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ISSUE BRIEF

Child and Early Marriage in India

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According to a recent UNICEF report, the pandemic has put nearly 1 crore more girls at risk of becoming child brides over the course of the coming decade.

ABSTRACT

Child helpline services across the country have reported an alarming spike in the incidents of child marriage during the pandemic. According to a recent UNICEF report, the pandemic has put nearly 1 crore more girls at risk of becoming child brides over the course of the coming decade. As the pandemic threatens to reverse years of gender equality gains, this paper examines the various Covid-19 induced socio-economic challenges that have led to a surge in child marriages globally, particularly in India. Further, this issue brief delves into the key challenges in implementing existing child marriage-related legislation and calls for an integrated approach to tackle child marriage in India.

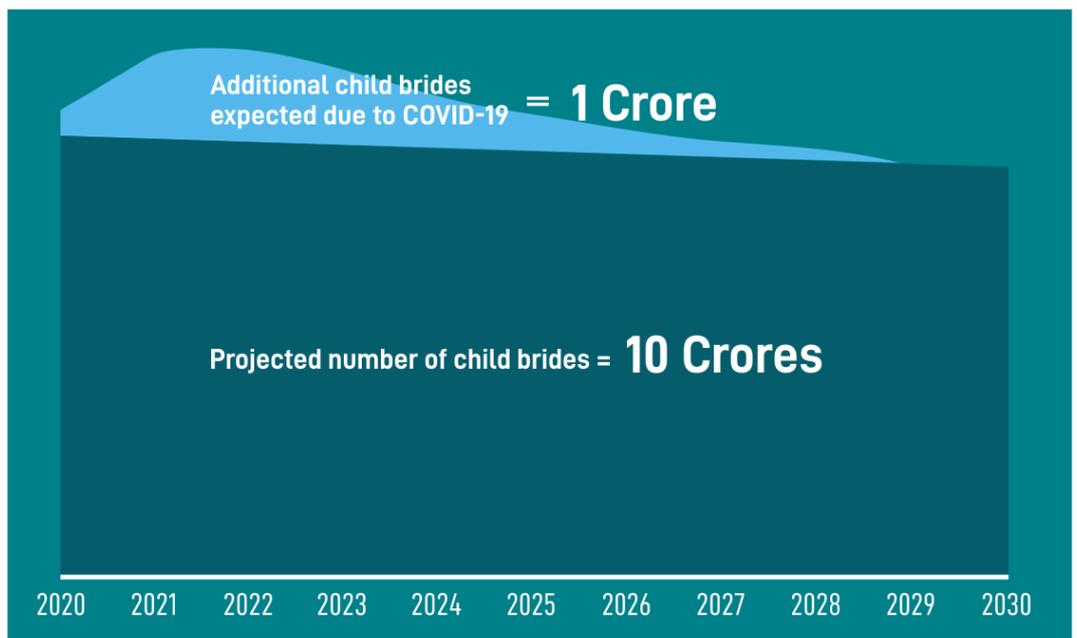
Keywords: Child marriage, child brides, Covid 19-pandemic, PCMA

CONTEXT

An unforeseen consequence of the pandemic is the sudden upsurge of child and early marriage cases globally, particularly in India. According to data reported by ChildLine¹ across India, between March and June 2020, they received a total of 92,203 distress calls, out of which some 5,584 were related to child marriages. Of this number, 97% were 18 years and below, and 91% were girls (Bahl, Bassi, and Arora 2021). Even states such as Karnataka, Andhra Pradesh, Tamil Nadu, Telangana, where the prevalence of child marriage is below 35%, reported a doubling in cases. This data only scratches the surface of ground reality since child marriages are socially accepted, most cases go unreported.

A recent UNICEF (2021b) report states that before the Covid-19 outbreak, more than 10 crore girls below 18 were expected to get married in the next decade. Now, an additional 1 crore might be at risk of becoming child brides due to the pandemic. These figures are highly distressing since India is already among the five countries that account for about half of the total child brides globally. At the state level, the top five states, namely Uttar Pradesh, Bihar, West Bengal, Maharashtra, and Rajasthan, account for 55% of all the child and adolescent marriages in the country. UP alone is home to 36 million child brides (UNICEF 2019).

Figure 1: Out of the projected 10 crore child brides, up to 1 crore more girls are at risk of becoming child brides by 2030 due to Covid 19 pandemic.



