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Shri Himanta Biswa Sarma
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17 March 2023

Dear Minister,

HOLISTIC FRAMEWORK TO CURB CHILD MARRIAGE IN ASSAM

I write on behalf of Amnesty International to seek your intervention to stop the mass arrests of entire communities through discriminatory use of child marriage laws in the state of Assam. Amnesty International is gravely concerned by the mass arrests which have taken place since January 2023. What is needed to address child marriage is not mass arrests and collective punishment of whole communities, but the adoption of a more holistic framework by the Assam Government to ensure that the state's implementation of certain policies and measures effectively upholds the human rights of women and girls.

On 23 January 2023, the Assam government announced that it is launching a crackdown on people who "participated in child marriage" in the last seven years in the state. Specifically, it announced that the Assam Police will arrest those who married girls between 14 and 18 years of age under the Prohibition of Child Marriage Act (PCMA), 2006 and girls below 14 years of age under the stringent Protection of Children from Sexual Offences (POCSO) Act, 2012. Since then, at least 6000 people have been accused including the persons who officiated child marriages and over 3000 people have been arrested by Assam police.¹ The highest number of cases have been registered in Dhubri district² that has the highest Muslim population in the state according to the 2011 census data.³ According to media reports, at least four women have died by suicide under the mounting pressure of the crackdown while many others are struggling to find effective and quality legal assistance for their family members. Women from socially and economically disadvantaged communities are also drawing back from public health facilities providing maternal healthcare fearing arrests of their family members, further putting their health at risk.

¹ Twitter, Himanta Biswa Sarma, "Child marriage is a social scourge and we are committed to ensure this evil practice is stopped. The arrests in Assam include accused and perpetrators of this crime and not done after verifying their religious affiliations.", 17 February 2023, <https://twitter.com/himantabiswa/status/1626529985937960960?s=20>

² Twitter, Himanta Biswa Sarma, "Assam Govt is firm in its resolve to end the menace of child marriage in the state. So far @assampolice has registered 4,004 cases across the state and more police action is likely in days ahead. Action on the cases will begin starting February 3. I request all to cooperate.", 2 February 2022, <https://twitter.com/himantabiswa/status/1620989214962909185>

³ According to the 2011 Census of India conducted by the Government of India, Muslims constitute 79.6% population of Dhubri district in Assam, <https://www.census2011.co.in/data/religion/district/148-dhubri.html#:~:text=Total%20population%20of%20Dhubri%20district%20is%201%2C949%2C258%20as,in%20Dhubri%20state%20forming%2019.92%25%20of%20total%20population.>

The list of challenges for girls is not short. Girls in Assam are more likely to experience exclusion, gender-based discrimination and violence than boys.⁴ They are also more likely to have unequal access to education and economic opportunities in the future.⁵ According to the 2019-2021 National Family Health Survey, 31.8% of women aged 20-24 years married below the age of 18 in Assam. At the time of survey, 11.8% of adolescent girls aged 15-19 years were already mothers or pregnant.⁶ In Assam, adolescent pregnancies were almost double in rural areas than urban areas.⁷

While we appreciate the Assam government's focus on ending child marriage, the emphasis on criminalisation solely may not yield the desired results. The UN Convention on the Rights of the Child, to which India is a state party, applies four general principles to the issue of harmful practices such as child marriage namely, a) protection from discrimination (Article 2), b) ensuring the best interests of the child (Article 3), c) upholding the right to life, survival, and development (Article 6), d) and the right of the child to be heard (Article 12). To ensure the application of these general principles, state authorities are required to establish a well-defined, rights-based, and locally relevant holistic strategy that includes supportive legal and policy measures, including social measures that are combined with commensurate political commitment and accountability at all levels. In this regard, the principle of evolving capacity of adolescents and children's development to make decisions about their lives must be considered.⁸ Accordingly, the need to protect adolescents from harm must be balanced with the recognition that their agency and autonomy increase as they mature.⁹ It also requires horizontal coordination across sectors, including education, health, justice, social welfare, law enforcement, immigration and asylum and communications and media.¹⁰ Strategies aimed at eliminating harmful practices also need to involve a wide range of other stakeholders, including national independent human rights institutions, health, education and law enforcement professionals, members of civil society and those who engage in the practices.

As part of a holistic strategy to curb child marriage, it is imperative that girls are equipped with the skills and competencies necessary to assert their rights, including to make autonomous and informed decisions and choices about their own lives. In this context, education is an important tool for empowering women and girls to claim their rights and a great deterrent to child and early marriage. However, the Assam government has consistently lagged in ensuring continued access to education for girls. According to Government of India's Unified District Information System for Education, in 2020-2021 Assam recorded the fourth highest school dropout rate in the country.¹¹ It also recorded the third-highest dropout rate amongst girls aged 9-10 years. Marriage is also often perceived as a way to ensure the economic subsistence of girls and women with no autonomous access to productive resources and for those living in situations of extreme poverty. Empirical evidence shows poverty and insecurity as one of the root causes of child, early and forced marriage. In 2021, India's Niti Aayog (Policy Commission) estimated that at least 32.67% of Assam's population lives in multi-dimensional poverty deprived of adequate health, education and standard of living.¹²

