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An Examination of Pakistan's Counter-Terrorism Strategies

-Vaishali Basu Sharma

Terrorist networks in Pakistan have systematically provided safe havens to regional terror organisations, targeted civil-military institutions, and engaged in sectarian conflicts. Pakistan is a frontline state both as a safe haven for regional terror groups and as a target, implementing a bonafide actionable counter terrorism strategy. Imran Khan's administration has produced a variety of federal documents purported to achieve national security, a key component of which is counter-terrorism. A conspectus of the national

security documents reveals that there has been no impact on terrorism related threat reduction from Pakistan. Rather, since the fall of Kabul, Taliban-Al Qaeda aligned militants and sectarian outfits have been emboldened. This raises scepticism about the fundamental objective of the successive security strategies that the Pak establishment has released. An analysis of the National Security Policy (NSP), National Action Plan (NAP), Paigham-i-Pakistan, the National Internal Security Policy to name a few delineate that Pakistan's counter-terrorism policy remains ill-equipped to respond to challenges like the resurgence of the Tehrik-i-Taliban Pakistan (TTP), rising sectarianism, congenial environment for



Kashmir-focused groups that have evaded counterterrorism scrutiny.

In January 2022 Prime Minister Imran Khan unveiled the public version of Pakistan's first-ever National Security Policy (NSP). Evading a unanimous consultative process, the draft of the NSP was presented by the Pakistan Tehreek-e-Insaf (PTI) government to the Parliament when the opposition had boycotted the session. It was passed by Pakistan's National Security Council (NSC) and then presented to the federal cabinet who approved it into law on December 28, 2021 without a political consensus as the opposition was never consulted. While the original version of the policy remains classified, the released NSP dissimulates noble themes like national cohesion, economic resilience, human security and such, for a five year period till 2026.

A significant portion of the document is constructed around Pakistan's military defence, and its supposed survival challenges. It declares the Kashmir 'dispute' a vital national security interest. It blames India for the "unresolved Kashmir issue" without any reference to its own pernicious policies, and calls "political, diplomatic and moral support to Kashmiris which should be understood as an insinuated avowal for continued support to terrorism and separatist subversion in the region.

Adhering to the constant appeasement of radical mullahs the NSP sets an aim to make Pakistan an example of the Islamic world, just like 'Riyasat-e-Madina' created by the Prophet Mohammad (PBUH). The document states that Pakistan would end Islamophobia and work towards the security and safety of the holiest sites of Islam in Saudi Arabia. That the banner of Riyasat-e-Madina has been invoked in the NSP is no surprise. Over the past few years, it has been an enduring theme in Imran

Khan's interviews and op-eds.

The NSP correctly identifies internal security fault lines like terrorism, violent extremism, sectarianism and organised crime. But the document falls short of admitting that these problems are in large measure a fallout of the ineffectual governance and recalcitrant unless punitive counter-terrorism policies are adopted. NSP does not talk about plans to achieve accountability in countering terrorism and violent extremism. The heightened religious undertones of the document which are purportedly used to cloak it under a religious-nationalism undermine the stated goal of countering radicalism.

In Pakistan, the military establishment has always been the determiner of national security and foreign policy, but that role appears to have become more pronounced under the PTI government. Formulating policy documents also demands an appraisal of whether Pakistan itself recognises the ambiguity of its practices vis-à-vis the internal and external dimensions of its terrorism policies. How can a state visualise the magnitude of, or remove the terrorism threat when its conventional thinking itself promotes this as a strategic policy. This same paradox exists in its other policy documents, like the National Action Plan (NAP), Paigham-i-Pakistan, the National Internal Security Policy and the Counter Violent Extremism Policy.

The Paigham-i-Pakistan is a document signed by 1,829 religious scholars belonging to nearly all mainstream sects in the country, declaring suicide attacks against the state, spreading sectarianism and anarchy in the name of religion and issuing a call to jihad without the consent of the state un-Islamic actions. And yet all political parties in Pakistan regularly use socio-religious issues for political gains. The phenomenal rise of the influence of the Tehreek-e-Labbaik Pakistan

(TLP) which applies the doctrine of 'Al Wala, Wal Bara,' signifying love and hatred for the sake of Allah has encouraged violent radicalism over the cause of 'blasphemy.' The grisly incident in Sialkot (Dec, 2021) when a Sri Lankan national was burnt alive by a mob over suspicion of blasphemy should serve as a prognostication of Pakistan's daunting extremism challenge. Violent sit-ins by the TLP have also claimed the lives of dozens of police officers. Despite such brazen acts, Khan's government has been hesitant to take action against TLP leadership who are seen as the custodian of provocative blasphemy laws.

Another instance where the ambiguity between policy formulation and action is Imran Khan's decision to approach the banned Tehreek-i-Taliban Pakistan (TTP) for "reconciliation," with the help of the Afghan Taliban. The TTP is an alliance of militant networks formed in 2007 to unify opposition against the Pakistani military, with a stated goal of establishing an Islamic caliphate in Pakistan that would require the overthrow of the Pakistani Government. It is responsible for some of the most deadly terror attacks in Pakistan. It was in response to the December 16, 2014 terrorist attack by the TTP on Army Public School (APS) in Peshawar that killed 140 people, mostly children, that the previous Pakistan Muslim League (Nawaz) government had rolled out the NAP on Counter Terrorism and Counter Extremism. Military Operations Zarb-e-Azb (2014) and Radd-ul-Fasaad (2017) were undertaken under the mandate of the NAP against TTP and other militant networks in Pakistan. Since the Afghan Taliban took power in Afghanistan, TTP has escalated terrorist attacks in Pakistan and speculation is that the violence may continue. Yet the Pak establishment failed to evolve any preventive counter mechanism, choosing instead to appease the militants. In an interview to Turkish government-owned TRT World news channel, in October 2021,

Imran Khan said, "Yes, we forgive them and they become normal citizens." To a question on why the TTP was conducting attacks on Pakistan's security forces when they were in talks with the government, he said it was just a "spate of attacks." Khan's policy of trying to reconcile with the TTP is not just symptomatic of turning a blind eye to the ideological realities of the militant group but also renders futile past military operations against them.

