



Unjust Arrests: Fact-Finding Report of Assam Clampdown on Child Marriage



Association for Protection of Civil Rights

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ACKNOWLEDGEMENT

The ***Association for Protection of Civil Rights (APCR)*** would like to most sincerely acknowledge the contribution of all those who led to the successful completion of this Fact-Finding visit to ascertain the recent Assam Government crackdown on child marriage and its effect on vulnerable groups particularly women. We acknowledge the communities living in different states of Assam including Guwahati, Barpeta, Dhubri and Mojuli who shared their experiences of arrests and participated in the informant interviews that provided the required content for this report. The efforts by the various Community leaders, local Journalists, Lawyers and Civil Rights activists that have put their lives on the line in the promotion and protection of human rights and useful information provided to the fact finding team cannot be gainsaid. The Association for Protection of Civil Rights further acknowledges the local people for their immense and invaluable support towards the success of this mission leading to final publication of this fact-finding report. We also sincerely thank reviewers for their invaluable comments and the technical editing of this report.

BRIEF FACTS

On 23.01.23 the Government of Assam took a Cabinet decision to crack down on Child Marriages. The decision was taken after the report released by the National Family Health Survey-5 conducted in 2019-2020¹. As per the survey in Assam around 31.8% of women in their 20-24 years age married before attaining the legal age of 18 years. The Assam Chief Minister Himanta Biswa Sarma on 03.02.2023 informed that Assam accounted for 16.8% of teenage pregnancy resulting from child marriages.

Consequently, the Assam police started registering cases against husbands, in-laws, fathers, relatives of minor girls and Qazi/Priest involved in child marriages under the Protection of Children from Sexual offences Act 2012 and Prohibition of Child Marriage Act 2006. At present, around 4,000 cases has been registered and around 3,000 people had been arrested across the state². The district wise data of cases registered are as follows:

SN	DISTRICT	TOTAL CASES
16	Golaghat	62
17	Hailakandi	1
18	Hamren	15
19	Hojai	255
20	Jorhat	25
21	Kamrup	80
22	Karbi-Anglong	126
23	Karimganj	92
24	Kokrajhar	204
25	Lakhimpur	32
26	Majuli	44
27	Morigaon	224
28	Nagaon	113
29	Nalbari	171
30	Sadiya	85
31	Sivsagar	54
32	Sonitpur	60
33	South Salmara	145
34	Tamulpur	110
35	Tinsukia	73
36	Udalguri	235
	Total	4004

1. National Family Health Survey 5: <https://prsindia.org/policy/vital-stats/national-family-health-survey-5#:~:text=National%20Family%20Health%20Survey%205,-The%20first%20phase&text=In%20the%20first%20phase%20of,surveyed%20across%20the%2017%20states>

2. <https://www.deccanherald.com/national/east-and-northeast/assams-child-marriage-crackdown-creating-havoc-in-private-life-gauhati-high-court-1191447.html>

In the current crackdown of Assam's government against child marriages, there are mainly two penal laws are involved:

- **The Prevention of Child Marriage Act, 2006**
- **The Protection of Children from Sexual Offences Act, 2012 (POCSO)**

Assam's Chief Minister has said that while men who married girls below 14 years of age would be booked under the Protection of Children from Sexual Offences Act, those marrying girls between 14 and 18 years would be booked under the Prohibition of Child Marriage Act. The POCSO Act, of 2012 criminalizes sex between a minor and an adult. The law does not recognize a minor's consent as valid. Sexual assault under POCSO is a non-bailable, cognizable offense. This means that the police can make an arrest without a warrant. So, a presumption of sexual assault is being made in cases of child marriage involving minor girls below the age of 14. The Prohibition of Child Marriage Act 2006, says that child marriages are illegal but not void. Instead, they are voidable at the option of the minor party, in the scenario that the minor petitions the court to declare the marriage void. The Act stipulates 18 years as the minimum marriageable age for women, while for men it is 21 years. The Act punishes child marriage with "rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both." The punishment also extends to anyone who performs, conducts, directs, or abets any child marriage and includes rigorous imprisonment of up to two years and a fine which may extend to one lakh rupees unless proven that he had reasons to believe that the marriage was not a child marriage.

Allegedly, the cases are registered based on data leaked by ASHA workers and the head of the Gram Panchayat Secretaries³. In pursuant to the approval of Hon'ble Cabinet meeting held on 23.01.2023, the Governor of Assam designated Gram Panchayat Secretaries as Child Marriage Prohibition Officers as per Section 16 of The Prohibition of Child Marriage Act, 2006. This has created havoc in the minds of married women especially avoiding health facilities during their pregnancy. The link of leak data of two such District Barpeta and Dhurvi is given below.

