Child, Early, and Forced Marriage. Child marriage is defined as one in which at least one of the parties is a child at the time of marriage, relying on the CRC definition of a child as a person below the age of 18 years “unless under the law applicable to the child, majority is attained earlier”.<sup>79</sup> The following paragraph notes a distinction between child marriage and early marriage. Although the terms are often used interchangeably, early

## Defining child, early, and forced marriage

### Joint General Comment No. 31 from the CEDAW / No. 18 from the CRC committees:

“Child marriage, also referred to as early marriage, is any marriage where at least one of the parties is under 18 years of age [...]. A child marriage is considered to be a form of forced marriage, given that one and/or both parties have not expressed full, free and informed consent.”

Forced marriages are “marriages in which one and/or both parties have not personally expressed their full and free consent to the union”.

### Preventing and Eliminating Child, Early, and Forced Marriage, Office of the High Commissioner for Human Rights (OHCHR):

Child marriage is one in which at least one of the parties is a child at the time of marriage, that is, below the age of 18 years “unless under the law applicable to the child, majority is attained earlier”.

Early marriage refers to marriages involving a person aged below 18 in countries where the age of majority is attained earlier or upon marriage. Early marriage can also refer to marriages where both spouses are 18 or older, but other factors make them unready to consent to marriage, such as their level of physical, emotional, sexual and psychosocial development, or a lack of information regarding the person’s life options.

Forced marriage is “any marriage which occurs without the full and free consent of one or both of the parties and/or where one or both of the parties is/are unable to end or leave the marriage, including as a result of duress or intense social or family pressure”.

<sup>76</sup> CRC General Comment 4, Paragraph 20.

<sup>77</sup> Joint General Comment No. 31 from the CEDAW/No. 18 from the CRC Committee.

<sup>78</sup> Joint General Comment No. 31 from the CEDAW/No. 18 from the CRC Committee.

<sup>79</sup> Office of the High Commissioner for Human Rights (OHCHR), *Preventing and Eliminating Child, Early, and Forced Marriage, A/ HRC/26/22*, 2 April 2014.

marriage “refers to marriages involving a person aged below 18 in countries where the age of majority is attained earlier or upon marriage. Early marriage can also refer to marriages where both spouses are 18 or older, but other factors make them unready to consent to marriage, such as their level of physical, emotional, sexual or psychosocial development, or a lack of information regarding their life options”.<sup>80</sup> Here, the authors are acknowledging that under national laws that set the age of majority below 18, a person marrying at, say, age 17, would not in that context be considered a child and the term ‘child marriage’ may be problematic. Nonetheless, ‘early marriage’ would apply, as it would in any country where majority is automatically granted upon marriage.

The OHCHR also defines forced marriage as “any marriage which occurs without the full and free consent of one or both of the parties and/or where one or both of the parties is/are unable to end or leave the marriage, including as a result of duress or intense social or family pressure”.<sup>81</sup> The second half of this sentence suggests that consent to marriage is not a static factor, and that it incorporates both consent to be married and consent to stay married.

In summary, among these three terms (child marriage, early marriage, and forced marriage), ‘forced marriage’ is the easiest to define, as lacking in the free and full consent of one or both parties. In 2017, global patterns of forced marriage were estimated in *Global Estimates of Modern Slavery*. The underlying surveys included a series of questions to capture whether or not respondents were forced to marry. After data extrapolation, 15.4 million people were estimated to be in forced marriages.<sup>82</sup> Forced marriage affects adult women and men as well as children; some of the forms it takes in South Asia are discussed below.

The term ‘early marriage’ can be used to capture those marriages that would be considered child marriages under international or national law, but not both, due to variations in legal frameworks. This can include marriages that take place after age 18, but before the legal age in a country, given that some nations have minimum ages that are higher than 18 (for example, Nepal), or marriages that take place after the domestic attainment of majority (therefore, not involving a child), but before the age of 18.

Some authors have argued that the terms ‘forced marriage’ and ‘early marriage’ together cover all the meaningful distinctions within the set of marriages that violate principles of consent and readiness, and that ‘child marriage’ adds nothing new.<sup>83</sup> Yet, ‘child marriage’ is the most widely used term in child protection and girls’ empowerment discourses and is the only one that has a fully operationalized global measure through the Multiple Indicator Cluster Surveys (MICS) and Demographic and Health Surveys (DHS), namely, the percentage of women aged 20–24 who were married before the age of 18. This measure has also been applied in SDG 5.3, the target to eliminate all harmful practices, including child, early, and forced marriage and female genital mutilation.

The above formulation—child, early and forced marriage (CEFM)—could either be inclusive, referring to any marriage that fits one of those three terms, or intersectional, which would mean marriages that fit all three of the terms. The fact that most key documents still begin with definitions of each term separately suggests that they should continue to be treated as three separate phenomena and that CEFM is an inclusive umbrella category. However, that is subject to interpretation. End Child Prostitution in Asian Tourism (ECPAT) International and Plan International present an alternative view:

<sup>80</sup> Ibid., Paragraph 5.

<sup>81</sup> Ibid., Paragraph 6.

<sup>82</sup> International Labour Organization, Walk Free Foundation, and International Organization for Migration, *Global Estimates of Modern Slavery: Forced labour and forced marriage*, ILO, Geneva, 2017.

<sup>83</sup> Sexual Rights Initiative, *Analysis of the Language of Child, Early, and Forced Marriages*, n.p., August 2013.

that the emergence of CEFM indicates that the international discourse has settled on, or is approaching, the view that these three categories of marriage are conceptually merged, i.e., a child marriage is an early marriage and a forced marriage, and that we use the term CEFM to stress this.<sup>84</sup>

Whatever the intention or interpretation of CEFM, it has become more common in usage, as international efforts against these forms of marriage have increased. Some still prefer to use ‘child marriage’ or ‘early and child marriage (ECM)’ to exclude the forced marriage of adults, but others contend that ECM collapses a range of phenomena into a singular concept that fails to capture multiple realities and contributes to misguided policy.<sup>85</sup> Partners for Law in Development argues that ‘early marriage’ is the best term for the Indian context in light of the increasing trend towards ‘self-arranged’ marriages. ‘Early marriage’ allows for the range of evolving capacities of the adolescent, as called for in CRC’s General Comment No. 4 on Adolescent Health and Development.<sup>86</sup>

## CONSENT

The above discussion demonstrates the centrality of the concept of consent to child marriage. Several UN documents say that child marriage is forced marriage, because of the issue of consent. The Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, put it in strong terms in her 2007 report focusing on forced marriage in the context of trafficking: “Since children are, by definition, incapable of consent or of exercising the right of refusal, child marriage is forced marriage, and as such violates fundamental human rights standards and

must therefore be strictly prohibited”.<sup>87</sup> The Joint General Comment No. 31 (CEDAW)/No. 18 (CRC) states that, “A child marriage is considered to be a form of forced marriage, given that one and/or both parties have not expressed full, free and informed consent”. But the statement then goes on to note the need to respect the child’s evolving capacities and that some children from the age of 16 may be mature and capable enough for marriage. These situations should be exceptional and approved by a judge acting on the basis of existing law.<sup>88</sup>

The CRC Committee stresses that children’s views must be heard, respected and given due weight in line with her or his evolving capacities. In South Asia, girls participate in decisions about their marriages to different degrees, from not at all, that is, having no knowledge of an impending marriage, to initiating a marriage through elopement, a spectrum that is discussed more below. What consent looks like is culturally shaped and interpreted, and girls’ agency can be expressed in different ways.<sup>89</sup> Given that ‘free and full consent’ is a concept that appears repeatedly in international law, particularly, but not only, regarding marriage, it is surprising that there has not been more examination or parsing of what it means, for adults and for children.

In addition, the CRC calls for the establishment of a minimum age of consent to sexual activity and that it be the same age for males and females. Furthermore, the CRC’s General Comment No. 20 warns against criminalizing “factually consensual and non-exploitative sexual activity” between adolescents of similar ages.<sup>90</sup> For more on ages of consent to sexual activity in South Asia, see the next section; children’s agency is elaborated on later in this paper.

84 Chaudhuri, Eliana Riggio, *Unrecognised Sexual Abuse and Exploitation of Children in Child, Early and Forced Marriage*, ECPAT International and Plan International, Bangkok, October 2015, p. 4.

85 Khanna, Akshay, *Searching for the Boys: A Review of Literature, Analyses and Practices Relating to Early and Child Marriages, with a Focus on Boys, Men and Masculinity*, American Jewish World Service, n.p., n.d., pp. 2–3.

86 Mehra, Madhu and Amrita Nandy, *Why Girls Run Away to Marry: Adolescent Realities and Socio-Legal Responses in India*, Adolescent Sexuality and Early Marriage Series, No. 1, Partners for Law in Development, New Delhi, 2019, p. 70.

87 United Nations, *Report of the Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, especially Women and Children*, Sigma Huda, A/HRC/4/23, New York, 24 January 2007, Paragraph 21.

88 Joint General Comment No. 31 (CEDAW)/ No. 18 (CRC), Paragraph 20.

89 For example, see United Nations Assistance Mission in Afghanistan and Office of the United Nations High Commissioner for Human Rights, *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan*, UNAMA, Kabul, 9 December 2010, p. 10; Taylor, Alice Y., et al., ‘Child Marriages and Unions in Latin America: Understanding the roles of agency and social norms,’ *Journal of Adolescent Health*, vol. 64, 2019, pp. S45–S31.

90 CRC Committee General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence, Paragraph 40.



# Marriage in South Asia

South Asia has the world’s highest number of married children, accounting for 40% of the global total. Rates of child marriage in South Asia have fallen by a third in the last decade,<sup>91</sup> driven by a considerable decline in child marriage in India. The greatest progress in the region has been among girls younger than 15.<sup>92</sup> However, the trend is uneven across countries, and there remain hotspots within certain geographic zones and ethnicities. For girls, Bangladesh has the highest rate among the eight South Asian nations, followed by Nepal and Afghanistan.<sup>93</sup> Boys are married at much lower rates, although many surveys do not ask the question of male respondents, and so the data is less reliable. Nepal probably has the highest rate of boys entering marriage, perhaps as high as 34% of all adult men<sup>94</sup> and 10% of men currently aged 20–24,<sup>95</sup> followed by Afghanistan and India.<sup>96</sup>

This section discusses common marriage practices and less common, but qualitatively unique, practices in South Asia.

## LEGAL FRAMEWORKS

In South Asia, many countries have established different ages of marriage for girls than for boys (see Table 4). The age of consent for sex is legislated for girls in each country, but not

always for boys. In two countries, and in a third of countries for the Muslim population, sex is proscribed altogether when outside of marriage.

**Table 4. Ages of consent to sex and minimum age of marriage in South Asian countries<sup>97</sup>**

	Age of consent to sex <sup>98</sup>		Age of marriage			
	Girls	Boys	Girls	Boys	With parental or court approval	
					Girls	Boys
Afghanistan	Upon marriage		16	18	15	-
Bangladesh	14	None	18	21	No minimum	No minimum
Bhutan	18	18	16	18	-	-
India	18	18	18	21	-	-
Maldives	Upon marriage		18	18	-	-
Nepal	16	None	20	20	-	-
Pakistan	16 (upon marriage for Muslims)	None (upon marriage for Muslims)	16 (18 in Sindh)	18	-	-
Sri Lanka	16 (12 if married)	16	18	18	No minimum for Muslims	No minimum for Muslims

91 United Nations Children’s Fund, *Child Marriage: Latest trends and future prospects*, UNICEF, New York, 2018.

92 United Nations Children’s Fund and United Nations Population Fund, *Child Marriage in South Asia: An evidence review*, UNICEF, Kathmandu, 2019, ch. 3.

