



# Protection versus rights: age of marriage versus age of sexual consent

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As many governments worldwide have raised the legal age of marriage to 18 years, some are also considering raising the age of sexual consent. Without close-in-age exemptions, arguments to align the legal age of sexual consent with that of marriage would restrict the ability of adolescents to legally have sex. In contrast to international agreements that affirm 18 years as the minimum age for consent to marriage, international human-rights standards do not recommend specific age limits for sexual consent but urge recognition of adolescents as rights holders, including rights in relation to sexuality. The majority of the world's young people are having sex before the age of 18 years. Laws that increase the age of sexual consent can be harmful and are often used to curb adolescents' agency, including denial of adolescents' rights to make decisions about whether, when, and with whom to have sex. Such laws can also result in stigmatisation or criminalisation (or both) of individuals who have sex before marriage, and increase barriers to accessing sexual and reproductive health. By contrast, providing adolescents with appropriate information and services supports healthy development, agency, and empowerment around their rights, including the right to be informed about their bodies and the right to consent (or not) to sex. Raising the legal age of sexual consent risks restricting adolescents from accessing the health care they need to protect themselves, and there is no evidence that it prevents consensual sex or sexual coercion. Because the consideration to marry and to have sex are very different, the minimum ages need not be aligned.

## Introduction

The increase in global recognition of the harms that result from child marriage has contributed to the decision of the governments of many countries—ranging from Chad to Costa Rica, Guatemala to Germany, Nepal to the Netherlands—to raise the legal age of marriage to 18 years.<sup>1</sup> In the past 6 years alone, 15 countries have raised the age of marriage to 18 years or removed exemptions that allowed girls younger than this age to marry—progress that exceeds that made over the previous 15 years.<sup>2</sup> As these positive changes have taken place, some governments have also considered increasing the legal age of sexual consent. Is alignment between the legal age of marriage and of sexual consent desirable? Or might such initiatives be counterproductive in relation to efforts to achieve a more gender-equitable world that supports the evolving capacities of adolescents and promotes adolescent health and wellbeing?

## Definitions and laws around the world

The age of sexual consent refers to the minimum age at which a person is considered to have the legal capacity to consent to sexual intercourse, whereas the legal age of marriage is the minimum age at which a person is deemed able to consent to marry. Throughout this Viewpoint, we refer to children as people younger than 18 years, and to adolescents as people aged 10 to 24 years.<sup>3</sup>

The legal age of consent to sex varies considerably across the globe, ranging from 11 years in Nigeria to 21 years in Bahrain. In some countries, there is no legal age of consent to sex, and in others—most characteristically in the Middle East—all sexual relations outside of marriage are considered illegal. Of note, there is no comprehensive, up-to-date, or globally supported database on laws about

the age of consent to sex, nor of efforts to change these laws. In this Viewpoint, we used the AgeOfConsent website as a starting point for data on national laws regarding age of consent to sex. The National Sexual Rights Law and Policy Database was also a useful source for information on age-of-consent laws and policies.

Historically, laws and societal acceptability related to the age of consent to sex largely coincided with the timing of puberty.<sup>4</sup> In contemporary society, the age of onset of puberty has decreased, and there is increased

### Key messages

- As governments around the world move to raise the legal age of marriage to 18 years, some are also considering increasing the age of sexual consent, which has raised concerns in relation to adolescent health and wellbeing, rights, and gender equality
- Globally, most girls and boys younger than 18 years have already initiated sexual activity; with declines in the prevalence of child marriage and shifts in norms regarding the acceptability of premarital sex in many parts of the world, an increased number of unmarried adolescents are likely to engage in sexual activity in the future
- Efforts must be made to protect all adolescents (married and unmarried) from sexual abuse, coercion, and exploitation; raising the age of sexual consent risks limiting adolescents' access to the sexual and reproductive health information and services they need to protect themselves, without evidence that it prevents consensual sex or sexual coercion
- As the consideration to marry and to have sex—and the effects of such decisions—are very different, the minimum ages need not be aligned