Source: UNICEF (2021b)

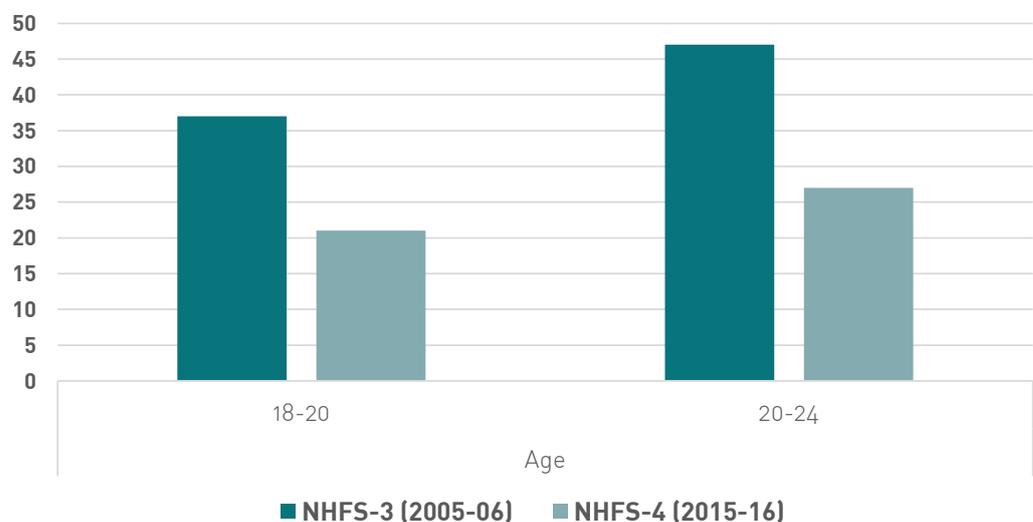
Over the years, India has made significant progress in decreasing child marriages, making the pandemic-induced surge particularly concerning. National Family Health Survey (2016) data indicates a sharp decline in child marriage in

¹ The nodal agency of the Union Ministry of Women and Child Development, Government of India, dealing with protection of children in distress

the last decade, from 47% of girls getting married before the age of 18 in 2005-2006 to 27% in 2015-2016 (see Figure 2). This has been accompanied by an increase in the median age of marriage, from 17.2 years in 2005-2006 to 19 years for women in 2015-2016 and from 22.6 to 24.5 years for men across the same timespan (Census 2011).

Over time, the pattern of child marriage has also changed. Child marriage, of those below the age of 12 years, is no longer common. Instead, most weddings take place amongst teens aged 15-17 years. Hence, there is a shift in terminology from 'child marriage' to 'early marriage' (Sen and Ghosh 2021)².

Figure 2: Percentage of girls married aged 18-20 years and 20-24 years who married before the age of 18 years



Source: Author provided

The impact of child marriage on children and adolescents are devastating and lifelong, with irreversible effects on health, education, opportunities, and livelihood. It places the children at high risk of violence, exploitation, abuse, and impairs their overall development. While child marriage affects both sexes, girls are disproportionately affected because of the deeply entrenched gender norms. Globally, the prevalence of child marriage among boys is just one-sixth that among girls (UNICEF 2021a). Even the long-term negative consequences of child marriage are more severe for girls than boys. The effects include early pregnancy, maternal and neonatal mortality, educational setbacks, lower employment prospects, exposure to violence and abuse.

Many complex factors that usually drive child marriage, such as poverty, lack of education, early pregnancy, have only intensified in the Covid-19 crisis. As the pandemic broke down community structures, it has triggered a rise in child marriages, which is a challenge that must be tackled immediately. In this context, the paper examines the various social and economic mechanisms contributing to the surge of child marriages in India. It further delves into the key challenges in

² This paper uses the term 'child marriage' and 'early marriage' to denote marriages below the age of 18 for women and below 21 years for men.

the implementation of child marriage-related legislation and calls for an integrated approach to combat child marriage in India.

PANDEMIC-INDUCED DRIVERS OF CHILD MARRIAGE

The rise in child marriages post-pandemic can be broadly attributed to five overarching factors. These are namely, economic insecurity, interrupted education, disruption of social services, lack of access to sexual and reproductive healthcare, and parental deaths (UNICEF 2021b). The factors are interlinked and operate in complex and varied ways.