93 See [www.girlsnotbrides.org/where-does-it-happen/atlas/](http://www.girlsnotbrides.org/where-does-it-happen/atlas/).

94 Plan International Nepal, et al., *Child Marriage in Nepal: Research report*, 2012, p. 21.

95 Ministry of Health Nepal, et al., *Nepal Demographic and Health Survey 2016*, 2017.

96 United Nations Children’s Fund and United Nations Population Fund, *Child Marriage in South Asia*, 2019, ch. 3; United Nations Children’s Fund, *Child Marriage in Afghanistan: Changing the narrative*, UNICEF, n.p., July 2018, p. 21.

97 Source: United Nations Educational, Scientific, and Cultural Organization, *Young People and the Law in Asia and the Pacific: A review of laws and policies affecting young people’s access to sexual and reproductive health and HIV services*, UNESCO, Bangkok, 2013; and United Nations Children’s Fund Child, *The Legal Framework for Child Protection in South Asia*, 2020.

98 For heterosexual sex only.

## ARRANGED VERSUS LOVE MARRIAGES

Many marriages in South Asia are arranged through the efforts of extended family members and/or marriage brokers.<sup>99</sup> As an example, in a 2006 survey in Bangladesh, 79% of women said they met their husbands for the first time at their wedding, the percentage dropping to 76% for the youngest cohort.<sup>100</sup> Yet, this does not necessarily mean that none of the women and girls getting married had input into the decisions being made. In India, 60% of unmarried male youth aged 15–24 and 41% of unmarried females in the same age group reported that their parents had sought their opinion about the timing of marriage. The proportion for youth already married was lower, at 45% for males and 20% for females.<sup>101</sup> An earlier survey of rural adolescents in Bangladesh found that while 45% said they had no say in their marriage, 30% said they were consulted, and 21% reported that they chose their spouses and then sought their parents' approval.<sup>102</sup>

The latter scenario is often referred to as a 'love marriage'. Adolescents (or adults) begin a relationship and then seek their families'

approval to marry. There is evidence that the proportion of unions that are love marriages is increasing in most countries in the region, and that these are less likely to be child marriages.<sup>103</sup> However, love marriages are highly stigmatized in some places, including Pakistan.<sup>104</sup> Elopements, too, are on the rise. An elopement—also called a 'self-initiated marriage'—happens when a young person knows their parents will not approve of a marriage, due to inter-caste or inter-religious prohibitions or other reasons, or their parents have already disapproved of the match. It often involves the couple 'running away' or cohabitating, presumably engaging in sexual activity together to solidify a union. Elopements in Bangladesh and Nepal, if not elsewhere, are more likely to be child marriages,<sup>105</sup> and there is much fear among parents that their children will take matters into their own hands in this way, rather than letting their families find a socially appropriate mate.<sup>106</sup> Some parents say they married their daughters early to prevent elopement.<sup>107</sup> In India and Afghanistan, laws against child marriage and kidnapping have been used to prosecute boys who elope and their families.<sup>108</sup>

99 It is difficult to find data on the percentage of marriages that are arranged. International Institute for Population Sciences and Population Council, *Youth in India: Situation and needs 2006–2007*, IIPS, Mumbai, 2010, Chapter 10 provides evidence that youth largely prefer arranged marriages to love marriages.

100 Amin, Sajeda, and Maitreyi Das, 'Marriage Continuity and Change in Bangladesh,' in *Marrying in South Asia: Shifting concepts, changing practices in a globalising world*, edited by Ravinder Kaur and Rajni Palriwala, Orient Blackswan Private Limited, New Delhi, 2014, pp. 89–115, p. 94.

101 International Institute for Population Sciences and Population Council, *Youth in India*, 2010, pp. 224–226.

102 International Centre for Diarrhoeal Disease Research, Bangladesh (icddr,b) and Associates for Community and Population Research, *Child Marriage in Bangladesh: Findings from a national survey*, Plan International Bangladesh, Dhaka, 2013.

103 United Nations Children's Fund and United Nations Population Fund, *Child Marriage in South Asia*, 2019, ch. 3; note that the Maldives may be moving in the other direction, due to the spread of conservative Islam.

104 Coram Children's Legal Centre and Plan International, *Getting the Evidence: Asia Child Marriage Initiative research report*, Plan International Asia Regional Office, Bangkok, 2015.

105 United Nations Children's Fund and United Nations Population Fund, *Child Marriage in South Asia*, 2019; Ghimire, Anita, and Fiona Samuels, *Continuity and Change in Social Norms for Nepali Adolescent Girls: The drivers and inhibitors of early marriage and education*, Overseas Development Institute, London, 2014, p. 5.

106 Maycock, M., et al., *"How Can You be a Marda if You Beat Your Wife?": Notions of masculinities and violence in Eastern Nepal*, Saferworld, Kathmandu, 2014, p. 14.

107 International Center for Research on Women, *Asia Child Marriage Initiative: Summary of Research in Bangladesh, India and Nepal*, Plan International Asia Regional Office, Bangkok, 2013, p. 21; International Center for Research on Women, *Child Marriage in Bangladesh*, Asia Child Marriage Initiative, Plan International Asia Regional Office, Bangkok, 2013, p. 10; Ghimire and Samuels, *Continuity and Change in Social Norms for Nepali Adolescent Girls*, 2014, p. 5; Karim, et al., *The Cultural Context of Child Marriage in Nepal and Bangladesh*, 2016, p. 39.

108 Mehra, Madhu, *Grassroots Experiences of Using the Prohibition of Child Marriage Act, 2006*, Adolescent Sexuality and Early Marriage Series, No. 2, Partners for Law in Development, New Delhi, 2019; United Nations Children's Fund and United Nations Population Fund, *Child Marriage in South Asia*, 2019, ch. 3.4.

## DOWRY AND BRIDE PRICE

One advantage of elopement for a girl's family is that they do not have to pay a dowry.<sup>109</sup> Dowry is illegal in most countries, but still practised under the guise of gifts from the bride's family to the groom's. Marital exchanges that go the other way, from the groom's side to the bride's side, are called the 'bride price' in anthropological academia, but in common usage, 'dowry' is used for both forms. Patterns of dowry and bride price vary widely across the region. In Bangladesh and the southern part of the Terai in Nepal, dowry demands are said to be a driver of child marriage, as parents believe that the younger the bride, the lower the dowry they will have to pay.<sup>110</sup> At least one study confirms their perceptions, with dowry in Bangladesh tripling between the ages of 12 and 18.<sup>111</sup> Bride price is practised in parts of Afghanistan and Pakistan and in some communities in India. Like dowry, it is also said to drive child marriage, because younger brides are more desirable and, therefore, bring a higher bride price.

However, marital exchanges can be quite complicated. In some ethnic groups in the southern Terai and bordering India, engagement and marriage is a multi-stage process with several points of exchange of money, livestock, material goods, and personal items. Children may be 'married' when still very young, but not reside together until their families deem it time, often after the girl becomes physically mature

(usually after menarche).<sup>112</sup> After a year or so, the bride can return to her parents' home for several months. There are points of ritual exchange at certain moments in the process. Communities report that in recent years, the period of time between marriage and *gauna* (the beginning of cohabitation), has shortened, with children marrying later (ages 12–14) but reaching *gauna* within a few years (ages 15–16), rather than after several years. There is some evidence that the lower dowry required for a younger girl may be offset by the cost of the exchanges that happen over a longer stretch of time between marriage and *gauna*.<sup>113</sup>

## OTHER FORMS OF MARRIAGE

There are other forms of child marriage in South Asia, some of which clearly qualify as forced marriages of girls.<sup>114</sup> Among these are exchange marriages, in which families swap daughters to marry their sons or other males. In Afghanistan, the practice is called *badal*, and in at least one study, it was found to account for 30% of child marriages.<sup>115</sup> In Pakistan, exchange marriage is known as *watta satta*; in Rajasthan, *atta satta*.<sup>116</sup> In other cases, a family will marry more than one of their daughters in a single ceremony.<sup>117</sup> There are other kinds of group marriages in India and Nepal linked to religiously auspicious days, in which a Hindu priest will marry several young pairs of children at once. The main incentive for marriages like these is economic—an exchange of daughters reduces dowry costs; marrying

109 Karim, et al., *The Cultural Context of Child Marriage in Nepal and Bangladesh*, 2016, p. 32; United Nations Children's Fund and United Nations Population Fund, *Child Marriage in South Asia*, 2019, ch. 4.5.

110 Karim, et al., *The Cultural Context of Child Marriage in Nepal and Bangladesh*, 2016, pp. 31–35; International Center for Research on Women, *Asia Child Marriage Initiative: Summary of research*, 2013, p. 29.

111 Amin, Sajeda, and Ashish Bajracharya, *Costs of Marriage—Marriage transactions in the developing world*, Promoting Healthy, Safe and Productive Transitions to Adulthood Series Brief no. 35, Population Council, n.p., March 2011, p. 3.

112 Plan International Nepal, et al., *Child Marriage in Nepal*, 2012, p. 32; CARE, *Dads Too Soon*, 2015.

113 Karim, et al., *The Cultural Context of Child Marriage in Nepal and Bangladesh*, 2016.

114 For more on marriage forms in South Asia, see United Nations Population Fund and United Nations Children's Fund, *Child Marriage and Other Harmful Practices: A desk review of evidence from South Asia*, UNFPA, Bangkok, 2020, pp. 41–44.

115 Afghanistan Independent Human Rights Commission, *Report on the Situation of Economic and Social Rights in Afghanistan*, AIHRC, Kabul, November/December 2009.

116 Lane, Samuel, *Stealing Innocence: Child marriage in Pakistan*, Abo Academy University and Plan International Finland, 2011, p. 40; United Nations Children's Fund Child, *Child Marriage in Afghanistan*, 2018, p. 68; Plan International Pakistan, *A Research Study on Child Marriage: Report*, Plan International, n.p., March 2013, p. 21.

117 International Center for Research on Women, *Child Marriage in India*, 2013, p. 11.

all your daughters at once reduces ceremonial costs—and priests are seen to be providing a service for the poor in marrying their children for free.<sup>118</sup>

*Baad, vani, or swara* marriages are a kind of debt settlement between families or tribes in conflict in parts of Afghanistan and Pakistan. Daughters or other females are given to resolve a financial debt or compensate one family for a murder, sexual assault, or other serious crime against a member of another family. Such settlements are usually negotiated in customary courts. *Vulver* is the outright sale of a girl to a man, reported to be practised in Pakistan.<sup>119</sup>

In Afghanistan, it is not uncommon for a rapist to avoid punishment by marrying his victim.<sup>120</sup> These are not always child marriages, but they are forced marriages.

The *Devadasi* practice in some parts of India involves the ‘marriage’ or dedication of young girls to a deity or temple. Girls live in servitude to priests, perform at ceremonies, and are often sexually exploited by priests or wealthy patrons.<sup>121</sup>

## REGIONAL RESPONSE

In 2014, SAIEVAC adopted the Kathmandu Call for Action to End Child Marriage in South Asia. This campaign recognizes that child marriage is a manifestation of women and girls’ unequal status in society and “a human rights violation which triggers a continuum of harms”.<sup>122</sup> It asks states to harmonize laws related to child marriage, including those on protection from sexual violence, birth and marriage registration, and property and citizenship rights. In strengthening policy implementation, the Kathmandu Call to Action promotes the prevention of child marriage and the provision of various forms of support for married girls or girls who have left a marriage, including psycho-social support and economic empowerment.