Lancet Child Adolesc Health 2018

Published Online  
December 5, 2018  
[http://dx.doi.org/10.1016/S2352-4642\(18\)30336-5](http://dx.doi.org/10.1016/S2352-4642(18)30336-5)

See Online/Comment  
[http://dx.doi.org/10.1016/S2352-4642\(18\)30370-5](http://dx.doi.org/10.1016/S2352-4642(18)30370-5)

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	Legal age of consent to sex (years)	Legal age of marriage (years)*
India	18	18
Bangladesh	16	16†
Nigeria	11–18‡	18§
Brazil	14	18
Ethiopia	18	18
Pakistan	16	16
Mexico	12–15‡	14
Indonesia	15	16
Democratic Republic of the Congo	18	15
Uganda	18	16

\*When all exceptions (eg, parental or judicial consent) are taken into account. †The law is unclear as to the minimum age for so-called special cases. ‡Varies by state. §Only 23 of 36 states have ratified this law.

**Table: Legal age of sexual consent and of marriage for girls in the ten countries with the highest burden of child marriage, ranked (top to bottom) by the number of child brides<sup>6,8</sup>**

interest by societies in protecting children—particularly girls—from sexual exploitation. This protective approach recognises that children might be pressured to engage in sexual activity without having the means or power to resist or give their fully informed consent.<sup>5</sup> Moralistic perceptions of the importance of girls' premarital chastity and so-called honour have also contributed to the creation of laws regarding the age of consent to sex.

Such laws are often accompanied by sanctions that criminalise sexual activity with anyone under the age of consent to sex. Some countries have close-in-age exemptions (sometimes also called Romeo and Juliet laws) to avoid criminalising sexual activity between consenting unmarried adolescents whose age difference is within 2–3 years. Many countries do not specify that age of sexual consent pertains to heterosexual sex, whereas in others, same-sex sexual relations are explicitly prohibited regardless of age.

The legal age of marriage varies from 10 years in Saudi Arabia (for girls) to 20 years in China (for women).<sup>6</sup> In many countries, the legal age of marriage is lower for women than for men, particularly when parental consent is taken into consideration. Indeed, in 54 countries, the minimum legal age for girls to marry is younger than for boys.<sup>6</sup> This legal gender distinction is important, as it signals an entrenched gender inequality. Because of this inequality and the substantially higher prevalence of child marriage in girls than boys,<sup>7</sup> the focus of this Viewpoint is on girls.

Violation of age-of-marriage laws is less likely to be accompanied by legal penalties than laws pertaining to sexual consent. In the 63 countries that prohibit child marriage (of 112 countries in the World Bank's Women, Business and the Law database), there are no criminal or civil penalties associated with authorising or entering marriage before the legal age.<sup>8</sup>

Whereas in many countries the age of legal marriage is higher than the age of sexual consent, in some, the age

of marriage is lower than the age of sexual consent. This type of inconsistency can be highly problematic, especially for girls and young women, as well as for those aiming to protect and provide services to them, such as health professionals.

Among the ten countries with the highest burden of child marriage (ie, the largest number of child brides), most have a lower legal age of sexual consent for girls than the minimum legal age of marriage (table). However, in the Democratic Republic of the Congo, Uganda, some states in Mexico, and—in some cases—Bangladesh, the reverse is true. This means that girls in these countries can legally marry before they are legally able to consent to sex.