Khan's government has also revised the NAP, reducing its 20 components to 14, and 'assigning intelligence agencies the key role for its effective oversight and implementation.' What was different in the latter bit remains to be guessed. Further, while the government is going ahead with its plans to reach some agreement with the TTP, there is no mention of this strategy in the revised NAP.

Similarly, Pakistan's National Counter Terrorism Authority (commonly called NACTA) has submitted another draft of the National Counter Violent Extremism Policy to the Ministry of Interior. The policy chalks out the plan for countering violent threats triggered by extremism, but none of its clauses endorses reconciliation with the TTP. Set up in 2009, NACTA is mandated to devise a counter-terrorism strategy. Its Board of Governors (BoG), comprises both the top-most civilian and military leadership, and given the discord between the two, NACTA is rendered dysfunctional. It seems that while NACTA had the mandate to collect intelligence, it had no jurisdiction to conduct group operations. The fact that this body is inert is reinforced by the fact that it was excluded from the revised NAP.

As if to further underline that the NACTA fails to deliver its mandate, Imran Khan has come up with a new intel gathering cell, National Crisis Information Management Cell

(NCIMC). Apart from a broad mandate 'to gather intelligence related to law enforcement,' specifics about why a separate body was required are unclear.

Speaking to media outlet 'The News on Sunday' (TNS) Tariq Parvez, a former head of the NACTA, stated that the development is a step towards "militarisation of internal security" and a downgrading of the NAP. "There is a need to reduce the predominance of the military. The NACTA was given the responsibility to implement the NAP after a thorough political consensus. If there are issues with the NACTA, those should be resolved. The counter narrative to curb extremism needs a vast civilian dimension and a large role for civilian bodies."

Point no. 9 of the revised NAP speaks of "Balochistan reconciliation process" without any elaboration on how this is to be arrived at. As security analyst Amir Rana has pointed out, with whom will the state reconcile – the separatist groups fighting on the ground or the exiled nationalist leaders who are waiting for a better deal from the state? He writes, "The government should have involved nationalist leaders such as Dr Malik and BNP-M's Akhtar Mengal to show it is serious about the reconciliation process."

A reforming aspect of the NAP was its commitment to bringing reforms in the criminal justice system, institutionalisation and implementation of Counter Violence Extremism (CVE) Policy. In keeping, a controversial issue, the special trial courts under the supervision of Pakistan Army were excluded from the revised NAP.

Ironically, Imran Khan's government has been touting the NCVE, put together by the sidelined NACTA as a document that is more geared towards 'winning hearts and minds.' It stresses the need to regulate mosques and

prevent the abuse of the pulpit by imams. In fact nearly all the strategies indicate that there is a need to regulate religious seminaries (madrassas). Yet, under the Single National Curriculum Policy (SNCP) the Pakistan government made it mandatory to teach Holy Quran in Arabic and deen-yaat (religious books on Islam) till class 5th and additionally, introduce a chapter on the life and history of the Prophet in the syllabus of 8th, 9th and 10th standards. This ideological policy-change has an overdose of religion that could lead to indoctrination of children at a young stage. Rather than regularising madrassa education the overemphasis on religious content has reversed mainstreaming of madrassas.

A reading of the policy documents gives a sense that the ideas on countering radicalization and extremism are imported by the global experiences. They don't appear to have been debated internally by Pakistan's academic research community or in any way tailored to meet local cultural understanding.

The NSP braces for Pakistan to achieve economic security but fails to address the deep political divisions and weak democratic processes in the country. Pakistan is so dependent on foreign assistance, that its sovereignty itself is vulnerable. The nation has failed its people on all aspects of human development and security. Human Rights Watch in its World Report 2022 pointed out that Pakistani authorities "expanded their use of draconian sedition and counterterrorism laws to stifle dissent and strictly regulated civil society groups critical of government actions and policies" during 2021. It is known and documented (US Country Reports on Terrorism) that the military continues to distinguish between "bad" and "good" jihadi groups with anti-India outfits such as Jamaat-ud-Dawa (JD) and state-backed insurgents such as the Haqqani Network, being kept off Pakistan's list of terrorist groups.

Counter-terrorism requires sustained efforts at dismantling terror networks through military operation, through law enforcement measures like detaining and trying jihadi leaders, disrupting terror financing and ending radicalisation through hate speech and literature. While the literature for this is in place, there is lukewarm political support action against radical entities in Pakistan. As the indicators of counter-terrorism action are plagued with inconsistencies, the obvious conclusion is that through the release of successive of national security related documents, Pakistan is deliberately and typically engaging in strategic manipulation to mislead the international community about the verity of its counter-terrorism effort or lack thereof.

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Raising Minimum Legal Age of Marriage for Women - Proceedings of a Discussion organised by PPF

January 7, 2022.

The Union Cabinet has cleared a proposal to bring uniformity in the marriageable age of men and women. The Prohibition of Child Marriage (Amendment) Bill, 2021, makes an amendment in the Child Marriage Restraint (CMRA) Act, 1978 and seeks to raise the age of legal marriage for women from 18 to 21. It will apply to all communities in the country and, once enacted, will supersede existing marriage and personal laws. The legal age of marriage for women is being raised by the Centre on the recommendations of the Jaya Jaitly Committee that was constituted by the Ministry of Women and Child Development, in June 2020. The task force was set up to re-examine the age of marriage and its correlation to health and social indices such as

infant mortality, maternal mortality, and nutrition levels of mothers and children. The Lok Sabha has referred this Bill to the Standing Committee after Members of Parliament demanded a deeper scrutiny and wider consultations.