The accompanying Regional Action Plan to End Child Marriage in South Asia (2015–2018)<sup>123</sup> focuses on legal frameworks, access to quality education, community mobilization and protection mechanisms, and alternative pathways for girls. It also contains plans to improve the evidence base on married girls and services for them in education, sexual and reproductive health, skills and employment, and redressing violence. Since the expiration of the Regional Action Plan, progress under it has been under review, with a view to updating it.<sup>124</sup>

118 International Center for Research on Women, *Asia Child Marriage Initiative*, 2013, p. 28.

119 Lane, *Stealing Innocence*, 2011, p. 41.

120 Equality Now, *The World’s Shame: The global rape epidemic – how laws around the world are failing to protect women and children*, Equality Now, New York, February 2017, p. 19.

121 United Nations Children’s Fund Child, *The Legal Framework for Child Protection in South Asia*, 2020; Kidron, Beeban, ‘Devadasis are a Cursed Community,’ *The Guardian* (US Edition), 21 January 2011.

122 SAIEVAC, *Kathmandu Call for Action to End Child Marriage in South Asia*, 2014, p. 3, <<https://reproductiverights.org/kathmandu-call-for-action-to-end-child-marriage-in-south-asia/>>, accessed 28 July 2021.

123 SAIEVAC, *Regional Action Plan to End Child Marriage in South Asia (2015–2018)*, Kathmandu, 2014.

124 See [www.unicefrosa-progressreport.org/childmarriage.html](http://www.unicefrosa-progressreport.org/childmarriage.html).

# Relationship between child marriage and child labour

There are many possible relationships between the phenomenon of child labour and that of child marriage. Conceptually, it is possible to imagine that child labour and child marriage tend to co-occur, perhaps because there are similar drivers of them, such as economic insecurity. Or, they could be divergent or parallel events, if, for example, child labour prevented marriage or a marriage took a child out of child labour. There might be causal relationships in which one becomes a direct cause of the other, or an indirect cause by way of increased vulnerability of the child, leading to other harms. The most likely relationship between child labour and child marriage is that one is a subset of the other. This section examines the evidence and arguments put forward about the relationship between child marriage and child labour.

## CHILD MARRIAGE IS FORCED MARRIAGE IS FORCED LABOUR IS CHILD LABOUR

The strongest possible relationship between child labour and child marriage is that one is, by definition, an example or a subset of the other. Some voices argue that because a child cannot give free and full consent to marriage, child marriages are in fact forced marriages. Therefore, whatever labour is done within them is forced labour. A child performing forced labour is engaged in child labour, which means that child marriage is child labour.

Advocates of this line of thinking point to child labour data that consistently shows boys and girls working in child labour at relatively equal rates until the ages of 12–14, when girls' participation in child labour drops off. By the age of 17, boys outnumber girls in child labour four to one. The pattern raises the possibility that a portion of these 'disappearing girls' are being lost to child marriage.<sup>125</sup> If so, advocates say, that they should be counted as children engaged in labour too. AIDS-Free World writes:

"[T]he marital status itself is what defines the labour as forced. Any work done by a child wife must be defined as forced labour *by virtue of the condition under which it's performed: a forced marriage*" (emphasis in the original quote).<sup>126</sup> This viewpoint presents child marriage as one of the worst forms of child labour other than hazardous work, meaning that there are no circumstances in which it is acceptable.

For ILO, child marriage, by definition, cannot be child labour, because child labour belongs to the world of work and child marriage does not. This does not mean that married children cannot be engaged in child labour; rather, it means that the child's marital status itself does not make the child a child engaged in labour. The determination of child labour rests on Conventions 138 and 182.

But could the marital status of a child be a useful indicator of the likelihood that the child is engaged in child labour? The answer depends on whether or not child marriage consistently involves hazardous work or hazardous UHS under Conventions 138 and 182. Among other

125 Khan and Lyon, *Measuring Children's Work in South Asia*, 2015, p. 19.

126 AIDS-Free World, *Child Marriage is Child Labour: The disappearance of girls from child labour statistics*, AIDS-Free World, New York, 2015, p. 8.

factors, these conditions include long hours. Applying the standards of ILO Recommendation 190 and SDG 8.7, in terms of hours worked, this would mean above the 21-hour weekly UHS threshold for children younger than 15 (there is no threshold for children older than 15). There has been little investigation of children's time use in marriage. One multi-country study found that among 12–17-year-old girls in India, girls who performed more hours of UHS were more likely to be married, when comparing girls working at least 7 hours, at least 14 hours, at least 21 hours, and at least 28 hours.<sup>127</sup> Other qualities of hazardous work include work at night or under unhealthy conditions; conceivably, there are child brides working in smoky kitchens who are confined to the home due to their marital status and, therefore, more at risk than their unmarried counterparts. However, there is too little data on married children to assess this idea.

Hourly thresholds that mark the point at which children's work becomes child labour are largely based on statistical evidence about the intensity of work that correlates with a decline in school performance or attendance, as discussed previously. Marriage can also have an effect on a child's ability to continue his or her education. For the Mamidipudi Venkatarangaiya (MV) Foundation, an Indian NGO, a child's out-of-school status is enough to call them children engaged in labour. Among its 'non-negotiable principles' are: any child out of school is a child engaged in labour all work is hazardous and harms the overall growth of the child and must be abolished; and child marriages must be nullified until 18 years of age.<sup>128</sup> This broad view of 'hazardous work' does not reflect the frameworks and definitions in international

or national law, and being out of school does not necessarily mean a child is working. It is also important, to understand the drivers of the violation of children's rights to distinguish between phenomena that lead to similar outcomes.

Note that there is no clear direction of causality in the strong correlation between non-enrolment at school and child marriage.<sup>129</sup> Girls who have already dropped out are more likely to be considered 'idle' and, therefore, ready for marriage; similarly, girls are often removed from school in order to marry.<sup>130</sup> However, as more communities see the value of education for girls, there are signs that married girls have more opportunities to continue their education for a time.<sup>131</sup> In Bangladesh, 24% of girls in one survey who were enrolled before marriage continued school after marriage.<sup>132</sup> When girls' parents negotiated this with their daughters' future in-laws, girls in Nepal were able to stay in school.<sup>133</sup> After having children, it is much less likely that a girl can complete her education, but even an additional year of school has benefits for girls in terms of literacy and earning potential.

In any case, the suggestion to use child marriage as a proxy measure for child labour assumes that married children are not being counted in current estimates of child labour. The most recent Global Estimates of Child Labour, 2020, rely on MICS, national labour force surveys, national household surveys, child labour surveys and Demographic Health Surveys (DHS), which include married and unmarried children.<sup>134</sup> While child marriage adds a layer of vulnerability to child labour, not all married children are engaged in child labour. Additionally, there are other social patterns besides child marriage that

127 Lyon, et al., *Unpaid Household Services and Child Labour*, 2013.

128 Sita, MV, 'Combating Barriers to Adolescent Girls' Education: A case study of MV Foundation,' n.p., 2017.

129 Bajracharya, Ashish, Stephanie R. Psaki, and Maqsood Sadiq, *Child Marriage, Adolescent Pregnancy and School Dropout in South Asia*, Population Council for the United Nations Children's Fund Regional Office for South Asia, Kathmandu, 2019.

130 Wodon, Quentin, et al., *Economic Impacts of Child Marriage: Global synthesis report* (Conference Edition), International Bank for Reconstruction and Development, World Bank, and International Center for Research on Women (ICRW), Washington, DC, 27 June 2017.

131 International Center for Research on Women, *Child Marriage in Bangladesh*, 2013, p. 11.

132 icddr,b and Associates for Community and Population Research, *Child Marriage in Bangladesh*, 2013, p. 20.

133 Ghimire and Samuels, *Continuity and Change in Social Norms for Nepali Adolescent Girls*, 2014, p. 6.

134 International Labour Organization and United Nations Children's Fund, *Child Labour: Global estimates 2020, trends and the road forward*, ILO and UNICEF, New York, 2021.

might explain the ‘disappearing girls’ in child labour data: social norms that tie the roles of girls and women to the domestic sphere and gender discrimination in hiring also need to be considered.

## CHILD MARRIAGE AS SLAVERY AND TRAFFICKING

Slavery, slavery-like practices, and trafficking are recognized in ILO Convention 182 as the worst forms of child labour. The argument that most child marriages meet the definition of slavery and/or trafficking has been advanced by more than one party,<sup>135</sup> but Anti-Slavery International presents the most comprehensive argument. Their position paper, *Behind Closed Doors: Child and Early Marriage as Slavery*, calls for ILO to include “certain incidences of child and early marriage in its child labour estimates”.<sup>136</sup> They build their case on the language about servile marriage and child exploitation in the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, the 1930 ILO Convention on Forced Labour, and the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (the Trafficking Protocol).

Clearly, there are cases of forced marriage that amount to trafficking and slavery, such as marriage by abduction, forced marriage perpetrated by armed forces, exchange marriages like *watta satta*, and dispute settlement marriages like *baad*. This holds true whether the victims are children or adults. But there are extra protections for children. As explained in an earlier section of this paper, the Trafficking Protocol establishes the standard that

any person under 18 years old who is moved from one location to another by any means for the purpose of exploitation is considered to have been trafficked. The UNICEF Implementation Handbook for the Optional Protocol on the Sale of Children explains that the movement need not be across borders; any movement of the child for the purpose of exploitation is trafficking, even within the victim’s own home village, town or city.<sup>137</sup> This would then include the relocation of a child bride to her husband’s home or vice versa. It is child trafficking even if the child has agreed to the movement and/or the exploitation, because, legally, a child cannot consent to be exploited. Therefore, what matters in determining if a case of child marriage is child trafficking is whether or not the purpose was for exploitation.

Are children married in order to exploit their labour and/or sexual services? This is difficult to answer in legal terms, because, as an ILO Working Paper points out, exploitation is not fully defined in international law.<sup>138</sup> We do know that in some parts of South Asia one reason given for child marriage, as a practice in general, or in particular instances of child marriage, is to obtain household labour.<sup>139</sup> ‘Support for household chores’ was the second most frequent reason given for child marriages by men who were married as boys in Nepal (45%); for female respondents married as girls, the frequency of that response was 1%, reflecting gendered patterns of labour in the home.<sup>140</sup> Among *kamaiya* labourers, bringing home a wife is seen as a way to help a boy’s family carry the burden of the domestic workload.<sup>141</sup> In Pakistan, one study found that the preference for young girls as brides is partly that they are mouldable:

135 See for example, Warria, Ajwang, ‘Forced Child Marriages as a Form of Child Trafficking,’ *Children and Youth Services Review*, vol. 79, August 2017, pp. 274–279; and Warner, Elizabeth, ‘Behind the Wedding Veil: Child marriage as a form of trafficking in girls,’ *Journal of Gender, Social Policy & the Law*, vol. 12, no. 2, 2004, p. 233–271.

136 Borrell, Rachel, *Behind Closed Doors: Child and early marriage as slavery*, Anti-Slavery International, n.p., n.d.

137 United Nations Children’s Fund, *Handbook on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*, 2009, p. 4.

138 Plant, *Modern Slavery*, 2014.

139 International Center for Research on Women, *Asia Child Marriage Initiative*, 2013; International Center for Research on Women, *Child Marriage in Bangladesh*, 2013; International Center for Research on Women, *Child Marriage in India*, 2013.