### Why is the age of sexual consent an issue now?

In some countries that are increasing the minimum age of marriage to 18 years, governments are also considering increasing the age of sexual consent, thereby restricting adolescents' ability to legally have sex under the age of 18 years. For instance, in Zimbabwe, after the 2016 constitutional ruling calling for the age of marriage to be increased to 18 years, the government has also proposed to increase the age of sexual consent to 18 years.<sup>9</sup> In February, 2018, the parliament of Botswana passed an amendment to the penal code raising the age of consent to sex from 16 years to 18 years.<sup>10</sup> In Kenya, a proposal to reduce the minimum age of consent to sex from 18 years to 16 years raised concerns that this reduction might increase early marriage, rape, and adolescent pregnancy.<sup>11,12</sup> Ghana and several other countries are also actively discussing increasing the age of sexual consent to align with the legal age of marriage.<sup>13</sup> In Turkey, an estimated 15% of women aged 20–24 years had been married before age 18 years, although any sexual activity before the age of 18 years would violate the country's statutory rape law. In 2016, a bill was introduced proposing that, if the offender of a sexual crime marries the victim, the sentence will be suspended. The bill was withdrawn because of controversy, yet there continue to be debates in the country about whether Islamic law can overrule the civil code and permit girls aged as young as 9 years to marry.<sup>14</sup>

These initiatives are concerning because, globally, large numbers of people—whether married or unmarried—have sex before age 18 years. According to an analysis of the most recent data from Demographic and Health Surveys for 48 countries, the median age at first sexual intercourse for males is 17·7 years and for females, 17·9 years. In other words, more than half of the people surveyed reported being sexually active under the age of 18 years.<sup>15</sup> UNICEF also estimates that 10% of boys and 10–12% of girls aged 15 years to 19 years in low-income and middle-income countries have had sex before the age of 15 years.<sup>16</sup>

Remarkable progress has been made toward reducing child marriage in the past decade alone, although this progress has been uneven. Largely because of sharp declines in south Asia, the proportion of women aged

20–24 years who were married as children decreased at a global level from one in four to one in five between 2007 and 2017.<sup>17</sup> Yet, an estimated 12 million girls younger than 18 years still marry each year, and unless global progress in ending the practice accelerates substantially, it will not be possible to achieve the Sustainable Development Goal of ending child marriage by 2030.<sup>17</sup> As prevalence of child marriage continues to decline globally, the median age at first marriage increases, and social norms about the acceptability of premarital sex shift in many parts of the world, it is to be expected that more unmarried adolescents will engage in sexual activity in the future.<sup>3</sup> While legal considerations to change laws might be framed around protection, making illegal what can be a healthy, natural activity for an adolescent can pose risks for their health and wellbeing. Indeed, as the American Academy of Family Physicians, the American Academy of Paediatrics, the American College of Obstetricians and Gynaecologists, the Society for Adolescent Medicine, and others have argued in the context of statutory rape,<sup>18</sup> age of sexual-consent laws show little efficacy and are incompatible with the demographic realities the world is facing.

### What do international human-rights standards say?

The Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Universal Declaration of Human Rights, and numerous international agreements and resolutions support the foundational concept that “marriage shall be entered into only with the free and full consent of the intending spouses”<sup>19</sup> and that a child is not able to provide free and full consent to a contract such as marriage. The Convention on the Elimination of All Forms of Discrimination against Women goes further, stating specifically that the “marriage of a child shall have no legal effect”.<sup>20</sup> In 2016, the UN Committee on the Rights of the Child specifically reaffirmed that “the minimum age limit should be 18 years for marriage”.<sup>21</sup>

Unlike marriage, international human-rights standards do not recommend specific limits for the age of sexual consent. Rather, the UN Committee on the Rights of the Child urges states to “avoid criminalising adolescents of similar ages for factually consensual and non-exploitative sexual activity”, and 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 age of 18 years as rights holders in accordance with their evolving capacity, age and maturity”.<sup>21</sup>

It is important to note that customary, religious, or traditional laws are sometimes cited as a justification to override legal prohibitions on age of marriage.<sup>22</sup> Such laws allow for the perpetuation of cultural and religious norms and practices that can have harmful effects on the health and wellbeing of adolescent girls and boys.

Thus, when considering legal status and legal changes to improve gender equality and other outcomes for adolescents, statutory laws and their implementation are only some of the factors to consider.