It is important to note that the procedure of arrest followed by the Assam police as alleged by the local residents in Dhubri, Barpeta, Mozuli and other districts is in clear contravention of Supreme Court guidelines in DK Basu v. State of West Bengal (1997) AIR SC 610 and Arnesh Kumar vs. State of Bihar (2014). Further, during arrest the police seized all documents related to marriage, medical and identification and made them sign blank papers concealing the information.

3.
https://docs.google.com/spreadsheets/d/1Dhc0AQPbw7hgycGvvT9m7XgCLXP8Vg_e/edit?usp=sharing&oid=104017503870088663499&rtfpof=true&sd=true

https://docs.google.com/spreadsheets/d/1JbGbQ32JBWOWv_sfmnFIFL_XAhaMeYlj/edit?usp=sharing&oid=104017503870088663499&rtfpof=true&sd=true

To accommodate all arrested accused and the possibility of more arrests in the coming three to six months as per the Assam Chief Minister statement, the state government has made two transit jails Matia transit camp in Assam's Goalpara and a stadium in Silchar. The recent crackdown has created havoc and an apprehension of arrest among people already distressed and entangled in issues prevalent in Assam such as NRC, D-voter categorisation, displacement, eviction and destitution etc.

METHODOLOGY

The report is a result of quantitative data collected through fact finding by a team comprising Tamanna Pankaj Advocate, Mohammad Moboshshir Aneeq Advocate along with two local counsel Mr. Masood Advocate and Mr. Junaid Khalid Advocate. They visited several districts of Assam including Dhubri, Barpeta, Mozuli and Guwahati and recorded statements of affected families of accused arrested by the Assam police. The testimonies of the wife/daughters of the accused are recorded along with statements of lawyers working in the area highlighting grave human rights violations committed by the state. The Association for Protection of Civil Rights (APCR), is a non-governmental civil rights organization working for the marginalized sections of society established in 2006 to provide pro-bono legal assistance has conducted the Fact-Finding visit in Assam to ascertain the present condition of human rights violations after the Assam crackdown on child marriage.

TESTIMONIES

DISTRICT GUWAHATI

Sonali Begum W/o Siddique Ali

Sonali Begum was married to Siddique Ali on 24.03.2022 when she was minor. On 02.02.2023-03.02.2023 at midnight the Police officers from Police Station Hatigaon District Guwahati forcefully entered her home and took away her husband Siddique Ali on the pretext of questioning. Further, they also took away her medical papers regarding pregnancy. When she asked why they were taking away her husband, the officers told her to come in the morning at 9 AM and meet the senior police officers. In the early morning, she went to PS Hatigaon where she was not allowed to meet anyone including her husband. One of the police officers told her that her husband will be produced in Guwahati District Court. Appalled by the response she asked about the allegations and copy of the First Information Report however the police officers refused to provide anything. They informed her orally that her husband has been arrested on the pretext of Child Marriage. She immediately went to the Guwahati District Court where her husband was produced before a Magistrate and sent to Goalpara Jail which is around 150 km away from Guwahati.

At the Magistrate Court, she was forced to give a statement where she recorded that “I am happily married to my husband. The marriage was done with her free on her own will and without any coercion”. Thereafter I was asked to sign the papers but the Hon'ble Court didn't allow her to read what was recorded. Further, she was forced to sign the two blank papers. No lawyers were appointed by the Hon'ble Court. Further she pleaded and requested the magistrate to release her husband but they Ld. Court didn't pay any attention to it. It is important to note that even in court she was not provided with a copy of the First Information Report or any other documents.

Sonali Begum comes from a poverty stricken family and because the marriage was against the wishes of her family consequently she received no support from her family in this crisis. She got some help from advocate Junaid Khalid and her neighbors who are affected by this crackdown in a similar way. Both her mother-in-law and her husband are daily wage laborers.