140 Plan International Nepal, et al., *Child Marriage in Nepal*, 2012, p. 28.

141 Giri, ‘The Bonded Labor System in Nepal,’ 2010, p. 39.

“It is [...] generally believed that the younger the bride, the more chance of conditioning her into the appropriate subservient behaviour”.<sup>142</sup> Clearly, access to sex and reproductive services to expand the family line is a reason for marriage in general, although not necessarily a reason to prefer child marriage.<sup>143</sup> ECPAT International has argued that child marriage may constitute sexual abuse or exploitation, which is discussed below.

Anti-Slavery International recognizes that not all child marriage is slavery or forced labour, such as marriages between young peers in late adolescence when they enter freely and can leave if they later choose. To determine whether or not a child marriage is a case of slavery, they present three factors related to the concept of ‘ownership’, on which the legal definition of slavery is based: a child’s ability to voice her or his rights (related to entering marriage); the levels of control and exploitation (within the marriage); and the ability of the child to leave (the marriage). It should be noted that Anti-Slavery International is concerned with all forms of slavery, not just slavery or trafficking for obtaining labour, and the factors they propose for consideration do not relate directly to the performance of work in marriage. For the purposes of this paper, we assume that the condition of slavery or trafficking is a priori a child labour concern, according to Convention 182.

On a child’s ability to voice her or his rights in entering marriage, Anti-Slavery International describes consent in relative terms: “Children are in a weaker position to give free, full

and informed consent than an adult may be [...]. The meaningful consent of any child is arguably doubtful, but the younger the child, the less able they are to exercise free, full and informed consent”.<sup>144</sup> The idea of a continuum of participation in marital decisions by children has some support in the evidence on child marriage globally<sup>145</sup> and in South Asia. At one end of the spectrum, it can be considered shameful for a girl to even have an opinion regarding her marriage, as reported by research in Pakistan, or shameful for the family to consult her, as reported in Afghanistan.<sup>146</sup> In many cases, children are merely informed of the family’s choice of spouse.<sup>147</sup> In a survey in Bangladesh, in 79% of cases, women said that parents sought their consent before arranging their marriage, although it was not clear if withholding consent prevented any marriages in the sample.<sup>148</sup> Another study in Bangladesh found that 30% of married females (without regard to age of marriage) were consulted about their marriage and 21% chose their own spouse and sought parental permission.<sup>149</sup> A study in India reported that 50% of female youth aged 15–24 said they would, or did, find it difficult to tell their parents that they did not like the match found for them.<sup>150</sup> In Afghanistan, the majority of those asked said that children should be involved in the discussions about marriage; some said that children can reject a proposed marriage.<sup>151</sup> Of course, there is a wide range of issues a family might discuss about how, when, and who to marry, and children’s influence in those discussions might be limited to less critical or more tokenistic aspects; this is an understudied area.

142 Plan International Pakistan, *A Research Study on Child Marriage*, 2013, p. 21.

143 Warner, ‘Behind the Wedding Veil,’ 2004, p. 32.

144 Borrell, *Behind Closed Doors*, n.d., p. 17.

145 Wodon, et al., *Economic Impacts of Child Marriage*, 2017, p. 64.

146 Plan International Pakistan, *A Research Study on Child Marriage*, 2013, p. 21; AIHRC, *Report on the Situation of Economic and Social Rights in Afghanistan*, 2009.

147 Ghimire and Samuels, *Continuity and Change in Social Norms for Nepali Adolescent Girls*, 2014, p. 4.

148 Icdrr,b and Associates for Community and Population Research, *Child Marriage in Bangladesh*, 2013, p. 19.

149 Amin and Das, ‘Marriage Continuity and Change in Bangladesh,’ 2014, p. 91.

150 International Institute for Population Sciences and Population Council, *Youth in India*, 2010, pp. 224–226.

151 United Nations Children’s Fund, *Child Marriage in Afghanistan*, 2018, pp. 39–40.



On control in marriage, girls in South Asia experience varying levels of power over their mobility and freedom of movement, the option to earn and keep individual income, and major life choices about if, when, and how many children to have after they are married. In some settings, child brides lose a great deal of freedom upon marriage or are confined to the home, which could be interpreted as indicative of 'ownership'.<sup>152</sup> For others, the status of marriage reduces restrictions on their mobility and confers benefits. For example, married girls in Bangladesh were twice as likely as unmarried girls to have mobile phones and more likely to visit a health centre.<sup>153</sup> Likewise, the evidence on spousal violence in child marriages is inconclusive, with some studies showing that married girls are at greater risk, particularly girls married by age 15.<sup>154</sup> Some married girls suffer considerable abuse from their in-laws or show signs of post-traumatic stress disorder.<sup>155</sup> Girls who are much younger than their spouses will have less negotiating power in the marital home, and while there are different patterns in terms of age disparity across South Asia, girls are usually at least a few years younger than their husbands. In one study, women in India who married before the age of 18 reported less decision-making power in their homes compared to women who married later.<sup>156</sup> Unmet needs for family planning (indicating that

a girl or woman does not want to have children at that time, but is not using any method of contraception) is remarkably high among married adolescents in Nepal, suggesting that others may be making decisions about their fertility.<sup>157</sup>

On the question of whether a party to a child marriage can leave the marriage, most of the evidence from South Asia, even where equal rights are granted to women in marriage dissolution, is that girls in particular risk destitution, isolation and rejection by their communities and/or natal families if they choose to leave a marriage. The literature abounds with stories of young brides being forced back to their husbands or abandoned by their parents.<sup>158</sup> In the most extreme cases, refusing to stay with a husband can lead to honour killing.<sup>159</sup> Boys and young men may face pressure to stay in a relationship, but the sanctions they face if they leave are more likely to be having to return the dowry they received or, in Muslim marriages, pay the mahr, an amount negotiated before marriage in case of divorce.<sup>160</sup> The Special Rapporteur on contemporary forms of slavery, in her 2012 thematic report on servile marriage, notes that "it is often easier for boys and men to leave forced marriages, live as divorcees, remarry and regain control of their lives, in particular because they are usually more educated and can be financially independent".<sup>161</sup>

152 Karim, et al., *The Cultural Context of Child Marriage in Bangladesh and Nepal*, 2016; Concerned for Working Children, *Young Voices National Report (15 States, Around 2500 Young People): Submission to the Task Force examining Age of Marriage and other concerns*, 25 July 2020, p. 26, <[www.concernedforworkingchildren.org/news/2020/07/young-voices-national-report-15-states-nearly-2500-young-people-submission-to-the-task-force-examining-age-of-marriage-and-other-concerns-july-2020/](http://www.concernedforworkingchildren.org/news/2020/07/young-voices-national-report-15-states-nearly-2500-young-people-submission-to-the-task-force-examining-age-of-marriage-and-other-concerns-july-2020/)>, accessed on 18 August 2020.

153 United Nations Children's Fund and Government of Bangladesh, *A Baseline Survey of Adolescent Health and Rights Enhancement through Innovation and System Strengthening: Key findings*, UNICEF, n.p., n.d.

154 Wodon, et al., *Economic Impacts of Child Marriage*, 2017; Solotaroff, Jennifer L., and Rohini Prabha Pande, *Violence against Women and Girls: Lessons from South Asia*, South Asia Development Forum, World Bank Group, Washington, DC, 2014, p. xxvii.

155 Khan, Naila and Margaret Lynch, 'Recognizing Child Maltreatment in Bangladesh,' *Child Abuse and Neglect*, vol. 2, no. 8, pp. 815–818.

156 International Center for Research on Women, *Too Young to Wed: Education & action toward ending child marriage*, ICRW, Washington, DC, 2006.

157 Ministry of Health Nepal, et al., *Nepal Demographic and Health Survey 2016*, 2017.

158 Lane, *Stealing Innocence*, 2011, p. 53; Human Rights Watch, "Will I Get My Dues...Before I Die?": *Harm to women from Bangladesh's discriminatory laws on marriage, separation, and divorce*, HRW, n.p., September 2012, p. 1; United Nations, *Report of the Special Rapporteur on Contemporary Forms of Slavery*, 2012, paragraph 18; Karim, et al., *The Cultural Context of Child Marriage in Bangladesh and Nepal*, 2016, p. 53.

159 Lane, *Stealing Innocence*, 2011, p. 30.

160 Karim, et al., *The Cultural Context of Child Marriage in Bangladesh and Nepal*, 2016, p. 53; Lane, *Stealing Innocence*, 2011.

161 United Nations, *Report of the Special Rapporteur on Contemporary forms of Slavery, including its Causes and Consequences*, 2012, Paragraph 15.

Although the movement of a trafficked person need not be far to be considered trafficking, greater distance from social and familial networks can make it harder to return home. Interstate marriages have become a concern in South Asia, as the high level of sex-selective abortion in India and the resulting dearth of girls has driven demand for brides from neighbouring countries and Indian states where abortion is less common. In some cases, groups of men act as brokers portraying themselves as well-off and traveling through villages to gather girls with the promise of a dowry-free marriage.<sup>162</sup> Depending on one's perspective, one might view cross-border marriages as trafficking (child trafficking when children are involved), as legitimate international matchmaking, or a mix of the two.<sup>163</sup> In any case, these brides are more vulnerable in many ways, because they are removed from people they trust and may not even speak the same language as their new family and neighbours, factors that make leaving difficult. The social isolation they can face was exemplified by a young bride from India who, when asked her hopes for the future, said she wished for the villagers in her new home to call her by her name rather than the name of the place she came from.<sup>164</sup>

Anti-Slavery International and others also make reference to the 1930 Forced Labour Convention. The standard for determining forced labour includes the imposition of "the menace of any penalty" as a means of coercion. This is interpreted to include not only physical violence, but also threats of violence, economic coercion, the withholding of rights, and psychological pressure.<sup>165</sup> In thinking

about coercion in marriage, it may be useful to distinguish coercion that occurs in the process of effectuating the marriage from coercion that is part of the ongoing conditions of marriage. The forced labour standard should only be applied to the latter, but the former can indicate forced marriage and, therefore, a kind of modern slavery under some definitions of that term.

The Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, wrote of her concern that the difference between an arranged marriage and a forced marriage can be tenuous: "A marriage imposed on a woman not by explicit force, but by subjecting her to relentless pressure and/or manipulation, often by telling her that her refusal of a suitor will harm her family's standing in the community, can also be understood as forced".<sup>166</sup> Other examples include marriage by abduction and dispute settlement marriages, which are clearly forced.

Coercion to perform work within a marriage can look like spouses or in-laws using physical, sexual, economic, or another form of violence against married individuals to ensure their compliance with work for the household (unpaid household services, agricultural work, wage work, or any other form of work). This should be recognized as forced labour and/or a practice similar to slavery, regardless of the age of the victim or the age at which he or she married. In contrast, violence against children by parents to compel unpaid household services is considered child abuse and is not counted as forced child labour.<sup>167</sup>

162 Khanna, *Searching for the Boys*, n.d., p. 23; Kukreja, Reena, and Paritosh Kumar, *Tied in a Knot: Cross-region marriages in Haryana and Rajasthan: Implications for gender rights and gender relations*, Tamarind Tree Films, New Delhi, 2013.

163 Kaur, Ravinder, 'Marriage and Migration: Citizenship and marital experience in cross-border marriages between Uttar Pradesh, West Bengal and Bangladesh,' *Economic & Political Weekly*, vol. XLVII, no. 43, 27 October 2012, pp. 78–89.

164 CARE, 'Tipping Point Child Marriage Project in Bangladesh and Nepal', unpublished internal documents, 2015.

165 Turner, Catherine, *Out of the Shadows: Child marriage and slavery*, Anti-Slavery International, n.p., 2013, p. 29; Plant, *Modern Slavery*, 2014, p. 2.