### Why are some countries increasing the age of sexual consent to align with legal age of marriage?

In many countries, having a younger legal age for sexual consent than for marriage is perceived as endorsing the notion that unmarried young people are free to engage in sexual activity, which is sometimes viewed as unacceptable by local social norms. In some cases, the age of sexual consent is cited as a means to prevent teen pregnancy and to protect girls. In Ghana, for example, a regional child-protection committee has petitioned the national government to increase the age of consent to sex to 18 years, arguing that girls aged 16 years (ie, the current age of consent) who become pregnant are not permitted to marry, as the legal age of marriage is 18 years. The committee argues that increasing the age of sexual consent to align with the legal age of marriage would ensure that girls younger than 18 years do “not know or engage in sex”.<sup>23</sup>

As outlined below, grounding this argument within this type of so-called protective framework might actually hamper efforts to ensure that adolescents—particularly girls—are informed and empowered, and have agency in their sexual and reproductive lives.

### The consequences of high age of sexual consent laws

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 (for example, jailing of adolescent boys for having consensual close-in-age sex), the effect of efforts to conflate age at marriage with age of sexual consent tends to be most impactful for girls. Such effects might include a denial of girls’ rights to make decisions about whether, when, and with whom to have sex; stigmatisation or criminalisation (or both) of individuals who have sex before marriage; and increased barriers to accessing sexual and reproductive health services.

A high age of sexual consent is often a reflection of a sociocultural environment where the provision of sexual and reproductive health services to adolescents—particularly those who are unmarried—can be highly restrictive. In Kenya, for example, the Ministry of Health acknowledges, in its adolescent sexual and reproductive health policy, that adolescents should be provided with services that are responsive to their needs.<sup>24</sup> However, the country’s sexual-offences act treats all cases of sexual activity under age 18 years (without distinction as to consensual or close-in-age sex) as criminal offences.<sup>25</sup> This lack of clarity around different laws and practices, such as the legal age of marriage and age of consent to sex,

exists in numerous countries and can be confusing for health-service providers. This confusion is a reason for clinicians to become more conservative in their practices, which risks reducing adolescents' access to contraception and other services, even when legally available.

In places where the age of consent to sex is 18 years, health-care providers who provide sexual and reproductive health services such as contraception, treatment for sexually transmitted infections, abortion, or even obstetric care to minors, might be practising illegally and consequently penalised, despite ethical requirements to attend to the best interests of the adolescent and commitments such as the Hippocratic Oath's first do no harm. In this regard, expectations that doctors police adolescents' behaviours will function as yet another barrier to adolescents seeking and obtaining the health services they need. In India, for example, the Protection of Children from Sexual Offences Act (2012) defines all sexual activity by children as a crime and mandates the reporting of sexual offences, and medical providers must report pregnant girls as victims of child sexual abuse, even if the sex was consensual with a boy of similar age.<sup>26</sup> The United Nations Population Fund reports that in Nigeria and Sierra Leone, adolescents have been denied sexual and reproductive health services by providers because of the legal age of consent to sex being 18 years.<sup>27</sup> Additionally, Amnesty International cites numerous examples from Zimbabwe, where confusion related to laws and policies regarding age of consent combines with stigma about adolescent sexuality and has resulted in the denial of access to health services and information that many adolescents need.<sup>28</sup>

### Protecting and empowering adolescents

As the global community works to improve public health, empower women and girls, achieve gender equality, and protect and support children, how can an appropriate balance between child protection and adolescent health and rights be ensured? We outline some suggestions in the next sections.

#### Protection of children and adolescents

First, countries must ensure that children and adolescents are protected from sexual abuse, coercion, and exploitation, whether it occurs within or outside of marriage. Non-consensual sex at any age should be criminalised. Children and adolescents might not always have the knowledge, means, or power to resist or give their genuine and fully informed consent, and thus can be pressured or coerced to engage in sexual activity. Everyone should want to avoid cases of sexual abuse, coercion, or exploitation.