High Job Losses and Economic Insecurity

During the pandemic, government-imposed lockdown led to more than 12 crore Indians losing jobs by May 2020 (The Hindu 2020). The resulting economic insecurity limited the ability of parents to provide for their children and forced them to resort to child marriage to alleviate poverty (Cousins 2020). Additionally, data suggests that poverty or limited household resources, resulting from economic shocks or crises, tend to put children and adolescents at a greater risk of child marriage (UNICEF 2021b).

Pandemic aggravated economic-strain and loss of household income has forced families to marry off their young girls, perceiving them as ‘financial burdens’ or a ‘liability’ draining limited family resources (Affoum and Recavarren 2020). Child marriage is used as a survival strategy for short-term financial security for many families. It works as a mechanism to generate quick income or as a method to reduce costs. Generally, younger brides need to give lower dowry because they are considered “easier to control, train and socialize in the ways of the marital home and are less likely to resist” (Nirantar Trust 2015). Another consideration is that younger girls can be married off to less educated boys, and thus, the dowry is lower (John 2021). Moreover, a pandemic related incentive to marry were the restrictions imposed on the number of guests invited to wedding functions. The limitations helped as a cost-cutting measure for low-income families (Jejeebhoy 2021).

School Closures and Loss of Education

According to UNESCO (2020), 150 crore children and youth were impacted by school and university closures in 195 countries by the middle of April 2020. Such a large-scale shutting down of schools pushed many children into early marriage. Especially girls since education was no longer an option. As evidence from the Ebola outbreak suggests, girls may drop out entirely or have a very low probability of returning to school once they reopen (Affoum and Recavarren 2020). In India, it is estimated that the pandemic could have caused 1 crore secondary school girls to drop out of school (Rana 2021).

Moreover, due to the gendered digital divide and the absence of digital infrastructure, many girls living in rural areas are unable to access online education. Even if a family has a smartphone, it is monopolised by men of the

family. A study conducted by Malala Fund states that despite there being a phone at home, only 30% of children reported access, with only 26% of girls having access to phones, versus 37% boys (Ghatak, Yareseeme, and Jha 2020). In addition to this, unpaid care and domestic work prevent most girls from participating in digital learning. The economic downturn caused by the pandemic also made it difficult for low-income families to afford education, resulting in prioritising education of boys over girls.

This disruption in education severely impacts the future of girls since education is a huge determinant of the age of marriage. Data demonstrates that girls with secondary schooling are up to six times less likely to marry as children as compared to girls who have little or no education (ICRW 2006). Lockdowns and closure of schools meant that girls spend more time at home and out of the protective net of school, making them more susceptible to domestic violence and sexual violence (UNFPA and UNICEF 2020a). According to data provided by National Commission of Women (NCW), between March- September 2020, they received 13,410 complaints of crimes against women (Nikore 2020) Moreover, being out of school, parents also feared that their unmarried daughters would indulge in sexual activity which may lead to unwanted pregnancies (UNICEF 2021c). This threat to female sexuality and chastity is linked to the honour and reputation of the families. Thus, child or even early-marriage becomes a tool for protection for girls against unwanted male attention, sexual assault, and promiscuity (Nirantar Trust 2015).

Disruption of Social Services and Interventions

The pandemic, its resulting lockdowns, and social distancing measures disrupted the interventions and programmes aimed to reduce child marriage by various governmental organisations, NGOs, and civil society. This included various adolescent-friendly organisations, social services, awareness campaigns, community engagement, mahila mandals, etc. UNFPA (2020) estimates that out of 1.3 crore more child marriages to take place over the 2020-2030 decade, 74 lakhs will be attributed to interruption in programme implementations.

Most of the frontline and social workers resources were redirected to deal with Covid-19 outbreaks. Other services were overlooked. For instance, reportedly, in parts of India, Child Marriage Prohibition Officers [CMPOs] were occupied with COVID-19 management, thereby reducing their surveillance and vigilance (UNFPA and UNICEF 2020a). Furthermore, the closure of schools and community centres restricted children's mobility and communication, cutting them off from their teachers, peers, local support systems, and formal legal systems. As mentioned earlier, the gendered digital divide also curbs the possibility to reach out for help, since most girls and women do not have access to mobile phones or helplines to report incidents (Jejeebhoy 2021).