Junaid Khalid, Advocate

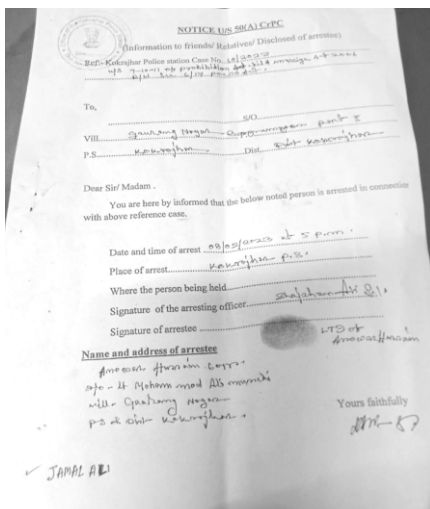
Mr. Junaid Khalid practiced at Gauhati High Court. He particularly does matters related to human rights issues and expressed his concerns over the recent clampdown. He stated that Assam as a sensitive state lacks strong civil society. People are already suffering the repercussions of National Register Citizen (NRC), rampant encounter and state repression and this added crackdown has severely affected the situation. People working here are affiliated with different political ideologies and hence very few are working for the welfare of the state of Assam.

DISTRICT DHUBRI, CHAPPAR

Dhubri being the most poverty stricken district in Assam constitutes a greater percentage of child marriages. As per the NITI Aayog report 2020 Dhubri District is considered as one of the most backward districts in Assam. The total number of cases registered and arrests as per data published by the Assam Police is 370 and 135 respectively. Allegedly the police are arresting late at night and without serving any notice.

Anowar Hussain

Mayuri Bibi W/o Anwar Hussain stated that police came in search of her son Mufijul Hussain after a section 41A notice under The Code of Criminal procedure Code 1973 was issued on his name. It was informed to the police that her son does not live here. However, they did not bother to listen and take away her husband. Further, they seized all documents related to the marriage of her son and refused to communicate any grounds of arrest. When asked how the police came to know about her son's marriage it was informed by one of the neighbors that the Gram Panchayat head allegedly leaked the information that resulted in his detention. Their issues have been made worse by the area's social, economic, and educational shortcomings.



Surman Ali

Surman Ali was married at the age of 26 when his wife was 17 years old through an agreement by a local Qazi in December 2022. The agreement was that nikah will be solemnized but the girl attained the age of majority then only she will be sent to live with her husband. In the meantime she will reside with her parents. Despite they were not living together, her husband Surman Ali was arrested under Prohibition of Child Marriage Act 2006. It is important that no notice as required by law was sent to him. After the arrest the wife is living in constant fear and intimidation.

Abdullah S.K

Dubhri District P.S lodged an FIR on 09.02.2023 against Fazul Haque on the complaint of Shahizuddin Ahmad R/o Durahati Dhubri district. Farida Parveen was a minor at the time of marriage, her father Faizul Haque a primary teacher was arrested on 9.02.2023 at around 1:30 AM. The FIR alleged that Faizul Haque forcefully married his daughter when she was 17 years of age in the year 2017. The ground of arrest in the FIR suggests that the village people have stated that the victim girl was married when she was underage. The witnesses have also stated about the marriage.

Abdullah stated that the police came to arrest the accused brother however while searching documents they discovered that Faizul's daughter was also minor at the time of marriage consequently they arrested him. The daughter stated that the police did not reveal the grounds of arrest and seized all the documents. They were not provided with the FIR copy initially or on what charges he has been arrested but later after two days they were given the copy of FIR. They took him to Gaolpara detention center 200 Km away from the district. She feared that the police would arrest her husband in a similar manner.

The Officer In-Charge,
Dhubri Police Station

Subject: Information about child marriage

Sr,

I would like to inform you that Faizal Hoque has a minor daughter namely Farida parvin approximately 17 years old, who belongs to my village Tister par was forcefully married to a man name Abdullah SK S/O Habibor Rahman of Vill- Berbangi PS- Golakganj Dist- Dhubri (Assam), who is above 18 years old. The marriage was performed in the year 2017. This fact came to my knowledge when I noticed that the girl was not seen with the family.

Initially, I was informed by the family that the girl had stayed back with the grandparents/relatives but now I have learnt that the girl is married. I learnt that the marriage took place in a traditional manner in presence of relatives of both the victim girl and the groom.

Therefore, I request you to take necessary legal action against the perpetrators whose details are given below, given the fact that Child Marriage is illegal and to register a case under appropriate sections of law.

Seen the FIR
on 09.02.23 at 2.50 AM/PM
delivered by Officer 141
Rly.