#### Recognition of adolescents' evolving capacities

At the same time, however, it is important to recognise the evolving capacities of adolescents and appreciate why high-age restrictions for sexual consent can be harmful. As challenging as it might be for adults to

accept, the Convention on the Rights of the Child recommends the recognition of adolescents as rights holders with capacities that evolve with age and maturity, and explicitly includes rights related to sexual activity and the right for adolescents to be informed about their sexual and reproductive health.

The concept of evolving capacities, which lies at the very heart of the Convention on the Rights of the Child, embodies the needed balance between recognising children as active agents in their own lives who are entitled to be listened to, respected, and granted increasing autonomy in the exercise of rights, and their entitlement to protection, in accordance with their relative immaturity and youth. There is no single age at which such maturity or agency is reached; rather, this approach recognises that the capacity to take responsibility for different decisions happens at different ages for children and adolescents with diverse life experiences. When considering legal ages of marriage and sexual consent, it might also be useful to understand the concept of adolescent capacity by considering child marriage to be a coercive practice (similar to sexual coercion) and sexual intercourse primarily as a voluntary choice.

#### Access to sexual and reproductive health information and services

Laws regarding age of marriage and age of sexual consent are imperfect interventions and should not be used to punish young people. Nations should, instead, create opportunities that empower and support adolescents to make informed and healthy decisions.

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. Efforts to promote sexual abstinence for adolescents are not effective in delaying sexual initiation or in changing other sexual risk behaviours.<sup>29</sup> Conversely, the provision of appropriate information and services supports adolescents' healthy development, agency, and empowerment around their rights, including the right to be informed about their bodies and their right to consent—or not—to sex.

A solid evidence base indicates that legal and regulatory barriers to sexual and reproductive health services limit access to and use of such services. 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. Furthermore, recommendations to fix a high minimum age of sexual consent without close-in-age exemptions are problematic (especially if there are associated criminal penalties) for adolescents who are sexually active. Without the skills, information, and services they need to adequately

negotiate safer sex, age restrictions can make sexually active adolescents vulnerable to coercive sex, sexually transmitted infections (including HIV), unplanned pregnancies, and unsafe abortions. Making sexual activity illegal will prevent sexually active adolescents from accessing the health care they need to protect themselves, without evidence that it prevents consensual sex or sexual coercion. Such laws are also likely to increase stigma for unmarried girls who become pregnant. While these laws might be intended to be protective, establishing such an age barrier effectively criminalises a biologically normal behaviour that large numbers of young people are engaged in throughout the world.

### Legal ages of marriage and sexual consent do not need to be aligned

As the effects of decisions to marry and to have sex are very different, the minimum ages do not need to be aligned. Marriage is a potentially life-long contract with important legal obligations and responsibilities. For children younger than 18 years, marriage is linked to numerous adverse consequences, including reduced educational attainment, increased prevalence of early pregnancy and its associated complications, restricted decision-making capacity, increased experience of intimate-partner violence, increased prevalence of depression, and poor economic opportunities.<sup>30</sup> In many societies, divorce is banned or strongly discouraged, and married children might not be allowed to procure legal services to help them navigate a divorce.

By contrast, sexuality is an intrinsic aspect of being human, including for children and adolescents. The decreased age of puberty onset across the globe is a pertinent reminder to those who care about child and adolescent health, growth, and development to ensure that adolescents are able to express their sexuality, including their sexual identity and sexual orientation in ways that are informed, safe, healthy, and consensual. This requires accessible, youth-friendly sexual-health information and services to help adolescents mitigate potential risks, such as early pregnancy and exposure to sexually transmitted infections.