In Assam, the police have arrested persons who participated in child marriages going as far back as seven years. Even as we agree on the need to address the harmful practice of child marriage, this retrospective action, without considering the best interests and the right to be heard of the married girls who may have become adults by now, could be detrimental to their health and safety. Moreover, relying solely on the abilities of the law enforcement officials to curb child marriage without considering the negative impact on survivors and ensuring their access to legal

⁴ Assam recorded the highest rate cases of violence against women for three consecutive years from 2016 to 2019 in India, Crime Statistics of India, National Crime Record Bureau, <https://ncrb.gov.in/en/crime-india>

⁵ In Assam, 29.6% women completed 10 or more years of schooling as opposed to 35.5% of men, National Family Health Survey (2019-2020), http://rchiips.org/NFHS/NFHS-5_FCTS/NFHS-5%20State%20Factsheet%20Compendium_Phase-I.pdf

⁶ Government of India, Ministry of Health and Family Welfare, National Family and Health Survey - 5, 2019-2021, State Fact Sheet, Assam, http://rchiips.org/nfhs/NFHS-5_FCTS/Assam.pdf

⁷ National Family and Health Survey - 5, 2019-2021, State Fact Sheet, Assam

⁸ UN Committee on the Rights of the Child (CRC), General comment No. 20 (2016) on the implementation of the rights of the child during adolescence, 6 December 2016, CRC/C/GC/20, <https://www.refworld.org/docid/589dad3d4.html>

⁹ CRC, General comment No. 20 (2016)

¹⁰ Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices, 14 November 2018

¹¹ Unified District Information System for Education, Department of School Education and Literacy, 2021-2022 statistics, Table 6.13

¹² https://www.niti.gov.in/sites/default/files/2021-11/National_MPI_India-11242021.pdf

remedies, support services and social and economic opportunities is short-sighted and more likely to leave women and girls more economically devastated.

Amnesty International also spoke to lawyers in Assam who are providing legal assistance to the arrested persons and found that the use of the stringent POCSO Act is being applied in all cases, despite earlier statements by the government that POCSO would only be used in cases where girls were under 14 years of age or below. Specifically, husbands have been arrested under Section 6 of the POCSO Act that attracts charges of “aggravated sexual assault”.¹³ Under this provision, husbands in child marriages may be prosecuted for crimes punishable with sentences of minimum of 10 years to life imprisonment. There is increasing recognition of evolving capacities of adolescents by international bodies. Mass application of POCSO, without a case-by-case analysis, risks violating the right to protection, the best interest principle and respect for the evolving capacities of adolescents¹⁴ and imposes disproportionate burden of criminality and stigma on entire communities.

The arrest of family members of girls in child marriages, may result in further deprivation of education, life skills and livelihood opportunities not only for them but also for their siblings when parents are arrested. In this instance, Amnesty International has learnt that family members and persons who officiated child marriages in Assam have been arrested under Section 17 of the POCSO Act that penalises abetment of sexual offences under the legislation.¹⁵ When it is evident that poverty and lack of education drive child marriages, the weaponization of POCSO may also deter survivors of child marriage, especially those minority communities, from coming forward, if it may result in the criminal prosecution and imprisonment of family members. This highlights the need to accompany legal reforms with policies addressing structural factors behind poverty and facilitating communities’ development and gender equality including programmes to promote and support girls’ education and raise awareness of families and communities about the risks of child marriage. The provision of economic support and incentives to girls to attend schools and to their families has proven to be effective in allowing girls to pursue higher education and delay marriage.¹⁶

Moreover, weaponizing of community health systems to crackdown on families is a violation of their right to privacy. International human rights standards require that the purposes for which data will be used should be clear at the time of data collection.¹⁷ Health related data can only be used for the prevention or detection of a specific crime in very limited circumstances and with strict safeguards.¹⁸ If not, it would amount to a violation of the rights to privacy and health. It appears as though these were not met in this instance where the data used for identifying child marriage in the state was drawn from the Reproductive Child Health portal designed for the timely identification of women’s reproductive health needs and run on the basis of information provided by community health workers known as Accredited Social Health Activist (ASHA).¹⁹ Media reports also indicate that there was no judicial oversight, and the data was used, retained and transferred further to law enforcement officials in a manner incompatible with the stated purpose of health and welfare, for which it was originally collected.²⁰ Although India does not have an adequate data protection law, the actions of the Assam government could potentially also run afoul of the safeguards of legitimate

¹³ Section 6 of the Protection of Children from Sexual Offences Act, 2012, “Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.”,

https://legislative.gov.in/sites/default/files/The%20Protection%20of%20Children%20from%20Sexual%20Offences%20Act,%202012_0.pdf

¹⁴ UN Committee on the Rights of the Child (CRC), *General comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, 6 December 2016, CRC/C/GC/20, para. 39.