Academicians, legal experts and social activists working in the field of child rights have pointed out that raising the age of marriage may not necessarily lead to women's empowerment. Significant positions have emerged on the issue of the renewed definition of child and its possible impact on communities, education, and employment. To examine these issues in detail, the Policy Perspectives Foundation (PPF) organised an in-house discussion. Dr. Nazima Parveen set the context by stating that the new Bill had not been reviewed and scrutinised adequately in the public discourse giving rise to debates around its effects on various issues of women's empowerment, agency and well-being. From a communitarian perspective, it was argued that the move infringed upon several personal laws in violation of fundamental rights of minority communities. Muslim women's rights and activist contended that 18 years as the year of marriage for girls was not fully implemented in the Muslim community. The Sharia law, which is not codified, states that the age of marriage is puberty or at age 15. In such cases the girls were married even before the age of 18 years. For this reason, it was insisted that within this current Bill, a special mention that the Muslim community would also come under its ambit must be made. From a socioeconomic perspective the bill has led to a contradiction between the minimum age and the right age of marriage. The government's pronouncements were about the right age for marriage, there was almost never a reference to minimum age. The Bill should prescribe a minimum age and 18

years was as good as any. It should continue to be a legal presumption, and there was no reason, therefore, to raise it to 21 years.

Ms Prabhasahay Kaur, Independent Litigator, Delhi High Court and Supreme Court of India, set off the discussion by explaining the legal implications of the Bill. She explained that the first main amendment brought by the Bill was in Section 2 A. which reads, "child means a person if a male has not completed 21 years of age, and if a female has not completed 18 years of age." In the Bill this provision had been changed to define a child as a male or female who had not completed 21 years of age. Essentially, the amendment was trying to remove the distinction in terms of age between men and women and bring it at par.

The second amendment in Clause 2 B where after the words "is a child", the words "notwithstanding anything to the contrary or inconsistent therewith contained in any other law for the time being in force, including any custom or usage or practice governing the parties" shall be inserted. This provision was being inserted to ensure that the Bill applies over and above any personal law or custom usage to this effect.

Amendment to Section 3 concerns void and voidable marriages. Void is something which is void ab initio, which means a nullity to begin with. Voidable, on the other hand, is void at the instance of one party.

Other legal aspects of the amendment were explained through noteworthy judgments. One such judgement was given by a full bench of Delhi High Court in 2012. The bench was dealing with numerous situations where girls and boys were being married before 18 and 21 years, respectively and several habeas corpus petitions were being filed. These petitions from parents complaining that their daughters were taken away to daughters

saying they wanted to live with their partner and other situations where girls after attaining the age of majority said that they were forced to marry someone. A batch of these petitions were clubbed together and the Court on its own motion *Lajja Devi vs. State* case, showcases the existing ambiguity and vagueness regarding the legality of marriages between a minor and an adult. Ms. Kaur cited relevant passages of the judgement and explained their legal ramifications

Para 21 of the Judgement states, "the PCMA, being a special law, will have an overriding effect over the Hindu Marriage Act, 1955 to the extent of any inconsistency between the two enactments." Para 26 and 27 of the judgement states, child marriage is such a social evil which has the potentialities of dangers to the life and health of a female child and plays havoc in their lives, who cannot withstand the stress and strains of married life and it leads to early deaths of such minor mothers. It also reflects the chauvinistic attribute of Indian society. The word "Child Marriage" is itself contradictory in itself as one would wonder how marriage and child could go together. The bench in the above paragraphs called child marriage an oxymoron and highlighted the need for ending such marriages.

Further Para 30 of the judgement noted that Section 3 of the PCM Act has to be contrasted with "void" marriages mentioned in Section 12 of the same Act. Void marriages are null and void ab initio and accordingly are treated as different and not similar to voidable child marriages. As per Section 12, in three circumstances, a marriage of a minor child is to be treated as void. We record that sub-section 2 to Section

3 will not apply in case of a "child" after he has attained majority, for he or she thereafter do not have any lawful guardian."

Para 35 the judgment mentions, "even after the passing of the new Act i.e. the Prohibition of Child Marriage Act 2006, certain loopholes still remain, the legislations are weak as they do not actually prohibit child marriage. It can be said that though the practice of child marriage has been discouraged by the legislations but it has not been completely banned" In the same vein, para 39 adds, "as held above, PCM Act, 2006 does not render such a marriage as void but only declares it as voidable, though it leads to an anomalous situation where on the one hand child marriage is treated as offence which is punishable under law and on the other hand, it still treats this marriage as valid, i.e., voidable till it is declared as void. The remedy lies with the legislature which should take adequate steps by not only incorporating changes under the PCM Act, 2006 but also corresponding amendments in various other laws noted above. In this behalf, we would like to point out that the Law Commission has made certain recommendations to improve the laws related to child marriage."

Para 48 of the judgement mentions, "we often come across cases where girl and boy elope and get married in spite of the opposition from the family or parents. Very often these marriages are inter-religion, inter-caste and take place in spite of formidable and fervid opposition due to deep-seated social and cultural prejudices. However, both the boy and girl are in love and defy society and their parents. In such cases, the courts face a dilemma and a predicament as to what to do. This question is not easy to answer. We feel that no straight jacket formula or answer can be given. It depends upon the facts and circumstances of each case. The decision will largely depend upon the interest of the boy

and the girl, their level of understanding and maturity, whether they understand the consequences, etc"

Further, the bench held that the attitude of the families and parents should be taken note of as there were cases where girls as young as 11 or 12 years had eloped and married a boy of their choice and said that they knew what they were doing. Given these situations, increasing the age of marriage could give girls an opportunity to make informed decisions. In another landmark judgement *Independent Thought vs Union of India* on 11 October, 2017, Supreme Court held "a child is and remains a child regardless of the description or nomenclature given to the child. It is universally accepted in almost all relevant statutes in our country that a child is a person below 18 years of age." Ms. Kaur felt that raising the age of marriage and accounting for the critical transition period of 18-21 years, girls would be more equipped to understand the consequences and make an informed decision.

