

## Assam Child Marriage Crackdown: A Revisit

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### ABSTRACT

*Child marriage is amongst many other human right issue that is consuming the development of child be it physical, mental, spiritual, moral and social development. To tackle this issue in Assam, Chief Minister Himanta Biswa Sarma on January 23 announced that his government will launch a [campaign](#) against child marriage and would book perpetrators of this crime under the Protection of Children from Sexual Offences (POCSO) Act for men marrying girl below 14 years of age and the Prohibition of Child Marriage Act for those marrying girl aged 14-18 years.*

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As reported on 18 February, 4,235 cases have been registered and out of the 3,047 arrested persons, 93 are female and 2,954 are male. The number of convicted people is increasing and to accommodate them, the Assam's first detention centre exclusively built for housing illegal foreigners has been temporarily declared a [jail](#). There has been a hue and cry in the state as the campaign has affected the lives of many families. A widespread arrest of male members who were the [sole bread earners](#) of their families has caused havoc in the state. Families of such arrested men are left struggling for survival. Four cases of suicide have been reported so far in connection with the mass campaign in the state. Among the deceased was a widow from [South Salmara Mankachar](#) district who took her life, fearing the arrest of her parents since she was a child bride. A woman from [Karbi Anlong district](#) committed suicide after she found that her son was arrested in the clampdown. In another incident, a 27 year old man named Kasem Ali Paramanik from [Baghmara village](#) in Dhubri district of Assam slit his own throat due to mental suffering upon receiving the news of massive crackdown in the state. In [Cachar district](#), a 17 year old girl took her life after her parents refused to give permission for marrying the man she was in love with fearing the recent legal restriction in the state.

In order to avoid the backlash, the state government has declared a financial aid for the distressed women of arrested men but the question which still remains is if this could actually reduce their agony or compensate for the emotional suffering. Sarma has [clarified](#) that child marriage is a menace which affects the society at large and he is committed to end this practise. The arrest in the state, he exclaims, is irrespective of their religious identity of the accused. The police also gave their statement in connection with the issue stating that relatives are being arrested for being "[facilitators](#)" of child marriage and not because they belong to a certain religion. However, Sarma's critics have alleged that this entire framework to deal the issue of child marriage is nothing but a [communal design](#) to target and marginalize the Muslim

population in the state. As per the [2011 Census](#), Assam has an overall population of 31 million of which 34.22 per cent follow Islam. In at least nine of the state's 31 districts, more than [50 per cent](#) of the population is Muslim. The statistics are indicative of contradiction to Sarma's claims of the crackdown being unbiased. In the recent mass arrest, both the Hindu and Muslim men have been put behind the bars, but there is allegation against the police for selective treatment in granting bail to them. While allegedly 24 men from Majuli district, which is dominated by tribal communities, got [bail within a day](#), for the same offence Muslim men failed to secure the bail. On February 14, while granting anticipatory bail to 9 accused men, the [Gauhati High Court](#) has observed that the crackdown is "creating havoc in private lives" and labelled the application of POCSO Act and rape provisions as "absolutely weird".

Additionally, the crackdown has also rekindled a discussion over the issue of legal age of marriage for Muslim women. According to Muslim personal laws, marriage is considered valid when both the parties have [attained puberty](#), while the Prohibition of Child Marriage Act (PCMA) sets the minimum marriageable age as 18 years for women and 21 years for men. At the same time, POCSO Act sets the legal age of consent for sexual intercourse as 18 years. An invocation of POCSO Act has been criticized since there is a lack of evidence regarding sexual abuse in majority of the reported cases. The wives of men so arrested have been pleading for their release, which in no way indicates sexual abuse either. Over the issue of legal age of marriage of Muslims women it is important to note the different opinions of state high courts. For instance, the [Gujarat High Court](#) stated that PCMA being a special law would prevail over the Muslim personal law or any other personal law as the case may be. Similarly, the [Kerala High Court](#) ruled that marriage within the ambit of Muslim personal law is not debarred from the gamut of the POCSO Act. However, the views of the [Punjab and Haryana High Court](#) were different. In 2018, the court ruled that Provisions of Muslim Personal Law would override the provisions of PCMA. The National Commission for the Protection of Child Rights filed a petition asserting that the High Court judgment goes against the provision of POCSO Act which clearly state the 18 years as the age of sexual consent. A bench constituting CJI DY Chandrachud and Justice PS Narasimha, passed the [interim order](#) that stayed the application of the Punjab and Haryana High Court's judgement.

According to the [National Family Survey Report, 2019-21](#), around 32% of women in Assam marry before attaining adulthood. The Report also shows that only 29.6% of women in the age group of 15-49 years have 10 or more years of schooling. This is indicative of a causal connection between lack of education and early marriage. The initiative taken by the state to address the issue is praiseworthy but it needs to shift from retrospective punishment to productive provisions which look into the cause of the issue and deal with it accordingly. The emphasis should be upon providing accessibility to contraception, maternal healthcare, better educational facilities and equal job opportunities. Thus, improving the condition of women would ultimately reduce the early marriage since they would be financially independent. This would help the state to achieve its desired goal in the long run. The issue of child marriage is not something new and therefore, in order to solve this social issue, we first need to look into the roots of the problem. Factors like poverty, illiteracy, lack of awareness, age-old traditions etc. needs to be tackled down in order to solve this chronic illness and it would be more impactful for the government to take the route of reformation than punitive crackdown.