

AGE OF MARRIAGE VS. AGE OF SEXUAL CONSENT

While there is increasing consensus globally that girls should not be forced into marriage as children, there is far less agreement about when young people should be allowed to have sex and at what age they are able to make an informed choice about whether to engage in a consensual sexual relationship.

In recent years, an increasing number of governments have acted to end child marriage and to set the legal age of marriage at 18 years of age. These moves have sometimes been accompanied by proposals to increase the age of sexual consent to 18, particularly in contexts where sex outside marriage is considered taboo.

At the *Girls Not Brides* Global Meeting in June 2018, **members discussed the potential impact** that such moves might have on our shared dream of a world in which girls and women enjoy equal status with boys and men, and are able to achieve their full potential in all aspects of their lives. The discussion exposed some discomfort about adolescent sexual activity among members, but there appeared to be agreement from the diverse meeting participants that the health, rights and wellbeing of adolescents should be always be prioritised.

A new article in the *Lancet Child & Adolescent Health* (3 December 2018), authored by global adolescent health experts Dr. Suzanne Petroni, Dr. Madhumita Das and Dr. Susan Sawyer,¹ sheds additional light on this discussion, and provides some important food for thought for the *Girls Not Brides* community. In short, the article provides a compelling case that the impact of decisions to marry and to have sex are different, and therefore, the minimum ages do not need to be aligned.



Photo: Jessica Lea/Department for International Development

Below, we highlight some of the key points addressed in the article:

- **It is critical to ensure that children and adolescents are protected from sexual abuse, coercion and exploitation, whether this takes place within or outside of marriage.** Children and adolescents might not always have the knowledge, means, or power to give their genuine and fully informed consent to sex, and thus can be pressured or coerced to engage in sexual activity. *Non-consensual sex at any age should be criminalised.*
- **Laws that promote a high age of sexual consent are often used to curb adolescents' and women's agency.** Although both girls and boys face consequences of a high age of sexual consent, efforts to conflate age at marriage with age of sexual consent can be particularly harmful for girls, as they can deny them the right to make decisions about whether, when, and with whom to have sex. They can also stigmatise or criminalise individuals who have sex before marriage and increase barriers to accessing sexual and reproductive health services.
- **The growing evidence indicates that the stigma around adolescents engaging in sexual activity prior to marriage may actually be contributing to child marriage.** In some societies, parents' desire to preserve their daughters' "sexual purity" prior to marriage may drive early marriage. In many societies, adolescents may feel the only way they can have sex—and access sexual and reproductive health information and services—is by being married, which again, may drive early marriage.
- **A lack of clarity around laws and policies pertaining to age of marriage and age of consent to sex can be confusing** to health service providers. This can potentially make them more conservative, reducing adolescents' access to the education, information and services they need to protect themselves against unwanted pregnancy and sexually-transmitted infections.
- **Adolescents have rights as well as evolving capacities to make decisions.** The Convention on the Rights of the Child recommends the need for minimum ages of sexual consent, marriage and medical consent that "closely reflect recognition of the status of human beings under the ages of 18 as rights holders in accordance with their evolving capacity age and maturity." These include rights in relation to sexual activity and the right to be informed about sexual and reproductive health.
- **The concept of the evolving capacities of adolescents reflects a balance between recognising children as active agents in their own lives, while also being entitled to protection in accordance with their relative immaturity and youth.** There is no single age at which maturity or agency occurs. The capacity to take responsibility for decisions affecting one's life can happen at different ages for children and adolescents with diverse life experiences.
- **Marriage is a potentially life-long legal contract** with significant legal obligations and responsibilities. Child marriage is associated with a number of adverse consequences for girls.² These include reduced educational attainment, higher rates of early pregnancy, increased experience of intimate-partner violence, increased prevalence of depression, and poor economic opportunities, among others. Divorce is banned or discouraged in many countries, and where it is not, married children may not be legally permitted to access legal services to seek a divorce.
- **At least half of all adolescents globally have reported having had sex before the age of 18.** Acknowledging that adolescents have sex allows them to gain the information, knowledge and tools to protect themselves. With appropriate information and knowledge, these adolescents will be better able to understand their rights and provide consent to have sex with their partner of choice when they are ready, and without punitive consequences for doing so.

