

“COME TOGETHER”

National Consultation on Prevention of Child Marriage

12-13 August 2014, New Delhi



Organised by



HAQ: Centre for Child Rights

India International Centre 40, Max Mueller Marg, New Delhi – 110003

March 2015

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FOREWORD

On the 9th of March, 2015 as we were finalising this report, the news of a mother having killed her three daughters aged 7 years, 3 years and 18 months and then attempting suicide appeared in the news.¹ Apart from all other facts describing her social and mental condition was the fact that she had been married when she was just 12 years old and now already a mother of 4 children. Her husband and neighbours said that she seemed depressed. It may be worthwhile to ask whether being married when a child herself and burdened with the responsibility of motherhood, family and societal pressures contributed to her mental condition that led her to act in such a dastardly manner?

Child Marriage is a human rights violation that does not consist of the violation of any one right, but several, that continue through the lives of the children that have been affected, often leaving long lasting effects that carry forward into their adult lives. Children miss out on fundamental rights, such as right to play, right to an education, and girls become exposed to unplanned and early pregnancies. Girls being married to men several years older than them are also put at risk for physical and sexual abuse. Abandonment of girls married at a young age by their husbands is not uncommon. Unskilled and unprepared, they are left to fend for themselves most often with several children they may have had at a young age. Child marriage is the beginning of a cycle of violation of rights of children, mostly girls.

Since 2012 HAQ: Centre for Child Rights has been implementing a project on Preventing Child Marriage through Strengthening Systems in partnership with Jabala in West Bengal and MV Foundation in Telengana.

As part of this project HAQ had organised a national consultation “Come Together” on the 12th and 13th of August 2014, to share experience, strategies, challenges and learning’s. It brought together 62 participants from 13 different states.

While this report presents the deliberations and discussions of the consultation, it also delves in some detail into the existing debates, legal issues and other important discussions on this issue.

It is hoped that this report contributes to the existing resource pool on the issue of child marriage.

We thank Ms. Neeraja Phatak for her preliminary draft of the consultation, all the HAQ colleagues who were rapporteurs for the consultation, Ms. Krinna Shah, Project director who put together the consultation and reviewed the report and Ms. Rhea Sharma who helped in editing and proofing the final version.

Enakshi Ganguly Thukral
Co- Director

Bharti Ali
Co- Director

¹ Desperate for a son, she killed them. Hindustan Times, ht metro, 11.03.2015

ABBREVIATIONS

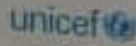
ARSH	Adolescent reproductive sexual health	NLEGEL	National programme for Education of Girls at Elementary Level
ANM	Auxiliary Nurse Midwives	NCW	National Commission for Women
AWW	Anganwadi Workers	NHFS	National Family Health Service data
CCT	Conditional Cash Transfer	NLEGEL	National programme for Education of Girls at Elementary Level
CEDAW	Committee on the Elimination of Discrimination Against Women	OCHR	Office of the United Nations High Commissioner for Human Rights
CIF	CHILDLINE India Foundation	PCMA	Prohibition of Child Marriage Act 2006
CMPC	Child Marriage Prohibition & Monitoring Committees	PIL	Public Interest Litigation
CMPO	Child Marriage Protection Officer	PLHIVs	People Living with HIV/AIDS
CPC	Child Protection Committee	POCSO	Protection of Children from Sexual Offences Act 2012
CWC	Child Welfare Committee	PRI	Panchayati Raj Institutions
DCPU	District Child Protection Unit	SAARC	South Asian Association for Regional Cooperation
DLHS	District Level Household and facility Survey	SAIEVAC	South Asia Initiative to End Violence Against Children
HIV	Human Immunodeficiency Virus	SABLA	Rajiv Gandhi Scheme for Empowerment of Adolescent Girls
ICDS	Integrated Child Development Services	SRS	Sample Registration System
ICPS	Integrated Child Protection Scheme	SC	Scheduled Caste
ICRW	International Center for Research on Women	ST	Scheduled Tribe
IMR	Infant Mortality Rate	STIs	Sexually Transmitted Infections
JJ Act	Juvenile Justice (Care and Protection of Children) Amendment Act, 2011	SSH	Short Stay Home Programme
KGBV	Kasturba Gandhi Balika Vidyalaya	UNICEF	United Nations Children's Fund
KSY	Kishori Shakti Yojana	UNCRC	United Nations Convention of the Rights of the Child
MMR	Maternal Mortality Rate	UNFPA	United Nations Population Fund
MDG	Millennium Development Goal	WFFC	World Fit for Children
MHRD	Ministry of Human Resource Development		
MWCD	Ministry of Women and Child Development		