166 United Nations, *Report of the Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons*, 2007, paragraph 26.

167 Benjamin Smith, Senior Technical Officer Labour Specialist, ILO, personal communication (Interview by video call), 15 July 2020.

Anti-Slavery International concludes that “the levels of abuse, exploitation and control experienced by children as a result of child and early marriage can often meet international legal definitions of slavery and slavery-like practices, such as forced labour and trafficking.”<sup>168</sup> The Special Rapporteur on contemporary forms of slavery, in her 2012 thematic report on servile marriage, draws the same conclusion: “Under international human rights law, a child cannot provide informed consent to a marriage. The marriage is therefore considered forced and falls under the slavery-like practices defined in the [1956 Supplementary] Convention [on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery]”.<sup>169</sup>

## CHILD MARRIAGE AS SEXUAL ABUSE, SEXUAL EXPLOITATION OR COMMERCIAL SEXUAL EXPLOITATION

Other discussions on child marriage as one of the worst forms of child labour focus on sexual abuse and exploitation. The Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents, emerging from the 3rd World Congress Against Sexual Exploitation of Children and Adolescents in 2008, includes child marriage as a phenomenon that contributes to sexual exploitation. The Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, writes in her 2007 report, “The practice of child marriage of girls is, according to many observers, the socially legitimized institutionalization of sexual abuse and marital rape, sometimes of very young girls”.<sup>170</sup>

These arguments are laid out by ECPAT International and Plan International in

*Unrecognised Sexual Abuse and Exploitation of Children in Child, Early and Forced Marriage*.<sup>171</sup>

This report mirrors points made by Anti-Slavery International, as outlined above, but focuses more on sexual abuse, sexual exploitation, and commercial sexual exploitation of children (CSEC). The authors present a framework to recognize sexual exploitation of children in child marriage, with three levels:

- Child marriage *as a channel* for the sexual abuse and exploitation of children, also for commercial purposes
- Child marriage *as a form* of sexual abuse and exploitation of children
- Child marriage *as a form of* commercial and economic sexual abuse and exploitation of children

In the first section of that report, ECPAT International and Plan International discuss the ways that child marriage—through the failure to protect girls, the instability of early marriages, potential abandonment or severe abuse that causes girls to leave the marriage, and likely social and psychological isolation—increases girls’ vulnerability to trafficking and CSEC. It also highlights the cover that child marriage gives to traffickers who offer ‘dowry-free marriages’ or temporary contract marriages. Temporary contract marriages are more often used in Gulf countries, while dowry-free marriage is a strategy known to be used in India by cross-region marriage brokers to bring girls from poor families to areas with a high sex imbalance where men and boys need wives (discussed in the previous section).<sup>172</sup>

The second section of the report treats child marriage as a socially acceptable path to the sexual abuse and exploitation of young girls, citing other organizations such as the

168 Borrell, *Behind Closed Doors*, n.d., p. 7.

169 United Nations, *Report of the Special Rapporteur on Contemporary Forms of Slavery*, 2012, paragraph 14.

170 United Nations, *Report of the Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons*, 2007, Paragraph 22.

171 Chaudhuri, *Unrecognised Sexual Abuse and Exploitation of Children in Child, Early and Forced Marriage*, 2015.

172 Kukreja and Kumar, *Tied in a Knot*, 2013.

International Planned Parenthood Federation and the Forum on Marriage and the Rights of Women and Girls. The report summarizes evidence that intimate partner violence and sexual violence are higher in child marriages and that girls suffer psychological trauma and physical harm from premature forced sex, female genital mutilation, HIV/AIDS, pregnancy, and childbearing. However, the authors do not make a link to an element of exchange, which, as explained above, the International Working Group on Sexual Exploitation of Children says is necessary to distinguish between sexual abuse and sexual exploitation.<sup>173</sup>

The third section of the report does consider exchanges. It points to marital exchanges as transactions that commoditize people and contribute to men's sense of ownership of wives. In 2013, the Special Rapporteur on the sale of children, child prostitution and child pornography argued that within the provisions of the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (OPSC), child marriage in many cases can be regarded a form of sale of children.<sup>174</sup> The CEDAW and CRC committees have also warned countries that they have reporting requirements under the OPSC related to dowry payments and bride price, because these practices could constitute the sale of children.<sup>175</sup> ECPAT International and Plan International say that CSEC applies because the economic transactions involved in the marriage, plus sexual abuse and exploitation, may justify a determination of economic sexual exploitation.

As suggested earlier in this paper, dowry and bride price are complex phenomena when considered in the larger socio-cultural context,

and it may be reductive to equate the exchange of money or material goods with the sale of children outside of that context. It may also be problematic to view a payment from a bride's family to a groom's family (dowry) as the sale of a person, when it is the bride who is being transferred to the groom's home. In any case, studies that have looked at how marital transactions contribute to power relations in a marriage are predominantly concerned with violence between spouses as the outcome of interest, and, while they do not focus on child marriages, their findings are inconsistent.<sup>176</sup> The analysis is complex, given that there are a range of actors that can be involved in marital transactions (parents, extended family, community leaders, marriage brokers, etc.); the exchange does not necessarily happen at one point in time, sometimes extending throughout the marriage; and there are sometimes counter transactions; as well as the variable size of the payments or gifts.

It is important to note the potential consequences of the designation of child marriage as any of the worst forms of child labour. Convention 182 on the Worst Forms of Child Labour is a strong instrument that applies a strict age threshold not found in other conventions, and it has achieved universal ratification among the 187 ILO member nations. Classifying child marriage as one of the worst forms of child labour would require State parties to Convention 182 to not only increase their efforts to prevent child marriages, but also to intercede in existing child marriages to remove children from the situation. These children, mostly girls, would then be treated as rescued victims. This presents several issues, not least of which is that families would be separated.

173 International Working Group on Sexual Exploitation of Children, *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse*, 2016, p. 24.

174 United Nations, *Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography*, Najat Maalla M'jid, A/HRC/25/48, New York, 23 December 2013, paragraph 26.

175 Joint General Comment No. 31 from the CEDAW/No. 18 from the CRC Committee, paragraph 23.

176 Abramsky, Tanya, et al., 'What Factors are Associated with Recent Intimate Partner violence? Findings from the WHO multi-country study on women's health and domestic violence,' *BMC Public Health*, vol. 11, no. 109, 2011, pp. 1–17; Suran, Luciana, et al., *Does Dowry Improve Life for Brides? A test of the bequest theory of dowry in rural Bangladesh*, Population Council, n.p., 2004; Rees, Susan, et al., 'Associations between Bride Price Stress and Intimate Partner Violence amongst Pregnant Women in Timor-Leste,' *Global Health*, vol. 13, no. 66, 28 August 2017, pp. 1–10.

There would need to be legal solutions for the children of such marriages. In many contexts, including large parts of South Asia, girls who leave marriages are ostracized, sometimes even by their families of origin. Without any support, they become more, not less, vulnerable to exploitation, trafficking, and commercial sex work. To guard against such unintended outcomes, it is important to remember that ‘the best interests of the child’ may not be to remove all girls and boys from their marital homes.

## CHILDREN’S AGENCY

This section discusses the role of children’s agency in the discourse on child marriage and child labour. In it, we are primarily concerned with agency in child marriage, because of how our understanding of choice and consent in marriage shape the dialogue on its relationship with child labour, although examples of children’s agency in work are mentioned as well.

The framework for child rights laid out in the CRC recognizes the evolving capacities of children as they develop and calls for balancing the protection to which all children are entitled with the exercise of their right to participation, according to their capacities. The CRC Committee’s General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence says that: “States should review or introduce legislation recognizing the right of adolescents to take increasing responsibility for decisions affecting their lives”.

Minimum legal ages should be established, but “[i]n all cases, the right of any child below that minimum age and able to demonstrate sufficient understanding to be entitled to give or refuse consent should be recognized”. This applies to a wide range of matters, but the Committee expressly mentions that “[s]tates should avoid criminalizing adolescents of similar ages for factually consensual and non-exploitative sexual activity”.<sup>177</sup>

The Committee also links the right to be heard to the ability to exercise agency.<sup>178</sup> Agency has been defined as the ability to set goals and take action to pursue them<sup>179</sup> and the process of influencing and making decisions about one’s life.<sup>180</sup> Agency is the essence of empowerment,<sup>181</sup> and empowerment should be understood as situational.<sup>182</sup> The agency of children is sometimes expressed relationally by influencing those that make decisions on their behalf,<sup>183</sup> particularly for girls, because of their relative power disadvantages, but also for boys. Those decision-making processes often involve negotiation and compromise,<sup>184</sup> “[Children] are active agents in a process of constant renegotiation with differing levels of dependency and competence at different times in accordance with different needs”.<sup>185</sup>

Researchers on adolescent girls and child marriage have often highlighted ways in which girls exercise agency in resisting marriages arranged by their families or other socially

177 CRC Committee General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence, Paragraphs 39 and 40.

178 Ibid., Paragraph 19.

179 Kabeer, N., ‘Resources, Agency, Achievements: Reflections on the Measurement of Women’s Empowerment,’ *Development and Change*, vol. 30, no. 3, 1999, pp. 435–464.

180 Van Eerdewijk, Anouka, et al., *White Paper: A conceptual model of women and girls’ empowerment*, Bill and Melinda Gates Foundation, Royal Tropical Institute (KIT), Amsterdam, 2017.

181 Malhotra, Anju, Sidney R. Schuler, and Carol Boender, ‘Measuring Women’s Empowerment as a Variable in International Development,’ in *Measuring Empowerment: Cross-disciplinary perspectives*, edited by D. Narayan, World Bank Gender and Development Group, Washington, 2002, pp. 71–88; Van Eerdewijk, Anouka, et al., *A Conceptual Model of Women and Girls’ Empowerment*, 2017, p. 5.

182 Van Eerdewijk, Anouka, et al., *Conceptual Model of Women and Girls’ Empowerment*, 2017, p. 10; Malhotra et al., *Measuring Women’s Empowerment*, 2002.

183 Warner, Ann, Kirsten Stoebenau, and Allison M. Glinski, *More Power to Her: How empowering girls can help end child marriage*, International Center for Research on Women (ICRW), Washington, DC, 2014, p. 8.

184 Van Eerdewijk, Anouka, et al., *Conceptual Model of Women and Girls’ Empowerment*, 2017, p. 5.

185 Landsdown, Gerison, *The Evolving Capacities of the Child*, UNICEF and Save the Children, 2005, p. 29.

normative practices.<sup>186</sup> In the above sections of this paper, we have discussed the range of children's participation in decisions about their marriage, from forced marriage to self-initiated marriage. There are also movements of working children, organized in unions, that advocate for children's right to work in safe, dignified, and fair conditions, rather than a general prohibition on work below a certain age; for example, Child Brigade in Bangladesh, Bhima Sangha in India, and UNATSBO in Bolivia.<sup>187</sup> Note that ILO Convention 138 allows children to perform light work from ages younger than the minimum age for admission to employment, under state regulation to ensure decent working conditions; ILO argues that the reduction of standards to allow even younger children to work would shift responsibility for protection from child labour away from public institutions to children themselves.<sup>188</sup>

Many of the reasons why children might choose to engage in harmful practices reflect failures of the state. Children who want to work say it is because they wish to contribute to the family's income, the earnings cover the costs of education such as schoolbooks and transportation, or they value benefits provided by employers like hot meals.<sup>189</sup> Marriage, when chosen by a child, is sometimes a path out of an abusive or neglectful natal home or a seemingly inevitable choice when the child has been denied continued education. It can also be borne

out of love or the desire to engage in socially approved sexual activity, which are normal manifestations of human development.<sup>190</sup>

Clearly, children have opinions and desires they wish to express, and these should be heard and respected even when they would choose to marry early or begin employment at a young age. Respecting their viewpoints does not necessarily mean giving permission for them to engage in harmful practices. As a representative of UNICEF said: "Concepts such as agency remind us to respect the viewpoints of the child and the family in the decisions they undertake, often under very complex and difficult conditions. We have to respect the decision making, even if we disagree, and find strategies that support children and their families to navigate these difficult conditions".<sup>191</sup> Children themselves have articulated the nuances in balancing rights and protection: "We are not calling for children of 10 or 12 to work. We are calling for protection [in the workplace] for children who do work, and for their contribution to be recognized".<sup>192</sup> Lansdown, writing for UNICEF, notes that "Ignoring the dynamics of the situation in which children live and the problems their families and communities face [...] can actually lead to a further deterioration in the protective environment".<sup>193</sup>

Partners for Law and Development document how the Child Marriage Restraint Act in India has

186 Marcus, Rachel, with Caroline Harper, *Gender Justice and Social Norms – Processes of Change for Adolescent Girls: Towards a conceptual framework 2*, Overseas Development Institute, London, 14 January 2014, ch. 2.3.2.