### Stigma associated with adolescent sexual activity can contribute to child marriage

Finally, and importantly for those who care about ending child marriage, growing evidence indicates that the stigma associated with adolescents engaging in sexual activity before marriage might actually be contributing to child marriage. This is either because adolescents might feel that the only way they can have sex (and access sexual and reproductive health information and services) is within marriage, or because of parents' desire to preserve their daughters' so-called sexual purity by promoting early marriage.<sup>31,32</sup>

We aim with this Viewpoint to prompt a discussion of the complex issues described in this section. In 2016–17,

#### Panel: Recommendations to governments from UNICEF and UN Population Fund<sup>33,34</sup>

##### Age of consent to sex

- Clearly set out the minimum age of consent to sexual activity and ensure alignment with the age of consent to access sexual and reproductive health services
- Take due account of small age difference between the two partners (ie, close-in-age exemptions; eg, 3 years)
- Avoid criminalising consensual sexual activity between adolescents younger than 18 years, taking into consideration the age difference and possible balance of power in assessing the validity of consent
- Consider narrowing the legal defences available to adults who engage in sexual activity with a child younger than the age of consent (eg, claiming that the child appeared older should not be considered sufficient to justify any unlawful behaviour)
- Harmonise the age of consent for both adolescent boys and girls (ie, both should have the same minimum age)
- Remove discriminatory provisions, particularly those based on gender and sexual orientation
- Provide guidance on the recognition of the evolving capacities of adolescents and normative sexual development

##### Age of marriage

- Set the minimum age of consent to marriage to 18 years, without exception and without differentiation between boys and girls
- Prohibit and criminalise under the law the facilitation of child marriage
- Ensure the minimum age of consent to marriage takes precedence over any cultural, traditional, or religious customs and practices
- Enact birth-registration systems to ensure effective compliance with the minimum age of consent to marriage
- Consider voidable any child marriage concluded before any law criminalising child marriage came into operation
- Develop comprehensive policies that address root causes of child and forced marriages, such as poverty alleviation programmes

UNICEF<sup>33</sup> and the UN Population Fund<sup>34</sup> have also proposed explicit recommendations regarding the ages of sexual consent and marriage (panel).

### Conclusions

The *Lancet* Commission on Adolescent Health and Wellbeing (2016) and subsequent publications from adolescent experts have called for laws to be more explicit in their intention and more nuanced in their consideration of consensual age.<sup>3,22</sup> Some laws are intended to protect children and adolescents from risk of harm, such as those that establish a minimum legal age to purchase tobacco or alcohol, to drive, to begin schooling, and to marry. Other laws provide an important context for empowering young people, such as those that mandate a specific number of years for schooling, or that determine the age at which they are permitted to vote.

Rather than aligning laws that ascribe adult privileges to be set at largely 18 years of age, there could be value in lowering the minimum age for those laws that encourage young people's participation, in accordance with their empowerment and basic human rights.<sup>3</sup> In the past decade alone, for example, Ecuador, Argentina, Malta, Scotland,

and Estonia have joined a growing list of countries that have lowered the legal age of voting (in at least some elections) to 16 years.<sup>35</sup> Similar consideration could also be given to increasing the age for services and activities that protect young people without diminishing their rights—for example, raising the age up to which governments support dependent insurance coverage, or offer supportive services within the child-protection system.

Growing attention to the harms of child marriage has appropriately led a wide range of communities and governments to work to end this practice, with the explicit intention of providing safety from harm. This has included efforts to raise the legal age of marriage to 18 years. Such changes are greatly welcomed, but they must be accompanied by an empowerment perspective, one 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.

#### Contributors

SP and SMS conceived this Viewpoint. All authors contributed to writing the paper.

#### Declaration of interests

SP has a long-term consultancy contract for a wide range of activities for Girls Not Brides: The Global Partnership to End Child Marriage. Under this broad contract, she has done some work related to the topic discussed in this Viewpoint. This included some research and facilitating a panel discussion on the topic at a global meeting in June, 2018. The other authors declare no competing interests.

#### Acknowledgments

We thank Ellen Travers and Rachel Yates from Girls Not Brides, and other individuals who provided the early motivation for this Viewpoint.

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