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MacArthur
Foundation



COME TOGETHER



NATIONAL CONSULTATION
ON PREVENTION OF
CHILD MARRIAGE

12-13 AUGUST 2014



CONTEXT

CHILD MARRIAGE IN INDIA AND THE CONSULTATION

Marriage before the age of 18 is a reality for many young women. World-wide, more than 700 million women alive today were married before their 18th birthday. More than one in three (about 250 million) entered into the marriage union before age 15. Child Marriage is a global phenomena and the practice of girls marrying young is the most common in sub-Saharan Africa and Southern Asia. In other parts of Asia, the Middle East and North Africa, marriage at or shortly after puberty is common among some groups. In parts of Western and Eastern Africa and Southern Asia, the marriage of girls before puberty is not unusual.²

According to UNFPA, India has the largest number of child brides in the world, with 47% girls married under the legal age of 18, projecting that 140 million child marriages may take place between 2011 and 2020, cutting across most developing nations.

While under age boys are also married, there is paucity of data on the impact of child marriage on them. Nevertheless, evidence points out that girls are disproportionately adversely affected, which is the reason why there is more data available and most interventions are targeted at girls. Child marriage can lead to a lifetime of disadvantage and deprivation.

Child Marriage in India has continued despite social reform movements and legislations against it, the earliest legislation being the Child Marriage Restraint Act, 1929, popularly known as the Sharda Act that was enacted eighty five years ago. Unfortunately, child marriage continued to be a reality. In 2006, the Government once again enacted a law- The Prohibition of Child Marriage Act, 2006.

What is of concern is that despite legal as well as social interventions by both the government and NGOs child marriage continues. What is more, it is not just a rural phenomenon, or confined to only a few states.

There are many manifestations of this union, in some cases a young girl often below the age of 15 years is married off to a much older man. In other cases adolescent girls and boys are married and live together as husband and wife, however if the children are very young, the wedding is performed and a waiting period for consummation of the marriage or 'Gauna'³ is practiced till the girl attains puberty. Yet in other cases, one set of parents makes a commitment of marriage of a child as young as 6 or 7 years to another set of parents, however the 'couple' do not meet till they reach the mar-

² http://www.unfpa.org/swp/2005/presskit/factsheets/facts_child_marriage.htm#ftn1

³ 'Gauna' is practiced in North India and associated with the custom of Child Marriage and with the consummation of the marriage. The girl and boy stay with their respective parents and only enter into effective marriage several years after the wedding ceremony. This custom of a girl continuing to live with her parents before she joins her husband is called 'gauna'.

riageable age, which is when the actual wedding ceremony is performed. Although there are no studies that look at the age pattern of children being committed to betrothal, this pattern varies from community to community.

PURPOSE OF THE CONSULTATION

In India we have The Prohibition of Child Marriage Act (PCMA), 2006. Experience shows that the implementation of the Act is weak. One of the reasons for this is that the law in its very construction is vague and weak. For example, while the law prohibits child marriage, if the marriage has taken place, it becomes legal and voidable. The initiative for seeking the marriage void has to be taken by the girl or her guardians, and more often than not, the guardians are responsible for the marriage in the first place. The enactment of the new law on child sexual abuse, the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and the Criminal Amendment on rape in 2012 has added to the confusion.

Interventions made by voluntary organisations for addressing the issue of child marriage are not new. It was the recognition of the kind of violations that child marriage results in and efforts made by public spirited individuals in that context that led to the enactment of the first law in 1929. Since then there have been hundreds of organisations across the country who have worked using different strategies to prevent child marriage with different levels of challenges and success.

Over the last two years or so there has been a lot of interest generated on this issue, nationally and globally. Several reports and studies have been published.⁴

Nationally the National Policy for Children, 2013 was drafted and adopted. However the policy hardly addresses the issue of child marriage. At the same time the National Strategy on Child Marriage Prevention and Draft National Plan of Action to Prevent Child Marriages in India are yet to be implemented with budget allocation and time line.

Internationally, in April 2014 the Office of the United Nations High Commissioner for Human Rights (OCHR) presented its report '*Preventing and eliminating child, early and forced marriage*'. The report addresses the various factors that contribute to child, early and forced marriage and further analyses existing measures and strategies to prevent and eliminate child, early and forced marriage with a particular focus on challenges, achievements, best practices and implementation gaps.⁵

The purpose of the national consultation was to bring together initiatives from across the country to share experience and challenges and work towards a

NEW DELHI: Just released census data shows that there are about 6.6 million more women who are "currently married" than men. While part of this might be accounted for by married men who have migrated abroad for work leaving their wives behind, the data also indicates that there are a very large number of women in polygamous marriages.

The data also shows that in 2011, the census year, more than 18 lakh girls under the age of 15 were married.