Marriages, even if they were in contravention of 18 and 21, or 21 and 21 (after the amendment) would continue to be voidable only. The amended provision proposed two changes, and read section three as it currently stands, child marriages were only voidable, at the option of the contracting party being a child. Every child marriage, whether solemnised before or after the commencement of this Act shall be voidable at the option of the contracting party who was a child at the time of the marriage. The definition of child was going to change but the marriage remained voidable at the option of either party. Subsection 3 of the PCMA stated that a petition under this section may be filed at any time but before the child filing the petition completed two years of attaining majority. By way of the amendment, the duration of two years would be increased to five years.

Essentially, the effect that this amendment would have is that currently if a girl was married at less than 18, she had time till she turned 20 years i.e. two years after she attained majority to claim that the marriage is void, this would change to five years i.e. until she turned 23.

Dr. Tabeenah Anjum, Senior Journalist and Media Educator, Outlook Magazine spoke about the role of the media in examining the Bill. She drew upon her experience of working as a journalist covering numerous stories on child marriages, annulment of marriages and marital rape in rural heartland of Rajasthan where child marriages were still rampant. She noted that the new Bill on paper looked good but its consequences on the ground given the fragile socioeconomic conditions of families in rural areas due to the COVID-19 pandemic required deeper analysis.

She informed the participants that the Rajasthan Government had introduced the Rajasthan Compulsory Registration of Marriages (Amendment) Bill, 2019. The Bill was revoked as it provided a mechanism for the registration of all marriages in the state irrespective of age of the bride and groom. The contentious amendment yet to be notified said that if a bride was under 18 and if the groom was under 21, the parent or guardian must submit a memorandum for registration of marriage within 30 days from the date of marriage. The social activists and the civil society members argued that new provision was retrograde as it effectively legalised child marriage.

In Rajasthan's heartland child marriage had been a major social ill but official data did not reflect it. For instance, according to the State Government only four child marriages were reported in Rajasthan in 2016, 10 in 2017 and 17 in 2018. Further, there are no estimates available for 2019 and 2020. The National

Family Health Survey (NFHS) estimates were also showing that the share of child marriages in the total marriages in Rajasthan per year plummeted from 65 percent to 35 percent in 2015-16. However, on Akha Teej in the month of May mass weddings were still happening. Therefore, In the absence of authentic and accurate data from government sources, it became contingent upon journalists to report more on child marriages.

To better understand the consequences of the new Bill on raising the age of child marriage, the journalists covering gender and social issues must strive to provide accurate data and stories from the field. On the contrary, in the last couple of years the reporting on child marriage and other issues was confined to only urban and easily accessible areas. This had become more common during COVID. However, the number of child marriages increased during COVID but reporting went down. In such circumstances, there was a pressing need for long form and well-researched reporting from rural areas particularly in the last two years. The journalists also must cover the impact of the amendment on such families and engage with experts from different disciplines including gender, nutrition and education.

Consistent reporting on the effects of an act or law could pave the way for roll-back of ineffective laws. There were similar precedents in Rajasthan, for instance, after repeated reporting on lacunae in Rajasthan Compulsory Registration of Marriages (Amendment) Bill coupled with pressure from the opposition and the civil society, the State Government was forced to take it back.

Dr. Anjum underscored the need for awareness creation and sensitisation around the Bill as well. She shared that the Bill wasn't taken well by the activists and civil society members working on the issue in Rajasthan.

Many of them noted that the Bill raised the age of marriage from 18 to 21 and this could force parents to marry off their girls as soon as possible and would increase the prevalence of child marriages. Others noted that there was a need for pre-legislative counselling and consultation with activists, civil society members, women's bodies and organisations before introducing such bills. She also spoke about the need for reporting and capturing positive stories of resilience. Describing a story on prevention of child marriages in Karauli – one of the remotest districts of Rajasthan, Dr. Anjum noted that a movement led by adolescent girls was created to prevent child marriages. Through this movement, girls under 18 came together and empowered more girls like them. They formed WhatsApp groups and ensured early response and intervention with the support of NGOs in cases of child marriages. More such stories should be captured to bring to the fore strategies and solutions to address child marriages. The media had an important role in reporting on various consequences of the Bill through wide consultations with all relevant stakeholders

The Chair, Dr. Nazima Parveen brought forth other aspects of the amendment. As the discussion proceeded another position was that personal laws should be a secondary concern. The data on underage marriage showed that there was no difference between Hindus and Muslims. Proportion of underage marriage hovered around 26 percent in both groups as per NFHS-4 (2015-2016). In fact, the number of under-age marriages was slightly lower among the Muslims compared to the Hindus. The popular conception that Muslims were backwards compared to Hindus was not true here. Thus, the debate should not be reduced to stereotyping of one community overshadowing other issues of importance..

The nutritional status of the mother and child and maternal mortality rates depend more

on the economic status of women and families rather than the age of marriage. For instance, Anaemia was not affected by age at marriage and was one of the primary causes of India's high maternal mortality rates. Similarly, a poorly nourished woman was not likely to become well-nourished because she was being married off three years later (at 21 instead of 18). The higher ages at marriage also had a direct connection with the better-off families with better health indicators. Since people who are wealthier marry at later ages. Therefore, the nutritional and health aspects that the Bill claimed to contribute did not have much merit.

The PCMA, 2006 had been used to criminalise young adults who eloped to marry against the wishes of their parents and had inter-faith or inter-caste marriages. In this context, while it put a bar on the decision-making power of a female to choose a life partner or prefer to go for love marriage, the Bill could possibly give an upper hand to the parents who were opposed to such relationships across different communities on different grounds. In such a scenario, the wilful relationship of these young adults could be declared null and void. Such relationships could land in complete legal limbo if not criminalised.