Reduced Access to Sexual and Reproductive Healthcare

The pandemic also substantially hindered access to sexual and reproductive healthcare for girls and women everywhere. This directly impacted unintended pregnancies, and the child marriages that were borne from unwanted conceiving. Closure of such health services and disruption in timely deliveries of

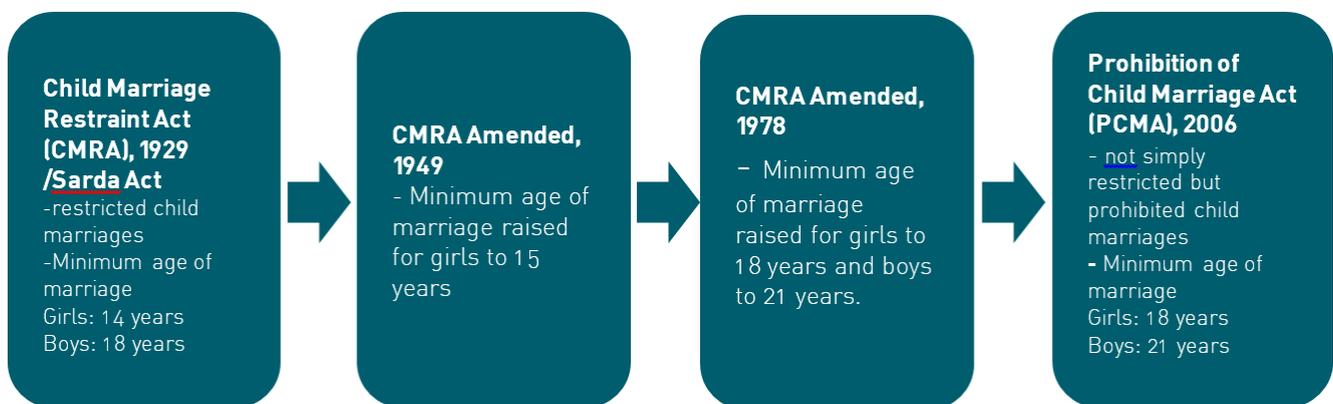
contraceptives and menstrual hygiene supplies can cause considerable difficulty in accessing contraception, safe abortion care, emergency maternal health care, HIV testing, and treatment. Increased adolescent pregnancies among unmarried girls is likely to increase pressure on girls to marry early (Girls Not Brides 2020). According to a UNFPA (2021) report, 14 lakh unintended pregnancies have been estimated in the pandemic due to lack of access to sexual and reproductive health services. Thus, globally, pregnancy is both a cause and a consequence of child marriages, leading to poor maternal and foetal health outcomes.

Parental Deaths

Covid-19 related deaths of children's parents has increased the likelihood of female orphans being married off early. In many cases, family members may find it hard or unwilling to support young girls (Jejeebhoy 2021). India saw over 4 lakh deaths due to Covid-19, and anecdotal evidence suggests that girls orphaned are married off early, especially in states such as Bihar, Rajasthan, Maharashtra (BBC 2020). In some cases, parents' fear and worry of who will look after the child if they succumb to Covid-19 pushed many children into underage marriage (Pathak and Frayer 2020).

MAJOR CHALLENGES IN IMPLEMENTING CHILD MARRIAGE LEGISLATIONS IN INDIA

Figure 3: Timeline of Child Marriage legislations in India



Source: Author provided

In India, the primary law prohibiting the solemnisation³ of child marriages is the Prohibition of Child Marriage Act, 2006 [PCMA]. Under PCMA, child marriage is established as a cognisable and non-bailable offence. If prosecuted, it could lead to imprisonment of up to a maximum of 2 years or a fine of up to INR 1,00,000. According to the law, the minimum age of marriage is 18 years for women and 21 years for men. However, despite these provisions, the law prohibiting child marriages has been highly ineffective. It has had a minimal impact on ending child marriage, as the practice remains prevalent in several parts of India.

³ Solemnisation of marriage refers to the act or process of performing a formal marriage ceremony.