¹⁵ Section 17 of Protection of Children from Sexual Offences Act, 2012, “Whoever abets any offence under this Act, if the act abetted is committed in consequence of the abetment, shall be punished with punishment provided for that offence. Explanation. — An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy or with the aid, which constitutes the abetment.”,

https://legislative.gov.in/sites/default/files/The%20Protection%20of%20Children%20from%20Sexual%20Offences%20Act,%202012_0.pdf

¹⁶ The World Bank, *Economic Impacts of Child Marriage: Global Synthesis Report*, 27 June 2017, para 15, 39, 88, 125, <https://documents1.worldbank.org/curated/en/530891498511398503/pdf/116829-WP-P151842-PUBLIC-EICM-Global-Conference-Edition-June-27.pdf>

¹⁷ Report of the Office of the United Nations High Commissioner for Human Rights, *The Right to Privacy in Digital Age*, UN Doc. A/HRC/27/37, para 21-27 and 29

¹⁸ Report to the General Assembly, Special Rapporteur on the Right to Privacy, UN Doc. A/74/277, para. 35.2

¹⁹ “The Weaponisation of Health Records and Need for Privacy”, *The Wire*, 13 March 2023, <https://thewire.in/tech/the-weaponisation-of-health-records-and-need-for-privacy>

²⁰ “The Weaponisation of Health Records and Need for Privacy”, *The Wire*, 13 March 2023, <https://thewire.in/tech/the-weaponisation-of-health-records-and-need-for-privacy>

aim, proportionality and necessity laid down by the Supreme Court of India in the *Puttaswamy* case.²¹ The use of data in this manner, without additional safeguards, also risks other adverse consequences, and may make people reluctant to access health services and undo the progress achieved by the Assam government on maternal health by pushing women and girls towards more unsafe methods of delivery or pregnancy termination.

Between 2015 and 2019, the Assam government conducted a state-wide exercise to prepare the National Register of Citizens (NRC) requiring individuals to prove their Indian citizenship. In August 2019, the government released the first draft of NRC which excluded 1.9 million people, disproportionately affecting marginalised groups such as Bengali Muslims, especially married women within that community. The NRC required people to provide documentation proving their Indian citizenship through descent. In 2019, Amnesty International India found that the Assam government and the courts not only failed to consider the particularly vulnerable situation of married women who migrate from their paternal homes to their marital homes at a young age but also overlooked the fact that most married women have documents proving their relationship with their respective husbands but struggle to establish legacy to their parents.²² As a result, many women who were married before the minimum age of 18 were compelled to rely on the certificates issued by the village heads which authorize their permanent residence at a place, mostly that of the marital home. This adversely affected the determination of a married woman's right to citizenship in Assam further putting them at risk of socio-economic marginalisation. In this background, we urge the Assam government to ensure that its policies and measures do not result in backsliding on human rights of women and girls as has been the case in the past.

In keeping with international law and standards, we request the Assam Government to:

1. Put a stop to any further mass arrests under the stringent POCSO Act without considering the specific facts and circumstances of each case, and to ensure access to free, effective, and quality legal assistance to individuals and families that cannot afford lawyers. Mass arrests can be counter-productive and detrimental to those communities who are already marginalised and living in poverty;
2. Ensure that policies to end child marriage take a holistic approach, including improving the economic situation for girls and their families, providing alternatives, and empowering girls with information and skills, among others. For those girls and women who are already married, there must be legal avenues, legal aid and support systems in place that allow them to leave the marriage, if they wish to;
3. Promote girls' right to education, in accordance with international law and standards, and ensure girl's access to high-quality education in practice including through tailored reintegration programmes for girls who are forced to drop out of school due to marriage and/or childbirth;
4. Ensure that adolescents can benefit from accessible, confidential and quality youth-friendly sexual and reproductive health services, commodities and information, particularly in areas where there are high rates of early and child marriages, to address the high rates of adolescent pregnancies and health risks associated with them;
5. Ensure the provision of comprehensive sexuality education aimed specifically at adolescents, both in schools and in communities, to increase awareness of sexual and reproductive rights, including relevant protections under the laws and how to access such protection if any person faces the risk of abuse;
6. Accord priority to the regular collection, analysis, dissemination, and use of quantitative and qualitative data on harmful practices disaggregated by sex, age, geographical location, socioeconomic status, education level and other key factors and ensure that such activities are adequately resourced;
7. Ensure that data collection systems in healthcare and social services, education and judicial and law enforcement sectors on protection-related issues must only be put in place with appropriate and adequate

²¹ *Justice K.S. Puttaswamy (Retd.) v. Union of India* (Writ Petition (Civil) No. 494 of 2012, (2017) 10 SCC 1), Supreme Court of India (2017)

²² Amnesty International, *Designed to Exclude: How India's Courts Are Allowing Foreigners Tribunals To Render People Stateless In Assam*, 2019, https://www.amnesty.be/IMG/pdf/rapport_inde.pdf

safeguards related to consent of the data principal along with the purpose, use, storage, retention, and transfer of such data.

Yours sincerely,



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