The Bill was likely to increase insecurities amongst young women not yet financially independent, who were unable to exercise their rights and freedoms while still under the yoke of familial and societal pressures. According to National Family Health Survey-5 (2019-2021), 23.3 percent of women aged 20-24 years married before the age of 18 establishing that PCMA, 2006, had not been successful in preventing child marriages. Further, increasing the legal age at marriage for girls will expand the number of persons deemed underage and render them without legal protection. According to an analysis of NFHS-4 (2015-2016) data by Mary E. John, Centre for Women's Development Studies, 56 percent girls were married below the age of 21 and this figure was as high as 75 percent among the poorest category of population. This was also worrisome when one looked at evidence on how PCMA was used largely by parents to punish

their daughters who marry against their wishes or elope to evade forced marriages, domestic abuse and housework. This change could leave most Indian women who marry before they are 21 without the legal protection the institution of marriage otherwise provided and criminalise their families. The Odisha Child Rights Panel recently noted that since juvenile justice laws only provided for supporting vulnerable children up to the age of 18, there would be no space to support vulnerable child brides older than 18 years after being rescued from a child marriage. Raising the age of marriage would lead to an increase in female foeticide and unwed mothers. A mere change of legislation in isolation would never be able to stop child marriages unless there is social and behavioural change among parents and community.

The amendment proposed defines child as: ‘(a) “child” means a male or female who has not completed twenty-one years of age’. This definition contradicts laws where the legal age of competence is recognised as 18 years. The 61st Constitutional Amendment Act of 1988 defines the voting age for elections to the Parliament and Legislative Assemblies as 18 years. Similarly, the Protection of Children from Sexual Offences (POCSO) Act, 2012 also recognised a child as someone under the age of 18 and thereby implies that the age of consent for sex is also 18 years. The law that deals with juvenile offenders (or children in conflict with law) and children who need care and protection, that is, the Juvenile Justice (Care and Protection) Act, 2015 also defined children as persons under 18. As per the Right of Children to Free and Compulsory Education, 2009, that guarantees access to education, a child is someone between the ages of 6 to 14 years. Whereas under the anti-child labour law or the Child Labour (Prohibition and Regulation) Amendment Act, 2016, which

prohibits the engagement of children in all occupations and bans adolescents in hazardous occupations, a child is “a person who has not completed his fourteenth year of age” and an adolescent means “a person who has completed his fourteenth year of age but has not completed his eighteenth year”.

At one level, the age to enter into contracts and to vote is 18 years. These provisions recognised that a person had the mental capacity to make decisions that would affect her life commercially or as a citizen, but at the same time as per the Bill she didn’t have the right to make decisions about personal life even after turning 18. The proposed law thus made an artificial distinction. By making marriages under 21 years invalid, the Bill was criminalising those who married under this age and depriving them of protection under law. The United Nations (UN) recognises adolescents as a unique group in terms of life choices, sexual identity, political thoughts, decision making, etc. The experts have warned that tweaking the definition of a child by amending the age criteria should be done only when it is enabled, and not when it deprives someone of their rights. It was necessary to have a differential age in terms of determining children’s capacities, but it should be for the advancement of their rights and not to take them away. Consequently, while it was important that girls were not pushed into early marriages and it should not be compulsory for them to gain social and economic status, yet an increase in the minimum age of marriage to 21 years might turn out to be counterproductive.

Another opinion that emerged in terms of advantages of the amendment is that it removes the distinction between men and women. There was no logic for treating men and women differently in terms of the marriageable age. Even if there was one,

there was no intelligible differentia which had discussed it. Therefore, the Bill was only remedying an anomaly. It was bringing the age of marriage for both men and women at par. The difference between age of men and women in a way was based on a patriarchal norm of society, which was now being remedied.

Better reproductive health outcomes was identified as another advantage of the amendment. The fact that marriage, if it was done three years later, could lead to better reproductive health in terms of giving a woman more time in consummating marriage, in conceiving and in having children. A number of studies confirmed a correlation between early marriage and health and educational outcomes of women and children. Keeping this in mind, the amendment could be a positive step towards improving the health of girls. Additionally, the age between 18 and 21 was very crucial for a young person, it was the age at which a person gained more autonomy. In that sense, the amendment made marriages more equal, it gave more bargaining power to the woman in a marriage enabling her to advocate for herself better. Therefore, the amendment could lead to healthier marriages. Delay in marrying the girls could increase their chances of education and standing on their own feet in terms of being gainfully employed. Presently, until a girl is 18, she was under the legal guardianship of her father and then it just shifted to her husband. There was not a single point of time in her life, where she became responsible for herself. So, when a girl was given three more years legally to attain autonomy and be responsible for herself, it could go a long way in building her confidence to challenge patriarchy.

However, it was felt that the Bill should have incorporated more stringent measures to control child marriage. This aspect had not been addressed in the Bill. A need to adopt more rigorous steps to control child

marriages was something which a number of judgments since 2010 had stressed upon. Since the PCMA, 2006 was enacted, courts had been pointing out that it was not achieving its objective of stopping child marriages primarily because of the concept of void and voidable marriages. The earlier Act and the amendment did not make child marriage automatically void if it happened. Likewise, there was not enough focus on punishing the people and parties complicit in child marriages. There is a lack of certainty of punishment in both the earlier Act and the new Bill.

There was an argument that the amendment would lead to more female foeticide because a lot of parents from socio economically weaker sections of the society would feel that they would have to support their daughters till 21. The amendment also affects the right of a woman to choose her partner. In the current scenario, often families do not accept inter-caste and inter-religious marriages and with the amendment there would be a situation where even at 18, the girl would not be given the right to choose, she would have to wait till 21. This would result in complex and uncomfortable situations where a woman wanting to be with somebody of her choice would be forced to wait another three years. The amendment would also lead to anomalous legal situations as the JJ Act, the Contract Act, the POCSO Act, IPC provisions and judgments of the Supreme Court defined a child as someone who was under 18 years. The amendment thus, gave rise to definitional concerns and bringing uniformity all these acts would have to be changed.