1. Inadequate law and poor enforcement of PCMA

With few prosecutions and convictions of persons perpetrating child marriage, the enforcement of PCMA is challenging. According to the National Crime Records Bureau [NCRB] data, only 785 and 523 cases were registered under PCMA in 2020 and 2019, respectively. One of the major fallacies of PCMA is that it does not declare all child marriages illegal. According to the law, only child marriages resulting from the use of force, threat, fraud, kidnapping, or violation of court order are considered null and void. In general, all child marriages continue to be legally valid unless and until either of the parties files a petition annulling the marriage, which rarely happens since children are not aware of their legal rights or how to challenge their violation in court.

And yet, PCMA puts the responsibility of filing the petition to annul a child marriage on the child bride/groom themselves. Additionally, it must be done within two years of becoming an adult. In the case of minors, that is girls under the age of 18 and boys under 21, the complaint can be filed only through a guardian, or “next friend” along with Child Marriage Prohibition Officer (PMCA 2006). Only allowing girls two years to seek an annulment is a challenge because, often due to familial pressure, girls bear children in their first two years of marriage which makes it even tougher to leave the marriage (Center for Reproductive Rights 2018).

The law doesn't take into account that even if the minor were capable of initiating legal proceedings, they would have to struggle against familial and societal resistance. Along with this, the child's lack of decision-making powers and financial backing independent of their family creates barriers in accessing the police and other government officials (Center for Reproductive Rights 2018). Convincing the guardians of children to annul the marriage is an obstacle in itself since in many cases, they are the ones instigating the child marriages and care deeply about social norms (Rajkumar 2019).

2. Legal inconsistencies with Personal laws

In India, religious-based Personal laws also hinder the implementation of PCMA. Personal laws have their own standards and procedures on the age of marriages, girls' rights to invalidate or leave marriages and accepting parental consent as sufficient for child marriage, which goes against the provisions of PCMA (Center for Reproductive Rights 2018). For instance, the Muslim personal law considers puberty, which is presumed to be 15 years of age, as the age of marriage.

Over the years, high courts have taken conflicting stances on the primacy of PCMA over other personal laws. However, the Supreme Court, in a 2017 judgement, stated the significance of PCMA as a special law that prevails over other personal laws. Yet, it's essential to raise awareness and ensure that courts reference PCMA rather than personal laws in determining the legal status of child marriages (ibid.).

3. Role and Appointment of Child Marriage Prohibition Officers [CMPO]

PCMA law requires each state government to appoint trained CMPOs and draft clearly defined duties for them. However, currently, only 20 states and union territories have appointed CMPOs from a total of 36 states and union territories (Center for Reproductive Rights 2018). Even where CMPOs have been appointed, in many states, rather than providing a dedicated officer, child marriage prevention is added as an extra duty to an existing officer's already broad portfolio.

Moreover, the PCMA does not punish CMPOs for negligence of duty. This leads to a lack of accountability and erects barriers in accessing law (Rajkumar 2019). Being part of the same society that allows for child marriages, CMPOs often believe that traditions and social norms are stronger than law, thus ignoring or refusing to register complaints (ibid.). And when they do prosecute and prevent child marriages, CMPOs face retaliation from communities, making it complicated and risky to carry out duties. Additionally, the officers are not appropriately trained and are ill-equipped to deal with children with sensitivity. A study analysing child marriage cases filed across the country from 2008 to 2017 states that only 7% of the cases was initiated by a CMPO (Partners for Law in Development 2021).

Sometimes, CMPOs redirect complaints to other designated officers under other laws, such as protection officers under the Domestic Violence Act or Juvenile Justice Act [JJA], who in-turn send them back to the CMPOs (Rajkumar 2019). This lack of coordination and bureaucratic to and fro impairs the effective implementation of PCMA.

4. Misuse of PCMA law

Evidence suggests that PCMA has become a tool through which parents assert their authority over their children. They use the law to break up self-arranged or choice marriages between consenting adolescents that they disapprove of and to stop the sexual activity of their children (UNICEF 2021d). A recent study by Partners for Law in Development (2021) demonstrates that elopement or self-arranged marriages account for 65% of the legal prosecution of child marriages across India. An analysis of who initiated the legal proceedings shows 67.4% of the times it was the parents of girls who approached the legal system with a complaint. These included cases where parents sought custody of an eloping daughter or wished to prosecute the husband (Partners for Law in Development 2021). Therefore, instead of protecting young girls from forced marriages, the law ends up criminalising young boys who seek consensual relationships. All while the parents get away with arranging forced marriages for their children since they bear social acceptance (Panda 2019).