187 Williams, Emma, *Children's Participation and Policy Change in South Asia*, CHIP Report No. 6, Childhood Poverty Research and Policy Centre, London, 2004; Liebel, Manfred, *Protecting the Rights of Working Children Instead of Banning Child Labour: Bolivia tries a new legislative approach*, Internationale Akademie, Berlin, 4 September 2014.

188 Federico Blanco Allais, Senior Research Officer, International Labour Organization, personal communication, 10 September 2020.

189 Ratna, Kavita, cited in BBC, 'Should We Rethink the Ban on Child Labour?', The Inquiry Podcast Episode, *BBC News World Service*, 8 October 2018.

190 Khanna, *Searching for the Boys*, n.d., p. 7; Dixon-Mueller, Ruth, *Sexual and Reproductive Transitions of Adolescents in Developing Countries*, International Union for the Scientific Study of Population Policy & Research Papers 20, IUSSP, Paris, 2007, p. 6; Biswas, Subas Chandra, Shuchi Karim, and Sabina Faiz Rashid, 'Should We Care: A qualitative exploration of the factors that influence the decision of early marriage among young men in urban slums of Bangladesh,' *BMJ Open*, vol. 10, 2020.

191 Ramya Subrahmaniam, Chief, Child Protection Research, UNICEF, personal communication (interview by Internet call), 20 July 2020.

192 Lourdes Cruz Sanchez, speaker of the Potosi Working Children's and Adolescents' Council, Bolivia, cited in Child Rights International Network (CRIN), 'Labour Rights: Child labour and protecting working children', CRIN, 11 June 2015, <<https://archive.crin.org/en/library/publications/labour-rights-child-labour-and-protecting-working-children>>, accessed 17 July 2021.

193 Lansdown, *Evolving Capacities of Children*, 2005, p. 39.

been deployed to prosecute boys and men with whom girls have eloped against their parents' wishes.<sup>194</sup> In South Asia, punitive measures are used most often when adolescents choose partners across caste and religion;<sup>195</sup> one study attempted to include young people from high caste or income groups in its sample of elopements that faced state interference and could find none.<sup>196</sup> Girls 'rescued' from elopements in India are sometimes forced by their parents into quickly arranged marriages with socially-acceptable matches; the problem the parents see is not with child marriage, but with their daughter's expression of agency in choosing an unsanctioned partner.<sup>197</sup> Parental disapproval of elopement is closely tied to the prospect of premarital sex in many parts of South Asia, especially for girls in places where her family is expected to safeguard her chastity until they have found the right husband for her. Child marriage is one way of accomplishing that goal before a girl begins to explore her sexuality and compromises the family's honour.<sup>198</sup>

Partners for Law and Development and others also suggest that it was a mistake for India to increase the legal age of sexual consent from 16 to 18 years, which criminalizes consensual relations involving adolescents. These critics say the change will arm states with additional tools to curb adolescents' agency, rather than protect their rights: "Raising the age of sexual consent risks limiting the access of adolescents to the health information, services, and advice they need, by treating them as children who need

to be protected, rather than as individuals who hold certain rights".<sup>199</sup> Girls and boys engaging in sex need more access to contraceptives and reproductive health knowledge, not less. Likewise, critics of child labour enforcement policies claim that criminalizing children's participation in the formal economy can lead them to engage in hidden and often more dangerous forms of work in the illegal sector.<sup>200</sup>

Neither the fact that some children exercise agency in choosing work or marriage, nor the dangers of perverse policy enforcement, mean that we should abandon minimum ages. Lansdown argues that "the possibility of an individual child acquiring the competence to make an informed choice to marry under the age of 18 years is viewed as less important than the need to protect children, as a constituency, from potentially harmful decisions taken either by themselves or imposed by family members".<sup>201</sup> The risk of labour or sexual exploitation by others, including family, requires minimum ages with the force of law.

The question is how to create structures for children to safely exercise agency, without compromising protection, through flexible frameworks or systems of case assessment. Flexibility in Convention 138 is on the basis of national needs and children's developmental opportunities and is built on a framework that progressively opens up more options to children as they cross certain age thresholds. The CRC Committee articulates a more individualized

194 Mehra, *Grassroots Experiences of Using the Prohibition of Child Marriage Act, 2006*, 2019.

195 Khanna, *Searching for the Boys*, n.d., p. 27.

196 Mehra and Nandy, *Why Girls Run Away to Marry*, 2019, p. 9.

197 Ibid.

198 Petroni, Suzanne, Madhumita Das, and Susan M. Sawyer, 'Protection Versus Rights: Age of marriage versus age of sexual consent,' *Lancet Child and Adolescent Health* vol. 3, April 2019, pp. 274–280, p. 278; GreeneWorks, *Report: Expert working meeting on sexuality and child, early and forced marriage (CEFM)*, American Jewish World Service, International Women's Coalition, CARE, GreeneWorks, 8–9 March 2016, p. 4; Child, Early, and Forced Marriage and Unions and Sexuality Working Group, *Tackling the Taboo: Sexuality and gender-transformative programmes to end child, early, and forced marriage and unions*, 2019, p. 8.

199 Petroni, et al., 'Protection Versus Rights,' 2019, p. 277.

200 Child Rights International Network (CRIN), *Submission to the UN High Commissioner for Human Rights on the Right to Work and the Implementation of the Sustainable Development Goals*, CRIN, September 2017, p. 2; Howard, Neil, 'More of the Same in the Fight Against Child Labor,' *Dissent Magazine*, 6 September 2011, <[www.dissentmagazine.org/online\\_articles/more-of-the-same-in-the-fight-against-child-labor](http://www.dissentmagazine.org/online_articles/more-of-the-same-in-the-fight-against-child-labor)>, accessed on 23 August 2020.

201 Lansdown, *Evolving Capacities of Children*, 2005, p. 39.

approach: “In seeking to provide an appropriate balance between respect for the evolving capacities of adolescents and appropriate levels of protection, consideration should be given to a range of factors affecting decision-making, including the level of risk involved, the potential for exploitation, understanding of adolescent development, recognition that competence and understanding do not necessarily develop equally across all fields at the same pace and recognition of individual experience and capacity”.<sup>202</sup> Especially for marriage—a semi-permanent state not easily revoked—what understandings, knowledge, and competencies does one need to exercise informed consent to marry? How do we assess the potential for exploitation or coercion in a potential or existing marriage?

The phrase ‘evolving capacities’ occurs only twice in the CRC, but more than 80 times in 19 of the 23 General Comments of the CRC Committee and often without being linked to the original articles in which it appeared (Articles 5 and 14[2]).<sup>203</sup> Indeed, General Comment No. 18 on harmful practices points to evolving capacities as the basis for recognizing exceptional circumstances in which a child can marry under the age of 18, without reference to parental guidance or Article 5.<sup>204</sup> Some argue that evolving capacities has in effect become, or should be, recognized as a general principle under the CRC to rebalance the view of the child as a subject of rights versus an object of protection.<sup>205</sup>

Strengthening evolving capacities as a principle of the CRC might facilitate better application of exceptions to minimum age laws on marriage.

Three South Asian countries expressly allow a court to permit exceptions to the minimum age of marriage under certain circumstances (see Table 3), although courts in other nations have been known to grant exceptions as well.<sup>206</sup> The danger in allowing exceptions by law is, of course, that courts can be used to legitimize a marriage based on only the wishes of the parents or using shallow markers of a child’s maturity, such as physical maturity. Unfortunately, there is little evidence from South Asia of good practices in, or guidelines for, court decision making in assessing a child’s capacity to consent to marry or the risks and benefits of a particular marriage for a child. Bangladesh allows children to marry in ‘special cases’, without defining what those might be. Globally, much of the thinking on assessing capacities or competence related to consent has been formulated to determine medical consent, wherein competence is understood to include an ability to understand and communicate information, ability to think and choose with some independence, ability to assess benefits, risks, and harms, and achievement of a fairly stable set of values.<sup>207</sup> Writing on early marriage, Partners for Law in Development make the case for “discerning coercion and force based on power, age differentials, capacities and the nature of the relationship between the parties—all of which are not new to the concept of children’s rights and child abuse”.<sup>208</sup> One piece of detailed guidance specifically on child marriage is an Interagency Guidance Note for social workers in the Kurdistan Region of Iraq working with children at risk of, or in a, marriage. The document provides a process that weighs a child’s desire to be married or not with best interest considerations, informed by social

202 CRC Committee General Comment No. 20 (2016), Paragraph 20.

203 Varadan, Sheila, ‘The Principle of Evolving Capacities under the UN Convention on the Rights of the Child,’ *International Journal of Children’s Rights*, vol. 27, 2019, pp. 306–338.

204 CRC Committee General Comment No. 20 (2016), Paragraph 20.

205 See Part III of Varadan, ‘The Principle of Evolving Capacities,’ 2019, pp. 330–332.

206 See, for example, <https://ilg2.org/2015/07/02/child-marriage-in-india-loopholes-in-the-law/>.

207 Lansdown, *Evolving Capacities of Children*, 2005, p. 55.

208 Mehra and Nandy, *Why Girls Run Away to Marry*, 2019, p. 71.



mapping and concerned with filling in gaps in children's abilities to protect themselves inside or outside of marriage.<sup>209</sup>

Factoring children's agency into a discussion of the relationship between child marriage and child labour, it is clear that not all child marriages are forced marriages. As Partners for Law and Development point out, "[l]abeling every union of a girl younger than 18 years as 'forced' is neither reflective of reality nor respectful to the adolescent whom the policy responses seek to protect".<sup>210</sup> If a marriage is not a forced marriage, the labour performed in it would not necessarily be forced labour, although forced labour could still exist in any marriage at any age, and a child could be doing hazardous work or hazardous unpaid household services regardless of marital status. It also remains true that many child marriages take place without any degree of consent or participation by the child involved, or in spite of the child's resistance.

## OTHER INTERACTIONS BETWEEN CHILD MARRIAGE AND CHILD LABOUR

Research on the relationship between child marriage and labour force participation rarely distinguishes youth employment from child labour. In addition, the focus is often on long-term outcomes, indicated by employment as an adult, rather than work activities as a child before or after marriage. Research on children engaged in labour rarely investigates the child's marital status. Therefore, there is little direct evidence for how these variables might interact at the population level.