Name and details of the victim:
Farida parvin - 17 years
D/O - Faizal Hoque
Vill - Tister par
PS + Dist - Dhubri

Name and details of the accused persons:
1. Faizul Hoque S/O- Late Ahiruddin SK
2. Vill- Tister par, PS+Dist- Dhubri
3. Abdullah SK S/O- Habibor Rahman
4. Habibor Rahman S/O- unknown
Vill- Berbangi, PS- Golakganj
Dist- Dhubri, (Assam)

Yours sincerely,
Shahizuddin Ahmad
Age- 58 years
G.P. Secretary, Durahati
PS + Dist- Dhubri, (Assam)

Seen
Addl. Sessions Judge-Cum-
Dhubri

Through the PI COURT OF Dhubri, Assam
Forwarding of accused person with a prayer for 5 (five) days Police Custody
Dhubri PS Case No.121 /2023, U/S-376 IPC
RW 9/10/11(i) of PCM Act 2006.
RW 4/17 of PCSO Act.

In connection to the above noted ref, I have the honor to forward herewith the below noted accused person who has been arrested in connection to the above noted ref.
Submitted for favor of your kind perusal and oblige.

Name & address of accused person arrested
Fajzal Hoque S/O- Late Ahir Uddin SK R/O- Tisterpar PS Dhubri Dist: Dhubri, Assam.

Brief of the case: The Complt. Shahizuddin Ahmed/S/O of Late Gulzer Hussain of R/O- Durahati PS: Dhubri, Dist: Dhubri, Assam lodged an FIR on 09/02/2023 that Faizul Hoque has a daughter namely Farida Parvin approx. 17 years of age, who belongs to his village was forcefully married to a person whose name is Abdullah SK S/O Habibor Rahman of vill-Bherbangi, P.S. Golakganj in the year 2017. And they are now living as husband and wife leading a conjugal life. This fact has come to my knowledge when I noticed that, the girl was not seen with her parents at the locality.

Initially, he was informed by her parents that, she stays with her grandparents/relatives. But, now he came to know that the girl is married. He has also come to know that, the marriage took place in a traditional manner in presence of relatives of both the victim girl and the groom and presently the victim is having a child at her premature age.

Since having physical relationship with underage girl (married/unmarried) is a crime and anyone abetting such offence is also culpable, he request to kindly register a case and take necessary legal action under appropriate sections of law against the perpetrators whose details are given below, given the fact that Child Marriage is illegal. Hence the case.

Ground of arrest:
The accused is FIR named accused.
The village's people has stated that the victim girl was married when she was underage. The witnesses has also stated about the marriage.
Right now they are living together as husband & wife.

Requirement for Police Remand: 5 (five) days

- 1) The arrested accused person has not mentioned anything about the whereabouts of the minor victim and could not be traced out.
- 2) The arrested accused person need to be interrogated thoroughly to collect more evidences like marriage papers, birth certificates etc. which has been concealed by the accused person himself.

Bail Objection: Under the above facts and circumstances I pray your honour that the accused person may not be released on bail at the primitive stage of investigation as if they are released, they may hamper/temper the process of investigation.

Name and address of accused person
Fajzal Hoque (55y) S/O- Lt Ahir Uddin SK
R/O- Tisterpar, PS + Dist - Dhubri

Yours Faithfully,
SI (V) Abir Reza

Advocate Masood

He explained the modus operandi of arrests by the police in the Dhubri district, the police abruptly enter the house of the accused late at night and arrest the person without communicating the ground of arrest. The pattern follows the arrest of either the Qazi who solemnized the marriage or the husbands and relatives of the minor girl with the aid of data leaked by the Panchayat Secretary or village Secretary.

DISTRICT BARPETA

Moinuddin

District Nuh Mati P.S Holdi : Moinuddin aged 20 years old married his wife who is 18 ½ years old around seven months ago. Now she is pregnant and alleged that ASHA workers leaked her information regarding her age. The place he resides is affected by frequent floods and thus huge displacement is common. It is important to know that they are also categorized as D-voters despite being cleared by NRC.

Nabibar Rehman

On 02.02.2023-03.02.2023 at midnight the Police officers from PS Kolkasia District Barpeta raided my home and then took away my husband Nabibur Rahman on the pretext of questioning. At the time of the raid, they said nothing but ensured that my husband will be back soon. The police officers were very abusive and threatened us that if they inform anyone then they will frame every individual in my family in a false case. But unfortunately, her husband did not return.



So she went to the police station to enquire about her husband, but the concerned police officers refused to tell me anything. Thereafter, she somehow got to know that my husband has been detained by the police in a case of child marriage. But this

didn't end up here on 08.02.2023 the police officers of PS Kolkasia asked my father Shri Abdul Majeed to come to the police station and take my husband back from there, however, in the evening my father didn't come back home so she got worried and went to the police station to enquire about her father. The police officer told that he can't be released and accused him of child marriage.