5. Issue of Birth and Marriage Registration

Due to the lack of effective and mandatory birth and marriage registration, many children don't have documents that prove their age at birth or marriage. This leads to inaccurate assessment of children's age at marriage and underreporting

of cases (Center for Reproductive Rights 2018). Even though birth registration is mandatory in India under the Registration of Births and Deaths Act of 1969, according to the National Family Health Survey (2016), almost 38% of children under 5 did not possess birth certificates at all in 2015-16. Besides this, India also has a problem of fake birth certificates, making it harder to identify children's age at marriage.

Moreover, even though there is no national law mandating marriage registration, the Supreme Court in *Smt. Seema vs Ashwani Kumar* (2006) ruled that marriage registration be made compulsory in each state. There are some states such as Karnataka and Uttarakhand that have provisions for registering child marriages. Recently, the Rajasthan government passed the Rajasthan Compulsory Registration of Marriages (Amendment) Bill in 2021, which sparked controversy and presented a complicated picture of child marriage registration. The amendment sets out to alter section 8 of the Rajasthan Compulsory Registration of Marriages Act of 2009, which now states that if the bride is under 18 and the groom is under 21, their parents or guardians must register the marriage within 30 days from the date of marriage (Vishwanath 2021). Critics have argued that this new provision would legitimise child marriage in society, however, historically, the push for compulsory registration of all marriages is not new, and this data could possibly help in identifying underage marriages and help child brides access government benefits with less difficulty, however, this will not help tackle child marriages alone (Chander 2021).

WAY FORWARD

Despite sufficient anecdotal evidence from child helplines and media reportings across the country, the Ministry of Women and Child Development stated that “there is no data to indicate rising number of child marriage cases during the lockdown period” (Thomas 2021). However, the pandemic has not only aggravated the existing risk factors that drive child marriage but it has also created new ones. Thus, there is a need to effectively address the key factors contributing to child marriage while also responding to new and emerging challenges.

There is a dire need to build and maintain a database on child marriages in the pandemic and conduct in-depth studies and surveys to understand the true scale and the prevailing ground realities concerning child marriages in India. Especially during the pandemic. A way to achieve this is through training frontline workers, who are already collecting data on the pandemic, to keep records of child marriages at the ground level (Patnaik 2021). Child marriage prevention programmes could be integrated with other efforts aimed at curbing the spread of virus and the socioeconomic consequences of the pandemic.

Furthermore, there is a need to focus on gender-responsive social protection measures and poverty alleviation programmes, such as basic income and cash or in-kind support, which are central to improving the economic and social conditions that make girls more vulnerable (UNICEF 2021b). Investing in economic empowerment and livelihood strategies for adolescent girls and women is also crucial. Practical programming and ensuring continuity of health services, especially sexual and reproductive ones, and maintaining access to child

protection measures, social services, and community mobilisation are imperative (ibid.) It is equally important to extend social and monetary support to children who have lost their parents due to Covid.

ICRW (2006) notes that there exists a positive correlation between education amongst girls and reduction in child marriage. Hence, keeping girls in school should be a priority. There is an urgent need to place measures ensuring a safe return of girls to schools through back-to-school campaigns and catch-up courses. Especially ones for girls who dropped out during the pandemic. Such efforts would make access to free, inclusive, safe and child-friendly primary and secondary education easier (World Vision 2021). For online learning, it's important to provide students, especially female ones, with access to digital tools and monitor their participation and retention in online classes by addressing the challenges they face and providing targeted support. Additionally, it is crucial to provide teachers with training and establish mentorship programmes for children. Gender sensitisation and awareness programmes should also be made mandatory in schools (Patnaik 2021).

Recently, the government proposed to raise the minimum age of marriage for girls from 18 to 21 years. Many lauded it as a progressive move, however, as evidenced by this paper, it is not enough to tackle the issue of child marriage at the inception (Patnaik 2021). There are significant gaps in the existing child marriage legislation that the government needs to adequately address. Strengthening PCMA's implementation and accountability mechanisms under the law, ensuring appointment and appropriate training to CMPOs, and setting up penalties for failure to discharge their duties are essential (Center for Reproductive Rights 2018). Several structural and social barriers, such as misuse of the law and lack of effective birth and marriage registration, further impact the implementation of child marriage legislation and hamper access to justice. Thus, a cross-sectoral approach involving various government agencies and ministries is necessary to strengthen, implement, and enforce prohibitions on child marriage and protect vulnerable children (ibid.). Though the full impact of pandemic is unclear, there is an immediate need to reimagine approaches to eliminate child marriage and accerelate action on child protection measures.

