

OPINION

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# 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.*

**Harsh Mahaseth** Assistant Professor and Assistant Dean (Academic Affairs) at Jindal Global Law School, OP Jindal Global University

**Dikshya Adhikari** Program Coordinator at the Conflict Victims' Women National Network, Nepal

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A Nepalese girl is prepared by her mother for a child marriage ceremony in Kathmandu on November 21, 2009 [Shruti Shrestha/Reuters]

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

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

Some have called this a [progressive](#) 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 could be disastrous.

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'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.

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 marriage is not really considered a serious issue.

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Nepal's government has endorsed several international instruments including the Convention on the Rights of the Child (CRC) and its two optional protocols, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which 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 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 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 due to the victim's age.

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 infringed upon — rather than being protected.

Nepal's children deserve better.

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

**Harsh Mahaseth** Assistant Professor and Assistant Dean (Academic Affairs) at Jindal Global Law School, OP Jindal Global University  
 Harsh Mahaseth is a Nepalese citizen working as an Assistant Professor and Assistant Dean (Academic Affairs) at Jindal Global Law School, O.P. Jindal Global University, and an MPhil Candidate at the University of Cambridge.

**Dikshya Adhikari** Program Coordinator at the Conflict Victims' Women National Network, Nepal  
 Dikshya Adhikari is a Program Coordinator at the Conflict Victims' Women National Network, Nepal. She is a law graduate from National Law College, Nepal.

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