A common sense approach suggests that child labour and child marriage are both found at higher rates among the poor in South Asia, because they are both economic coping strategies. Poverty is better understood as an impediment to change than a cause of child marriage, as the perceptions of economic insecurity are more important than absolute levels of poverty.<sup>211</sup> Where child marriage is normalized, such as in Bangladesh, macro-economic growth has modest effects on lowering rates, but where child marriage is less common, growth has a strong effect on lowering rates.<sup>212</sup> While child labour is borne of economic insecurity, child marriage in South Asia often reflects an interplay between economic and social insecurity.<sup>213</sup> Social norms place the burden of family honour on girls; their purity reflects on the prestige of their family, and marrying them before any questions about their chastity come up is considered a parent's duty. Poorer families can take fewer social risks and are likely to weigh the risks of delaying marriage more heavily than the benefits.<sup>214</sup>

A longitudinal analysis of the Nepal Living Standards Survey found that girls in poor and low caste households were much more likely to be out of school and working at ages 5 to 9 and/or married by age 18 than their better-off counterparts. The nature of the work was not recorded, so we do not know if these girls were involved in legitimate youth employment or child labour, and working married girls were not separated as a category, so it is unclear if marriage and work were co-occurring or divergent paths for girls.<sup>215</sup> A district level

209 United Nations High Commissioner for Refugees (UNHCR), UNICEF, Agency for Technical Cooperation and Development (ACTED), Save the Children, QANDIL, ERC, International Rescue Committee (IRC), et al., *Prevention of and Response to Child Marriage*, Interagency Guidance Note, Kurdistan Region of Iraq (KRI), 2015, <[www.girlsnotbrides.org/documents/638/CM-interagency-guidance-Kurdistan-Iraq-2015.pdf](http://www.girlsnotbrides.org/documents/638/CM-interagency-guidance-Kurdistan-Iraq-2015.pdf)>, accessed 29 July 2021.

210 Ibid.

211 United Nations Children's Fund and United Nations Population Fund, *Child Marriage in South Asia*, 2019, ch. 4.

212 United Nations Children's Fund and United Nations Population Fund, *Key Drivers of the Changing Prevalence of Child Marriage in Three Countries in South Asia*, Working Paper, UNICEF, Kathmandu, 2018, p. vii.

213 Ramya Subrahmaniam, Chief, Child Protection Research, personal communication (interview by Internet call) 20 July 2020.

214 Karim, et al., *The Cultural Context of Child Marriage in Bangladesh and Nepal*, 2016.

215 Amin and Bajracharya, *Costs of Marriage*, 2011.

analysis in India is perhaps the best evidence available for the region to suggest that children who contribute to the family income, at least among socially and economically marginalized families, may be protected from child marriage.<sup>216</sup>

That said, marriage is expensive, and in some communities, girl children are considered other people's daughters or other people's property.<sup>217</sup> In Nepal, income an unmarried girl earns is sometimes treated as her future in-laws' assets by way of dowry, and parents do not feel entitled to it.<sup>218</sup> In contrast, the pre-marriage earnings of a girl or woman in Karachi are shared with the household.<sup>219</sup> In Bangladesh, parents reported that when girls are working and contributing financially, it gives them more time to find a good groom.<sup>220</sup> One study found that girls who migrated to work in the garment industry in Bangladesh married significantly later than their peers who did not, but the direction of causality is unclear; they may have been able to take employment because they were unmarried.<sup>221</sup> Work outside the home may have other benefits for marriage autonomy by expanding one's social experience and familiarity with life options in a way that can lead to the choice to marry for love, as reported in a study of garment factory workers in South India.<sup>222</sup>

Boys face a different set of economic pressures related to marriage: to establish themselves financially before or upon their wedding.<sup>223</sup> In an exploration of masculinities in Nepal, men felt that they needed employment or property in order to marry, to secure their role as providers and improve their chances of finding a wife in the first place. Young men sought to establish themselves with some kind of economic security and social status to be ready to start a family.<sup>224</sup> Another study showed that boys perceived dowry as an estimation of their desirability as a partner, and they worried that smaller dowries would make people wonder if there was something wrong with them.<sup>225</sup>

The role of labour migration from Nepal and Bangladesh to India in shaping life in rural source communities cannot be overstated. Migration is almost a rite of passage for Nepali boys and young men near the border with India. The border is open, and circular migration is common. Boys and young men will go to Delhi or Mumbai to do manual labour like construction. With enough money saved, India becomes a pass-through country on their way to Gulf states. Hindu boys are often married before they migrate to increase their sense of responsibility to send remittances. Wives generally stay home and, in young marriages,

216 Srinivasan, Padmavathi, et al., *District-level Study on Child Marriage in India: What do we know about the prevalence, trends and patterns?* International Center for Research on Women, New Delhi, 2015, p. 25.

217 Karim, et al., *The Cultural Context of Child Marriage in Nepal and Bangladesh*, 2016.

218 Ghimire and Samuels, *Continuity and Change in Social Norms for Nepali Adolescent Girls*, 2014, p. 8.

219 Shaheen, Anwar, 'Marriage, Women's Economic Participation and Patterns of Support in Urban Karachi,' in *Marrying in South Asia: Shifting concepts, changing practices in a globalising world*, edited by Ravinder Kaur and Rajni Palriwala, Orient Blackswan Private Limited, New Delhi, 2014, p. 199.

220 International Center for Research on Women, *Child Marriage in Bangladesh*, 2013, p. 12.

221 Bajracharya, Ashish, and Sajeda Amin, *Poverty, Marriage Timing and Transitions to Adulthood in Nepal: A longitudinal analysis using the Nepal Living Standards Survey*, draft for the 2009 Meeting of the International Union for the Scientific Study of Population (IUSSP), 2009, p. 5.

222 Lessinger, Johanna, 'Love in the Shadow of the Sewing Machine,' in *Marrying in South Asia: Shifting concepts, changing practices in a globalising world*, edited by Ravinder Kaur and Rajni Palriwala, Orient Blackswan Private Limited, New Delhi, 2014, p. 237.

223 United Nations Children's Fund, *Child Marriage in Afghanistan*, 2018, p. 37; Karim, et al., *The Cultural Context of Child Marriage in Bangladesh and Nepal*, 2016; Maycock, "How Can You Be a Marda if you beat your Wife?", 2014, p. 14; Lane, *Stealing Innocence*, 2011, p. 39.

224 Maycock, "How Can You Be a Marda if you beat your Wife?", 2014, page 14.

225 Karim, et al., *The Cultural Context of Child Marriage in Bangladesh and Nepal*, 2016.

the distance leaves the relationship vulnerable to dissolution through new partners, isolation, and, for wives left behind, an increased workload.<sup>226</sup>

Those planning to migrate from Bangladesh are said to prefer younger girls because they are more malleable.<sup>227</sup> In the haors of Bangladesh, migration drives child marriage in a different way: fathers going to Middle East countries to work prefer to have their eligible daughters married before they leave. Sons left behind take on additional responsibilities and workloads in the absence of their fathers, increasing the likelihood of dropping out of school and then marrying. In all three countries, boys and young men who work abroad are attractive suitors due to the income they can garner.<sup>228</sup> The links between migration and early marriage might explain the findings that households at source with members working abroad are not less likely to involve child marriages, even though they tend to be relatively economically secure compared to their neighbours.<sup>229</sup>

Girls and women also migrate, mostly for domestic or small-scale manufacturing work. Domestic workers are especially vulnerable to degrading work and living conditions and sexual and labour exploitation, due to the fact that they are invisible to the public.<sup>230</sup> Informal recruiters target girls with unstable family situations at home and promise better fortunes elsewhere; other girls know the risks they are taking. Migration for marriage, often without dowry, was discussed earlier in this paper as a potential form of trafficking in South Asia.

Another possible interaction between child labour and child marriage practices is that one forestalls the other. Many of the studies on bonded labour in South Asia found that the participation of working girls drops considerably by puberty, while boys of that age continue working.<sup>231</sup> *Kamalari* and *haliya* girls reported being married as young as 12, with some continuing to do their work until having children and then scaling back to seasonal or daily labour.<sup>232</sup>

226 Ibid., p. 30; Storer, Graeme, *Towards Safety, Dignity and Better Health of Migrants*, EMPHASIS Learning Series, CARE, Kathmandu, April 2014, p. 84.

227 Population Council, *Community Assessments: Accelerating action to end child marriage in Bangladesh*, United Nations Children's Fund, United Nations Population Fund, Bangladesh, 2017.

228 CARE, *Dads Too Soon*, 2015; Karim, et al., *The Cultural Context of Child Marriage in Bangladesh and Nepal*, 2016, p. 30.

229 United Nations Children's Fund and United Nations Population Fund, *Key Drivers of Changing Prevalence*, 2018.

230 Storer, *Towards Safety, Dignity, and Better Health of Migrants*, 2014, p. 82.

231 Ali et al., 'Hidden Hazardous Child Labor as a Complex Human Rights Phenomenon', 2017; Giri, 'Bonded Labor System in Nepal', 2010; International Labour Organization and United Nations Children's Fund, *Breaking the Mould*, 2015.

232 Giri, 'Bonded Labor System in Nepal,' pp. 38–39.

# What next?

This paper has examined key threads of the discourse on practices in child protection and child rights related to child marriage, child labour, and the possible relationship between them, with reference to the relevant conceptual frameworks. The analysis suggests several gaps, conceptual and empirical, that, if filled, might advance the discourse. Our knowledge and the discussion will hopefully benefit from recent advancements in measures of child marriage and child labour, for example, in time use studies, indicators that capture the number of years spent in child marriage, and tools for multifactorial macro-economic analyses. The following questions need to be explored.

## ON CONSENT TO MARRIAGE

We still understand little about decision-making processes around the arranged and self-initiated marriages of children. Marriage in most of South Asia is 'compulsory', that is, there are very few legitimate ways to participate in society as an unmarried adult; marriage is assumed to be inevitable.

- Where is the line between an arranged marriage and a forced marriage?
- How does agency come in?
- Can we recognize 'bargaining strategies' or envision a continuum of consent and dissent that girls and boys navigate when entering marriage?
- How do married adolescents view the idea that they are in a forced marriage?
- How important is the ability to withdraw consent, to leave a marriage?
- At what point does a consensual marriage become a forced marriage?

## ON CHILD LABOUR INSIDE OF CHILD MARRIAGE

- How do patterns of children's time use change after marriage?
- Is there evidence of longer total hours of work?
- How do hours of economic work interact with hours of unpaid household services, and are there differences according to marital status?
- Do pregnant adolescents or working child mothers require separate thresholds?
- Do married children face unique or more severe hazards in their work? For example, are child brides in purdah more exposed to kitchen pollutants because of their isolation in the home?
- Is there a relationship between marital status and participation in the worst forms of child labour other than hazardous work, such as commercial sexual exploitation?
- In what situations can we say child marriage is for the purpose of labour exploitation?
- Does marriage precipitate labour force participation and constitute a 'double duty' for girls in contexts where employment outside the home is common?
- Does child marriage change or influence the labour force participation of boys and girls?

## ON CHILD LABOUR BEFORE MARRIAGE

- The majority of children in child labour in South Asia work in family businesses. Does that form of work have a different effect on marriage timing than other forms?
- Are there patterns in time use for work and school that predict early marriage?

## ON SEXUAL ABUSE

- How often is sexual initiation forced in child marriage?
- How prevalent is repeat sexual abuse?
- Is there a spousal age disparity threshold that marks an increased likelihood of sexual abuse?
- Are there other markers?