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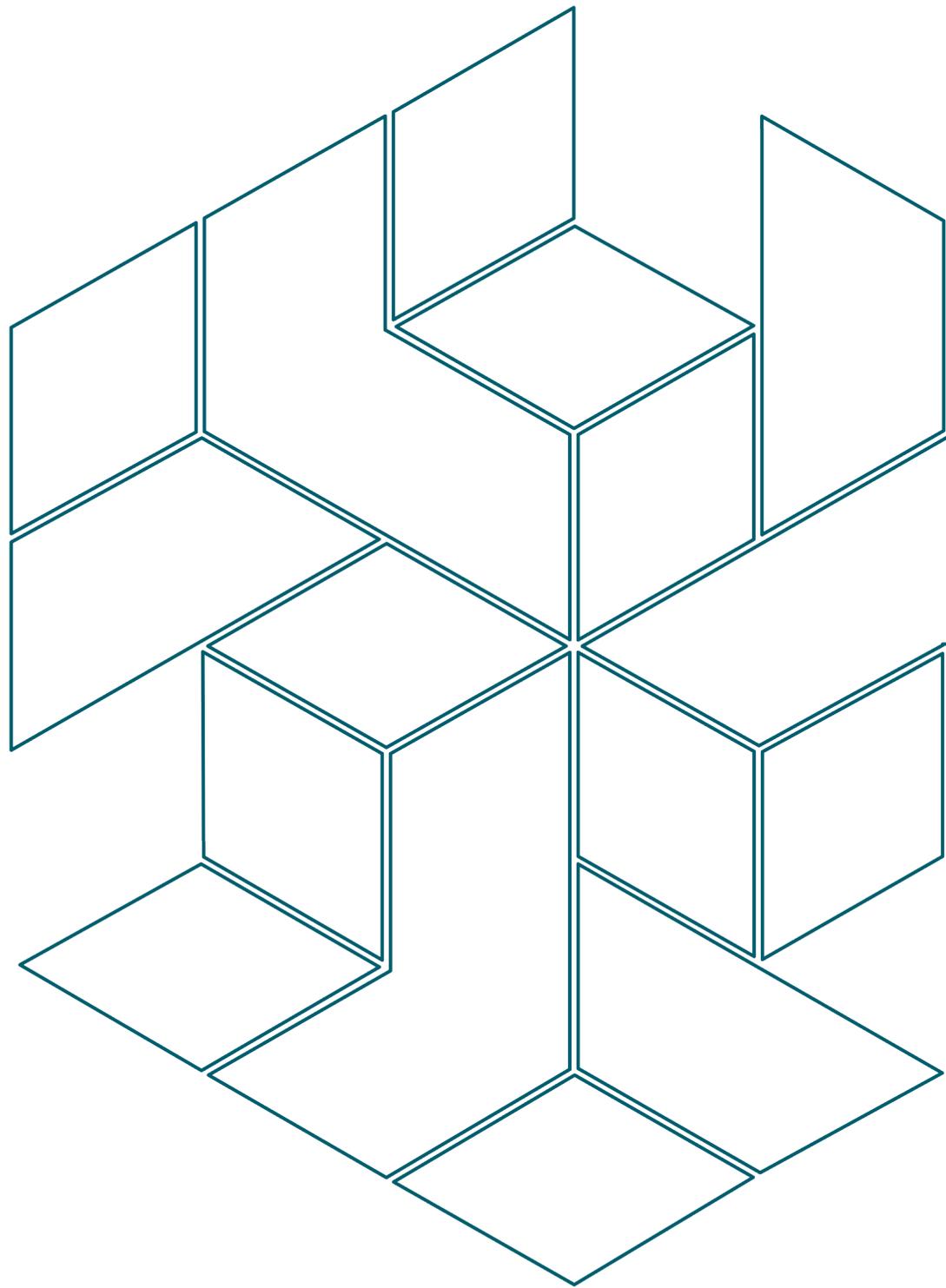
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