OPINION Opinions | Child Rights

Why Nepal's Supreme Court is wrong on child marriages and rape

The court has effectively diluted the concept of statutory rape and could end up encouraging child marriages.



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not guilty of rape or kidnapping, but only of child marriage.

The top court overturned a high court verdict that had imposed an 11-year jail term on the man. Instead, the Supreme Court reduced his prison term to six months with a fine of 10,000 Nepali rupees (\$75).

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- that statutory rape, which is a part of Nepal's criminal code, wouldn't apply in this case because the couple were married.

rape. Some have called this a <u>progressive</u> judgement — a triumph of love over law — that's a worrying reading of the implications of this ruling. By proclaiming that sexual intercourse between the couple would not be considered rape, the court has erased the distinction between a child and an adult — just because they are married.

Not only is that ironic, since child marriage itself is illegal, but worse, such a judgement

could encourage more child marriages in Nepal if the message goes out that this would

reduce the punishment for other offences such as statutory rape. In a country where 38

percent of women in the age group of 20-49 were married before the age of 18, this

The woman, who was not even 16 years old at the time of the marriage, has insisted in

mother had complained about the child marriage. The court appears to have accepted

this argument, holding that the man was not guilty of kidnapping, hostage-taking or

her testimony that she and the man were in love, and hence got married. The couple

belong to different castes, and the girl has alleged that this was the reason why her

There is a reason why children are not allowed to vote, sign contracts, work, enlist in the military, use alcohol or tobacco, or indeed, get married — a lack of mental maturity and authority over their lives to take such decisions with the full awareness of the consequences and the readiness to face them.

It is the reason why a minor girl's adult partner should not be exempted from statutory rape charges solely based on the child's consent to marriage and sexual activity. While Nepal should be lauded for having a higher age for marriage than many others,

the Supreme Court judgement underscores a difficult reality: in Nepalese society, child

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Nepal's government has endorsed several international instruments including the Con-

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marriage is not really considered a serious issue.

their rights. In light of this, the marriage, in this case, should have been declared void, and relying on Nepal's criminal code, the case should have been treated as one of statutory rape

The legal system can serve as a potent tool for influencing children's lives for the better.

Judgements like this risk doing the opposite, and could lead to children's rights being

The views expressed in this article are the authors' own and do not necessarily reflect Al Jazeera's editorial stance.

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In a recently released judgement, the Supreme Court of Nepal held that an adult man who had married a minor female and engaged in sexual intercourse was

could be disastrous.

This is a dangerous decision because it dramatically dilutes the concept of statutory rape, under which an adult indulging in sexual intercourse with a minor is guilty of rape, irrespective of whether the act was carried out with consent. The court decided

It's a reason that Nepal itself recognises statutory rape as a crime in section 219(2) of its Criminal Code, 2017, and by the fact that in Nepal, the legal age for marriage is 20, higher than the 18 that is usual in many other countries.

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vention on the Rights of the Child (CRC) and its two optional protocols, the Convention

prohibit early marriages and make the state responsible for acting against the practice.

The country's National Strategy to End Child Marriage, 2015, aims to eliminate child

on the Elimination of All Forms of Discrimination against Women (CEDAW) which

marriage by the year 2030. The National Child Policy, 2012 has a long-term goal of creating an environment in which children of all classes and communities can fully enjoy

infringed upon — rather than being protected.

due to the victim's age.

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Nepal's children deserve better.

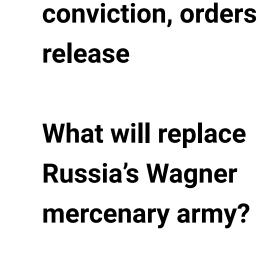
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