## ON CONTROL WITHIN MARRIAGE

- Can we define a level of control of a child's mobility, activities, and/or economic assets in marriage that would constitute servile marriage or slavery?
- What role do extended family members such as in-laws play in demanding married children's labour?
- Is there a spousal age disparity threshold beyond which the younger spouse becomes significantly disempowered in the marriage?

## ON LABOUR MIGRATION AND MARRIAGE

- Labour migration seems to be a driver of child marriage in South Asia. What evidence do we need to investigate this further?

# Conclusion

This paper has examined the discussion about the relationship between child labour and child marriage. The argument that child marriage is child labour is based on the idea that children cannot consent to marriage and, therefore, the work they perform as a result of the marriage is forced child labour. Child marriage has also been assessed as a form of slavery or a practice similar to slavery, trafficking in children, sexual exploitation, and commercial sexual exploitation. We have also looked at the role of children's agency in marital and work decisions and reviewed evidence of other interactions between marriage and work in children's lives, particularly in South Asia.

In South Asia, child labour, including the worst forms of child labour, remains common. Millions

of children are married, some of them in forced marriages. Our collective understanding of child, early, and forced marriage would benefit from a more articulated classification of the range of pathways to, and conditions of, the marriages in which children are living, including the nature of the work they do within those marriages. This paper suggests some areas for further research and debate.

The world has committed itself to eradicating child labour and child marriage by 2030. To reach that goal, it is important that our work is interdisciplinary and reflects the multidimensionality of children's lives. The debate about the relationship between child marriage and child labour is valuable for that reason.

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## Appendix I: Methodology and experts consulted

The study was conducted as a literature review covering: research and knowledge on the forms and prevalence of child marriage and child labour in South Asia; employment, child labour, and unpaid care work in child marriage; consent to child marriage, including self-initiated child marriage and forced marriage; patterns and conditions of marriage among working children; relevant international and regional conventions, agreements, and guidelines that establish the international law and standards in relation

to child marriage and child labour, and where they may overlap; thought pieces relevant to the relationship between child marriage and child labour, including position papers and policy papers by interested organizations and media on the topic; and publications on related concepts such as work, labour, consent, and empowerment. In addition, six experts on child marriage and child labour were interviewed, as presented in the table below.

**Table A1:** Experts interviewed

Name	Position
Ramya Subrahmaniam	Chief, Child Protection Research, UNICEF
Jo Sauvarin	Technical Specialist, Adolescents and Youth, UNFPA APRO
Ravi Verma	Executive Director, International Center for Research on Women (ICRW) Asia
Mary E. John	Center for Women's Development Studies
Benjamin Smith	Senior Technical Officer Child Labour Specialist, ILO
Sumnima Tuladhar	Executive Director, Child Workers in Nepal

## Appendix II:

## Ratification of key international conventions by South Asian countries<sup>233</sup>

CONVENTION/ COUNTRY	Afghanistan	Bangladesh	Bhutan <sup>234</sup>	India	Maldives	Nepal	Pakistan	Sri Lanka
Slavery Convention (1926)	Y	Y	N	Y	N	Y	Y	Y
Forced Labour CONVENTION (1930)	N	Y	N/A	Y	Y	Y	Y	Y
Supplementary Convention on Slavery (1956)	Y	Y	N	Y	N	Y	Y	Y
Abolition of Forced Labour Convention (1957)	Y	Y	N/A	Y	Y	Y	Y	Y
Consent to Marriage, Minimum Age, and Registration (1962)	N	Y <sup>235</sup>	N	N	N	N	N	N <sup>236</sup>
Convention 138 (1973)	Y	N	N/A	Y	Y	Y	Y	Y
CEDAW (1979)	Y	Y <sup>237</sup>	Y	Y <sup>238</sup>	Y <sup>239</sup>	Y	Y	Y
CRC (1989)	Y	Y <sup>240</sup>	Y	Y <sup>241</sup>	Y	Y	Y	Y
Convention 182 (1999)	Y	Y	N/A	Y	Y	Y	Y	Y
Optional Protocol on the Sale of Children (2000)	Y	Y	Y	Y	Y	Y	Y	Y
Trafficking PROTOCOL (2000)	Y	Y	N	Y	Y	Y	N	Y
Protocol to The Forced Labour Convention (2014)	N	N	N/A	N	N	N	N	Y

233 As of 15 September 2020.

234 Bhutan is a member of the UN, but not ILO; therefore, it does not participate in ILO conventions.

235 Bangladesh holds reservations on Articles 1 and 2 concerning minimum age of marriage and child marriage.

236 Sri Lanka has signed, but not ratified.

237 Bangladesh holds reservations on Articles 2 on the equality of men and women and 16(1c) on equal rights and responsibilities in marriage.

238 India holds reservations on Article 16(2) concerning marriage registration.

239 The Maldives holds reservations on Article 16 on equality within marriage.

240 Bangladesh holds reservations on Articles 14(1) on freedom of religion and 21 on inter-country adoption.

241 India has agreed to progressively implement Article 32(2a) on minimum age for employment.

## Appendix III:

## International Conference of Labour Statisticians statistical definitions relevant to the measurement of child labour

**PRODUCTION BOUNDARIES**

The ILO's frameworks are designed in reference to other global conceptual templates. One of these is the System of National Accounts (SNA). The SNA is the internationally agreed typology of economic activity. It was first issued in 1953, and the most recent version is dated 2008. It is used by countries to record macroeconomic development and national finances in a common way that allows comparisons across countries.

'Within the SNA production boundary' refers to production of all goods and most services that are available for exchange in markets, i.e., economic production. It excludes 'own-account production of services'. Own-account (or 'own-use') production of services encompasses unpaid household work and care work, such as cooking, cleaning, child care, elder care, and other basic household duties done by family members for their own purposes. These are not included in the SNA production boundary. The reason for this is that "the own-account production of **services** within households is a self-contained activity with limited repercussions on the rest of the economy" and such activities do not influence economic policy, because they yield no tax, are not subject to market fluctuations, etc.<sup>242</sup> However, the production of **goods** within households for family members' own use—for example, products of subsistence

agriculture, pottery, and furniture for the producer's own home—are included inside the SNA production boundary. Notably, water and firewood (and other similar goods) collected from public sources are treated as goods and, therefore, the work of gathering water and firewood are included inside the SNA production boundary.<sup>243</sup> Some countries choose to apply a wider frame to economic activity and use the 'SNA **general** production boundary' or simply 'the general production boundary.' The general production boundary encompasses all of the above activities, whether done for one's own-use or not.

**EMPLOYMENT VERSUS WORK**

For decades, employment was the central concept in human labour, given its importance to poverty reduction and economic development, and the notion of work corresponded to the definition of employment.<sup>244</sup> In 2013, the International Conference of Labour Statisticians—the standard-setting body of labour statisticians hosted by ILO—which convenes every five years, defined 'work' for the first time in global cooperative efforts, reflecting a growing concern that focus on purely economic production forestalls appreciation of the wider sphere of livelihoods, social cohesion, and well-being and downplays the role of unpaid work:<sup>245</sup> "Work comprises any activity performed

242 United Nations, European Commission, International Monetary Fund, Organisation for Economic Co-operation and Development, and World Bank, *System of National Accounts, 2008*, United Nations, New York, 2009, pp. 98–99.

243 The indicator definitions for Sustainable Development Goal 8.7 on child labour include fetching water and collecting firewood as unpaid household services.

244 For example, see the footnote on page 5 of: International Labour Organization, *Report III: Child labour statistics*, 2008.

245 International Labour Organization, *Report II: Statistics of work, employment and labour underutilization*, 2013, p. 8.



by persons of any sex and age to produce goods or to provide services for use by others or for one’s own use”.<sup>246</sup> Work is still work even if it is illegal, such as in illegal drug trade and child prostitution, and regardless of whether it is part of the formal economy or not. This definition aligns with the general production boundary of the SNA.

Five mutually exclusive kinds of work are identified: own-use production work, employment, unpaid trainee work, volunteer work, and other work activities.<sup>247</sup> The two categories important for our discussion here are own-use production and employment. Own-use production work is the production of goods and services for one’s own final use personally or within one’s own household. Employment is work for use by others for pay or profit and continues to be the frame of reference for determining the labour force and unemployment.

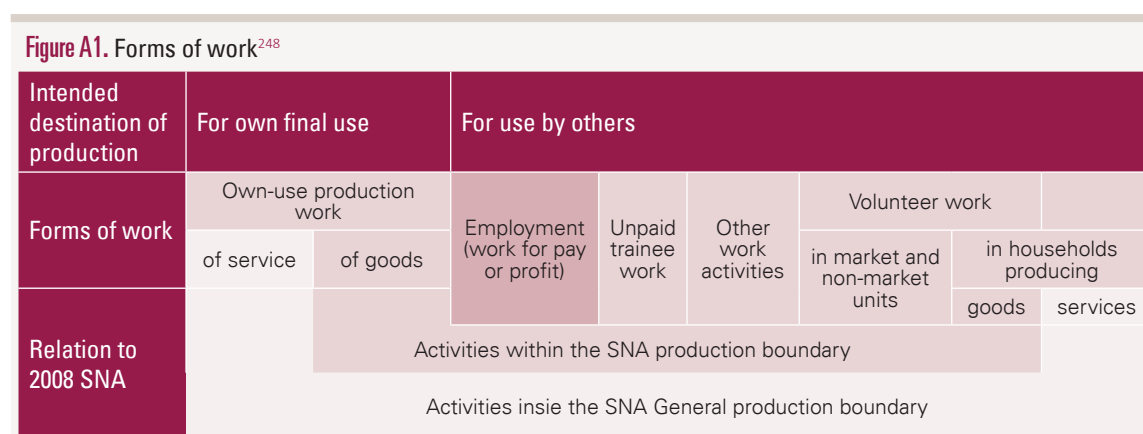
Figure A1 shows the forms of work overlaid with the SNA production boundary and the general production boundary. Notice that own-use production of goods is within the SNA production boundary and own-use production of services is outside the SNA production boundary, but within the general production boundary.

## UNPAID HOUSEHOLD SERVICES

Own-use production of services includes unpaid household services (UHS), also called unpaid care work or unpaid domestic work, as in Sustainable Development Goal 5.4. When it is children doing the work, it is sometimes called household chores. These terms only apply when the work is being done in the child’s (or the adult’s) own household. There are conditions under which a child doing household chores would be counted as child labour for statistical purposes, e.g., when the number of hours exceeds established thresholds for their age group or when conditions are hazardous.

## WORKING CHILDREN

Prior to the 19th ICLS, children who were employed or engaged in work were referred to as ‘children in productive activities’. With the definition of ‘work’, the ICLS recognized that a different term, that of ‘working children’, was necessary. The 20th ICLS, therefore, included this term in its revision of child labour statistics (Resolution IV).<sup>249</sup> ‘Working children’ encompasses children doing any kind of work, legal or illegal, legitimate or illegitimate, inside the home or outside the home.<sup>250</sup>



246 International Conference of Labour Statisticians, *Resolution I: Resolution concerning statistics of work, employment and labour underutilization*, 19th ICLS, ILO, 11 October 2013, paragraph 6.

247 ‘Other work activities’ may include, inter alia, court-ordered labour and unpaid military service.

248 Source: International Conference of Labour Statisticians, *Resolution I*, 2013, Diagram 1.

249 International Conference of Labour Statisticians, *Resolution IV: Resolution to amend the 18th ICLS Resolution concerning statistics of child labour*, 2018.

250 Begging and stealing are treated as personal care and not work, unless it is done for a third party, in which case it is generally considered child labour.



The Relationship between  
**Child Labour and  
Child Marriage:**  
A Discourse Analysis



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for every child

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