Participants brought to the fore their views on the Bill and its various facets. These have been captured below. It was argued that the parity in age could also be achieved if the legal age of marriage for boys was reduced

to 18. However, in India, hypergamy (the long-standing mind-set that the boy had to be older, more educated, should earn high income etc.) is practised and this is prevalent in both urban and rural setup. If the legal age of marriage was brought down for men to 18, their preference for desirable brides might reduce to 15-16, thereby increasing the prevalence of child marriages. The new Bill correlated the increase in legal age of marriage for women with a delay in age of motherhood and to improve nutritional levels among young mothers and decrease maternal mortality. Teenage pregnancies had complications for both child and mother. However, expecting that the law alone would solve the problem of child marriages was unrealistic and irrational. The ground reality differed and the legislation on its own would be ineffective in changing the paradigm of child marriages. In India, a female child is considered a liability and marrying minor daughters is viewed as an economical and feasible option by parents. In addition to this, deep rooted social mindsets that reinforce the belief that a women's honour would be protected only if she is married, that she will be safe from sexual violence and early marriage means less dowry and that it will prevent elopement contribute to child marriages. These among other social beliefs played a major role in shaping families and communities' mindsets and remained a major driver of child marriages.

There is mounting evidence that a single solution to the problem of gender inequity (girl's education, child marriage, health etc.) was not feasible. A prudent approach would be to evaluate and address this issue through a multi-dimensional lens encompassing social, economic and demographic changes along with legal ones. If this law was not supplemented by simultaneous steps/ concerted efforts, it would not be effective in addressing the issue of concern.

Even the report of the task force for framing the Bill recommended a combination approach. The report mentioned many recommendations for better infrastructure & hygiene, for instance provision of toilet and sanitary napkins so that girls do not drop out of school, safe transport to improve access to education, sex education, vocational training and livelihood options and social campaign to reform patriarchal mindset etc. and one of the recommendations was raising the legal age of marriage for women. It seemed that the legislature had picked up only the last recommendation while ignoring others. NFHS data revealed that the predominant reasons for girls dropping out from school were either the 'school being far away' or 'it costs too much' and 'got married' was the least opted reason. So, there are many other reasons that were forcing girls out of school and once out of school, their families pushed them into marriage. Another study showed that villages with high schools have much lower rates of early marriages.

A participant felt that the Bill overlooked the rural setup of the country. The rural households lacked awareness or intent to educate their girl children. The law should have been preceded by awareness creation activities especially in rural areas. The law could further restrict girls' sexual and romantic choices for a longer duration and enable their domination. The Bill did not seem to take cognisance of these issues, possibly because it was passed in a hurry without a wider consultative process. For instance, Khap Panchayats have criticised the amendment on the grounds that it will give girls more opportunity to elope with boys bringing dishonour to the family. These Panchayats demanded that the age of marriage should be reduced from 18 to 16. In rural areas girls are still considered a liability and the need for controlling their sexuality

was strong. Thus, addressing these regressive views about girls and their choices require State's attention and action.

One of the participants posed a brooding question that patriarchal mind-sets and societal structures often normalise social evils like child marriage and domestic violence, how should they be changed and what should be done for the same. It was noted that like child marriage the cases of domestic violence sharply spiked during COVID-induced lockdowns. To address patriarchal mindsets, dialogue and discussion towards social and behaviour change at village level with involvement of community-based structures and groups such as self-help groups and women's groups was critical.

It was pointed out that girls and boys mature at different ages. The girls matured earlier than boys. This was the rationale behind setting different ages for marriage for girls and boys in PCMA. With respect to the new Bill, making a law was easy but its implementation remained questionable thereby it may not bring any real change. Thus, the formulation of law was possibly uncalled for. Another aspect to consider were the specific rural circumstances where the age of 18 was not considered less for marriage. In the absence of educational, skill development and employment opportunities, for many parents in rural areas marrying off their daughters remained the only option. Such traditional structures and practises should be kept in mind while framing laws. Until patriarchal structures remain unchanged, there would always be a scope of misusing the laws to restrict girls' choices

It was also mentioned that marriage provided a safe space for valid sexual relations between a man and a woman. With

the delay in age of marriage, the law may have repercussions on this aspect as well. For instance, Government of Odisha stated that law instead of controlling the teen-age pregnancies, the Bill could increase the number of un-wed mothers as couples would not get married and in turn, they would not get the safe space for establishing valid sexual relations.

A senior participant felt that the new Bill is a progressive legislation, in sync with 21st Century India. A general view was that while the intent of the Bill was good, more advocacy should be done before introducing such laws. The law may have beneficial effects in urban and peri-urban areas but not in rural areas. Therefore, concrete steps must be taken to empower girls by improving their economic situation and access to education. This should be done by bolstering the school infrastructure and ensuring availability of more teachers. Other than making such laws there was a need for positive, supportive provisions. For instance, a provision to monetarily support secondary education of girls through a stipend could be considered. Empowerment of girls through improving their access to education and other skill development opportunities was a time-consuming and costly affair, while formulation of law was simple. Perhaps lessons could be drawn from states such as Kerala, Mizoram and Tripura which rank high in terms of literacy and other socioeconomic indicators. The State therefore should not shy away from its responsibility of improving education, health and socioeconomic situation of girls by simply opting to formulate a law. The new Bill also made the definition of 'child' contentious which was not in consonance with many other laws. The age of 18 is universally recognized as the age of adulthood even by the UN. The law contradicted this definition. The Bill therefore

must be reviewed, scrutinised and discussed through wider stakeholder consultations. It was also recommended that if the Bill became a law the states should be given the flexibility to adopt it given their specific contexts.