I pleaded and requested the police officer to release my father. I said he is an old man but they did not listen. They were very abusive and also threatened me. Thereafter I requested for the copy of the First Information Report but the police refused to provide me with the same. My father and husband are daily wage labourers and I am seven months pregnant and completely dependent on my husband for my survival. That due to the wrongful arrest of my father and husband and out of fear I am now even unable to get proper medical treatment. It is important to mention that they are already affected by D-voter categorization and now this crackdown has worsened the current situation.

DISTRICT MAJULI

As informed by **Advocate Masood** On 03.02.2023 and 04.02.2023 midnight around 24 people were arrested and they were charged under section 9, 10, 11 of The Child Marriage Prohibition Act 2006 and 6/17 of the Protection of Children from Sexual Offences Act, 2012 (POCSO) Act. However, when produced before District Court Majuli they were all granted bail.

KEY OBSERVATIONS

1. **Deteriorating health conditions of pregnant women**

The drive against child Marriage has a major downside affecting pregnant women who has the apprehension of arrest of their husbands, in-laws and relatives on the pretext of child marriage. They are reluctant to go to ASHA workers despite their pregnancy dates approaching. It is due because the ASHA workers have leaked/shared the data of pregnant women district wise causing apprehension of arrest. For women whose sole bread earners are languishing in jail, taking care of their children and providing nutrition to the unborn has become a major concern.

2. **Retrospective implementation of the law**

Child marriage is a menace to society affecting young girls and to prevent this problem the central government enacted Prohibition of Child Marriage Act 2006. However to bring social change the government needs to disseminate information and educate the masses rather than implementing drastic change through mass arrests. Penalizing and criminalizing people at this extent has larger consequences affecting their social and economical status.

3. **Violation of Supreme Court guidelines on arrest**

The Hon'ble Supreme court of India has issued guidelines in order to prevent arbitrary and unlawful arrest of individuals. The guideline laid down in D.K Basu v. State of West Bengal(1997) suggests that the police officer making the arrest must clearly identify himself/herself and inform the person being arrested of the grounds for arrest. It also obligates the police to inform the accused his/her right of legal representation.

4. **The absence of a robust civil society**

The lack of strong civil society in Assam has made it challenging to hold the government accountable and fight against state repression. The absence of a robust civil society infrastructure, coupled with a lack of awareness and education among people, has made it difficult to organize people to oppose the actions of the state. Consequently, the affected communities have often been left to fend for themselves, with little support or assistance. This has led to widespread grievances and a sense of alienation among people, particularly those from marginalized communities

5. No legal assistance

The absence of legal aid can prevent people from accessing justice and defending their rights, leaving them vulnerable to exploitation and abuse. In Assam, the lack of legal assistance is particularly acute in rural and remote areas, where people may not have access to legal services due to a lack of infrastructure and resources. The recent crackdown has accentuated the need for accessible justice particularly for marginalized communities to navigate the legal system.

6. Lack of strong groups

The absence of strong associations in Assam to defend the rights of people has been a significant challenge in the state. The lack of organized groups has made it difficult for people to come together, advocate for the rights and demand accountability from the government. The historical marginalization of the state led to a lack of resources for civil society to sustain, additionally, the political situation in the state has been volatile to build strong and sustainable organization. In the recent event the affected families get support only through neighbors who are equally affected and not from any organized group. Advocate Junaid Khalid working in Guwahati stated that Assam as a sensitive state lacks strong civil society. People are already suffering the repercussions of NRC, rampant encounter and state repression and this added crackdown has severely affected the situation. People working here are affiliated with different political ideologies and hence very few are working for the welfare of Assam.

Conclusion

The unethical outburst of the recent crackdown in Assam has engrossed many lives. The bitter truth lies in the fact that the state is frozen and denied the protection of its own citizens particularly those who are from the marginalized and affected areas. Women who were expecting and weaving dreams are now hustling for their spouse to live a 'normal' life.

The fact-finding report on the recent crackdown in Assam has revealed a deeply concerning situation in the state. The findings indicate that the crackdown has resulted in significant human rights violations including unjust, arbitrary arrest, targeting vulnerable groups, affecting health conditions of pregnant women.

The crackdown has a significant impact on the people of Assam, particularly those from marginalized communities who have been disproportionately affected by the government's actions. The lack of due process and use of access force have created fear and intimidation in the minds of residents denying full protection of their rights.

Fact Finding Team

1. Tamanna Pankaj, Advocate
2. Mohd. Mobashshir Aneeq, Advocate
3. Masood, Advocate
4. Junaid Khalid, Advocate



Association for Protection of Civil Rights