¹Petroni, S., Das M, Sawyer S. (2018). The Lancet Child & Adolescent Health. Protection versus rights: age of marriage versus age of sexual consent. December 3, 2018. Available at: [https://www.thelancet.com/journals/lanchi/article/PIIS2352-4642\(18\)30336-5/fulltext](https://www.thelancet.com/journals/lanchi/article/PIIS2352-4642(18)30336-5/fulltext)

²<https://www.girlsnotbrides.org/what-is-the-impact/>

- **Efforts to prevent adolescents from engaging in sexual intercourse have not been proven effective.** To the contrary, the evidence affirms that providing adolescents with the skills, information, and services they need to say “yes” or “no” to sex, and to be able to negotiate safer sex, can help to prevent unplanned pregnancies, unsafe abortions and sexually transmitted infections.
- **Ensuring that all adolescents have access to developmentally appropriate, accurate, and non-judgmental sexual and reproductive health information and services,** including rights-based comprehensive sexuality education, is crucial to ensuring their health and wellbeing, regardless of the age of consent to sex.
- **Recommendations to set a high minimum age of sexual consent without close-in-age³ exemptions are extremely problematic,** especially if there are associated criminal penalties. While the intent may be protective, establishing such an age barrier effectively criminalises a biologically normal behaviour in which large numbers of adolescents are engaged.

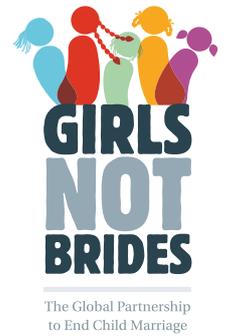
The article concludes by celebrating that increased attention to the harms of child marriage has contributed significantly towards ending this harmful practice, including through raising the legal age of marriage to 18. While these changes are welcomed, however, the authors note that they must be accompanied by a perspective that “explicitly respects and protects adolescents’ rights to express their sexuality without fear of criminal consequences, and to access sexual and reproductive health information and services in line with their needs.”

Additional Resources

In addition to the *Lancet Child & Adolescent Health* article, the following resources may be useful to those who want to learn more about age of consent.

- **Age of consent laws globally:** A website that provides information about the age of consent around the world.
- **National Sexual Rights Law and Policy Database:** A database that documents the status of law and policy related to a variety of sexual rights issues in different countries, including age of consent to sex and age of legal marriage, among others.
- **Age of consent: global legal review:** Report from the Southern African AIDS Trust, in collaboration with the Thomson Reuters Foundation, 20 global law firms, and UNICEF, produced in 2016 as a synthesis of Age of Consent laws in 22 countries.
- **Many countries allow child marriage:** A 2016 brief published by the Pew Research Centre summarising age at marriage for girls and boys globally.
- **Child marriage & the law: Why is it important for countries to set 18 as the minimum legal age of marriage?** A webpage providing questions and answers on the legal age at marriage.
- **Child, early and forced marriage and the control of sexuality and reproduction:** A brief by the International Women’s Health Coalition, Nirantar Trust, American Jewish World Service, GreeneWorks, and CARE International, arguing that improving our understanding of sexuality and its social construction can help us better tackle child, early and forced marriage.
- **World Policy Analysis Center:** An interactive site with information on marriage laws and policies.
- **Legal minimum ages and the realization of adolescents’ rights** A paper from UNICEF which reviews the situation in Latin America and the Caribbean.
- **Lost without knowledge: Barriers to sexual and reproductive health information in Zimbabwe:** A report from Amnesty International documenting how widespread confusion around the legal age of consent for sex, marriage and accessing health services is leaving adolescent girls in Zimbabwe vulnerable to unwanted pregnancies, at higher risk of HIV infection and child marriage, as well as challenges in completing their education.

³Close-in-age exceptions refers to a law allowing a young person below the age of consent to have lawful sex with an older partner. For example, in Canada, a 14 or 15 year old can consent to sexual activity as long as the partner is less than five years older and there is no relationship of trust, authority or dependency or any other exploitation of the young person.



This brief was developed by the Girls Not Brides secretariat, and does not necessarily reflect the views of every member of the Girls Not Brides Partnership.

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Girls Not Brides is global partnership made up of more than 1000 civil society organisations from over 95 countries, committed to ending child marriage and enabling girls to fulfil their full potential.