बिहार की ग्रामीण स्वास्थ्य व्यवस्था: हकीकत

बनाम दुविधा

-पूजा कुमारी

कोरोना कि तीसरी लहर ने देश भर में लगातार बीमारी के बढ़ते आंकड़ों ने फिर से भय का माहौल पैदा कर दिया | देश के अन्य हिस्सों के मुकाबले स्वास्थ्य क्षेत्रों में पिछड़े राज्यों कि स्वास्थ्य व्यवस्था फिर से चिंता के रूप में उभरने लगी है | जिनमें से बिहार भी एक राज्य है | यह कोरोना की दूसरी लहर की चपेट में बुरी तरह प्रभावित होने वाले राज्यों में से एक रहा है | 24 जनवरी तक राज्य में कोरोना के कुल एक्टिव मरीज 14,833 हैं | साथ ही 15 दिसंबर 2021 कि खबर के अनुसार राज्य में वैक्सीन की खुराक 9 करोड़ तक हो गई है |

महामारी की दूसरी लहर में इस बार न केवल बड़े स्तर पर बिहार के ग्रामीण इलाके इसकी चपेट में आये बल्कि उनको गंभीर स्थितियों का सामना भी करना पड़ा जैसे ऑक्सिजन समय पर न मिलना, वेंटिलेटर की कमी या उसे चलने वाले टेक्निशियंस की कमी थी | राजधानी पटना में कई अस्पतालों में खाली ऑक्सिजन सिलेंडर और वेंटिलेटर बेकार पड़े धूल खा रहे थे जो PM केयर फण्ड से आये थे | भारत के बड़े राज्यों में से एक बिहार हैं फिर भी ऑक्सिजन, ऑक्सिजन प्लांट्स की उसकी जनसंख्या को देखते हुए कम है | कुछ जगहों पर प्लांट्स थे भी तो उनमें ऑक्सिजन बनाने की प्रक्रिया बंद हो चुकी थी या फिर कुछ वक्त पहले बंद की गई थी | अचानक ऑक्सिजन की मांग बढ़ने से इन बंद पड़े ऑक्सिजन प्लांट्स को दोबारा शुरू करने में अधिक समय लगा है | राज्य में ग्रामीण क्षेत्रों में आज भी स्वास्थ्य सेवा छोटे क्लिनिक, झोला छाप हकीमों और बेहद कम सुविधा वाले सरकारी स्वास्थ्य केन्द्रों के भरोसे चल रहे हैं | बिहार के ग्रामीण इलाकों में स्वास्थ्य सेवा है, अस्पताल है लेकिन डॉक्टर नहीं आते जिससे एम्बुलेंस सेवा और स्ट्रेचर तक के लिए लोगों को परेशानियाँ झेलनी पड़ती हैं | इतना ही नहीं महामारी कि दूसरी लहर में अचानक स्वास्थ्य सेवाओं में भारी मांग के कारण बिहार के प्राइवेट अस्पताल भी इसमें मददगार साबित नहीं हो सके थे |

स्वास्थ्य कर्मियों कि चुनौतिया: इंडियन मेडिकल एसोसिएशन (IMA) के अनुमान के अनुसार, तीसरी लहर में लगभग 600

डॉक्टर और 3,000 स्वास्थ्य कार्यकर्ता COVID-19 से संक्रमित हो गए हैं | इसने बिहार में स्वास्थ्य सेवाओं को धीरे-धीरे प्रभावित करना शुरू कर दिया है | दिसम्बर के आखिर में इंडियन मेडिकल एसोसिएशन (IMA) के 96 वें राष्ट्रीय सम्मेलन में शामिल 70 से ऊपर डॉक्टर संक्रमित पाए गये | जिसके उद्घाटन में मुख्यमंत्री ने कहा कि राज्य में कोविड -19 महामारी की तीसरी लहर शुरू हो चुकी है |

12 जून (एएनआई) 2021 कि रिपोर्ट के अनुसार: देश में कोविड-19 महामारी की दूसरी लहर में सबसे अधिक डॉक्टरों की मौत बिहार में हुई है, इसके बाद उत्तर प्रदेश और दिल्ली का स्थान है | आईएमए के अनुसार, बिहार में 111, दिल्ली में 109, उत्तर प्रदेश में 79, पश्चिम बंगाल में 63 और राजस्थान में 43 लोगों की मौत हुई है | वही दक्षिणी राज्यों में, आंध्र प्रदेश ने 35, तेलंगाना में 36 डॉक्टरों, तमिलनाडु में 32 मौतें दर्ज की गईं, तो वही कर्नाटक और केरल में 9 और 24 मौतें दर्ज की गईं | ये आंकड़े हमें इस चिंता में डालते हैं कि बिहार में डॉक्टर भी आम लोगों कि ही तरह भयंकर रूप से प्रभावित हुए हैं |

बिहार में एक सरकारी चिकित्सक पर 20 हजार की आबादी आश्रित है | विश्व स्वास्थ्य संगठन के अनुसार चिकित्सक और उस पर आश्रित आबादी का अनुपात 1:1000 होना चाहिए | सेंटर फॉर साईस एंड एनवायरनमेंट एवं डाउन टू अर्थ पब्लिका द्वारा संयुक्त रूप से जारी की गई स्टेट ऑफ इंडियाज एनवायरनमेंट एन फिगर्स 2021 रिपोर्ट के अनुसार – ‘ग्रामीण भारत में सामुदायिक स्वास्थ्य केंद्रों को 76 प्रतिशत अधिक डॉक्टरों, 56 प्रतिशत अधिक रेडियोग्राफरों और 35 प्रतिशत अधिक लैब तकनीशियनों की आवश्यकता है’ |

2021 पटना हाईकोर्ट को बिहार सरकार की ओर से दी गई जानकारी के मुताबिक कुल 5566 स्वीकृत पदों में 2893 जनरल मेडिकल ऑफिसर हैं, 5508 स्पेशलिस्ट स्वीकृत पदों में 1795 डॉक्टर हैं | कांटेक्ट के आधार पर 915 स्वीकृत जनरल मेडिकल ऑफिसर पदों में 279 और 769 कांटेक्ट के आधार पर स्पेशलिस्ट के स्वीकृत पदों में 150 चिकित्सक ही हैं |

2020 में कोरोना की पहली लहर के बीच स्वास्थ्य विभाग ने मई महीने में पटना उच्च न्यायालय को जानकारी दी थी कि राज्य के सरकारी अस्पतालों में चिकित्सकों के कुल 11645 पद स्वीकृत हैं जबकि 2021 साल में भी अप्रैल महीने में सरकार ने पटना उच्च न्यायालय को बताया कि इन सरकारी अस्पतालों चिकित्सकों के 7355 पद खाली हैं |

2021 में कोरोना संकट में जब राज्य के स्वास्थ्य विभाग की लचर स्थिति फिर से जाहिर होने लगी तो सरकार ने एक महीने से तीन महीने

की अवधि तक 1000 चिकित्सक की अस्थायी भर्ती के लिए वॉक इन इंटरव्यू का आयोजन किया गया।

चिकित्सकों की कमी का मामला सिर्फ कोरोना संक्रमण तक सीमित नहीं है। पिछले कुछ वर्षों से यह तथ्य बार-बार सामने आ रहा है कि राज्य में चिकित्सकों और स्वास्थ्य कर्मियों का घोर संकट है। 2019 में चमकी बुखार के भीषण प्रकोप के बीच बिहार सरकार ने सर्वोच्च न्यायालय को बताया था कि राज्य में चिकित्सकों के आधे और नर्सों के तीन चौथाई पद खाली हैं।

18 मई, 2021 को राज्य के अपर मुख्य सचिव ने बताया की है कि कुछ माह पहले बिहार में 1451 ग्रामीण स्वास्थ्य केंद्र बंद कर दिये गये थे। इनके चिकित्सकों और अन्य स्वास्थ्य कर्मियों को डेडिकेटेड कोविड हेल्थ सेंटरों में ड्यूटी के लिए तैनात कर दिया गया था। अब उन्हें वापस भेजकर इन केंद्रों को फिर से खुलवाया जा रहा है। इस वजह से इन केंद्रों में ओपीडी समेत अन्य सेवाएं बंद थीं।

कोरोना काल में जब जगह-जगह अस्थायी अस्पताल और कोविड सेंटर खोले जा रहे थे, ऐसे समय में सरकार ने इन्हें बंद करने के निर्णय से गैर कोविड मरीजों को भी नुकसान हुआ। ग्रामीण क्षेत्रों के ज्यादातर अतिरिक्त प्राथमिक स्वास्थ्य केंद्र पहले से बंद जैसे ही हैं। जहाँ समय पर सही इलाज मिलना बहुत बार मुश्किल होता है।

आंकड़ों में उतार चढ़ाव: 2 दिसंबर 2021 तक, राज्य में कोविड की मौत का आंकड़ा 9,664 था। 3 दिसंबर की देर रात कोविड की मौत के आंकड़ों में संशोधन किया, जो बढ़कर 12,089 हो गए। 2021 मई तक अस्पष्ट कारणों से बिहार में 75,000 हजार मौतें हुई हैं जो की महामारी की दूसरी लहर के दौरान हुए हैं। यह बात राज्य के नागरिक पंजीकरण प्रणाली के आंकड़ों से सामने आई हैं। ये आंकड़े चिंता का विषय हैं। अगर ग्रामीण स्तर पर व्यवस्था अच्छी होती तो इनमें से बहुत लोगों को वक्त पर बचाया जा सकता था। इसी अवधि में राज्य में पुष्टि किए गए कोरोनावायरस से हुई मौतों की संख्या 5,163 थी।

स्वास्थ्य बजट: बिहार के उपमुख्यमंत्री और वित्त मंत्री तारकिशोर

सोमवार को राज्य का 2.18 लाख करोड़ रुपये का बजट पेश किया, जो पिछले वित्त वर्ष के बजट से 7,000 करोड़ रुपये अधिक है। जिसमें स्वास्थ्य पर 13,264 करोड़ खर्च कर मूलभूत सुविधाओं को बढ़ाने के साथ नए अस्पतालों के निर्माण की भी बात की गई। स्वास्थ्य पर खर्च पहले से अधिक है फिर भी इस समय की मांग और बिहार की जनसंख्या के अनुरूप नहीं है।

राष्ट्रीय ग्रामीण स्वास्थ्य मिशन (NRHM) की शुरुआत 2005 में ग्रामीण आबादी, विशेष रूप से कमजोर समूहों को सुलभ, सस्ती और गुणवत्तापूर्ण स्वास्थ्य देखभाल प्रदान करने के लिए की गई थी। जिसके तहत आशा वर्कर को शामिल किया गया था। महामारी में इसका रोल बहुत अहम था जो कि मूलभूत जरूरतों की कमी के कारन जमीनी स्तर पर धराशाई दिखा। हमारी के दौरान इनकी अलग समस्याएं भी रही। बिना किसी सुरक्षा या बेहद कम सुरक्षा किट के साथ आशा वर्कर घर - घर जाकर कोविड के मरीजों तक अपनी पहुँच बनाई थी।

अगर ग्रामीण स्तर पर स्वास्थ्य सेवाएँ अच्छे से काम करेंगी तो इसका सकारात्मक पहलु हर स्तर पर दिखाई देगा और किसी महामारी जैसी बड़ी मुसीबतों से लड़ने में सहयोग देगा। राज्य और केंद्र में बेहतर तालमेल बनाने और किसी भी परिस्थिति को नियंत्रण करने में भी मदद मिलेगी। इसलिए यह जरूरी है कि बिहार की ग्रामीण आबादी के लिए स्वास्थ्य मिशन जैसे कार्यक्रम को मजबूत बनाया जाये।

लेखक पीपीएफ के साथ शोधकर्ता हैं


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