Of the total 1.2 billion population about 580 million were married at the time of the census. This number does not include those divorced, widowed or separated. Among these 580 million married persons, 293 million were women while 287 million were men.

Of the 18 lakh under-15 married girls, more than 4.5 lakh had also witnessed child birth. About 3 lakh under-15 mothers had two children at the time of the census. Of the total 7.8 lakh children born to girls below 15 years of age, about 56,000 had already died. Thus, there were a large number of girls who before the tender age of 15 had got married, delivered babies and also seen their child die.

Rajasthan had the highest proportion of girls aged 10-14 married. Of 40 lakh girls of this age in the state, a little over 4% were married. Rajasthan was followed by Maharashtra, Goa and Gujarat, all having more than 3% of girls aged 10-14 being married at the time of the census.

<http://timesofindia.indiatimes.com/india/29-3cr-wives-28-7cr-husbands-Census-bares-polygamy-truth/articleshow/46437481.cms>

4 For example, '*Marry Me Later*' (USAID, Kiawah Trust, Omidyar Network and Dasra, June 2014), '*Protecting the Girl Child*' (Equality Now, January 2014), '*Child Marriage in South Asia*' (Briefing Paper by Center for Reproductive Right, 2013), '*Marrying Too Young*' (UNFPA, 2012), '*Desk Review of Child Marriage*' (UNICEF, March 2011) and '*Delaying Marriage for Girls in India*' (ICRW Report to UNICEF, March 2011) etc.

5 A/HRC/26/22, United Nations, General Assembly 2 April 2014



cohesive strategy and a common agenda of advocacy against child marriage and child protection. It provided a platform to share learnings based on grass root level efforts on what works and what does not by various stakeholders of civil society, government agencies and the communities.

AREAS OF DISCUSSION

- The broad areas of discussion in the two day consultation were:
- Legal and Policy Framework
- Intervention Models
- Research and Assessment/Output of Intervention on Child Marriage
- Identifying Gaps and Challenges in Ending/Preventing Child Marriage
- Agenda of Advocacy Against Child Marriage



THE BACKDROP

CHILD MARRIAGE A VIOLATION OF RIGHTS

Child marriage is a practice that violates the rights of children. Apart from imposing adult responsibilities on them such as that of motherhood and “having to take care of the family” in the case of boys, it also takes away their right to choose—choose to continue their education, choose their livelihood or vocation, right to choose their partner and when to do so.

While it has severe health implications, what has often not been addressed enough is the aspect of the child’s violation of the right to protection. Moreover, it has continued to be looked upon as a social evil instead of crime.

DEFINING CHILD MARRIAGE

Across the world, early and forced marriage and child marriage are used to describe the phenomenon of under-age marriage, sometimes even inter-changeably including some United Nations documents.⁶ Others use the phrase “early marriage, including child marriage,” implying that early marriage encompasses child marriage but also includes situations that do not qualify as child marriage, such as marriages in which one or both spouses are below the age of 18 but have attained majority under state laws. UNICEF for example says, “Early marriage, better known as child marriage, is defined as marriage carried below the age of 18 years, “before the girl is physically, physiologically and psychologically ready to shoulder the responsibilities of marriage and child bearing”⁷



‘Early’ marriage in comparison to what and for whom?

“For me even marrying at 40 years is early. For others it may be 25 that is early and there are those for whom 18 is too late. With a law on this, child marriage becomes a legal term and defined.”

Dr. Jaya Sagade

6 E.g. A/HRC/21/41 and UNICEF , Early Marriage: A Harmful Traditional Practice: A Statistical Exploration (2005), p. 4. And Report of the Office of the United Nations High Commissioner for Human Rights, *Preventing and eliminating child, early and forced marriage*, April 2nd, 2014

7 Early Marriage In South Asia-A discussion paper www.unicef.org/rosa/earlymarriage (lastversion).doc

Child rights activists use the term child marriage to describe a marriage in which at least one of the parties is a child. But as Jaya Sagade points out, the term child marriage itself is contradictory, as marriage is a formalised relationship, with legal standing between two consenting adults. But she also says that the term child marriage is used for a number of reasons.

The first is to emphasise the paradox in the prevalent practice of marrying young girls; the second because law professionals, social workers and legislators in India and many other countries refer to this practice as child marriage. The laws in India in particular use the term child marriage- The Prohibition of Child Marriage Act, 2006 (PCMA) and its predecessor the Child Marriage Restraint Act, 1929.⁸ According to the United Nations Convention on the Rights of the Child, which India has ratified, a child is “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.

Although early is not explicitly defined to mean less than 18 years old, it is frequently found in that context.⁹ In fact, most organizations that collect data on early marriage use the under-18 benchmark.

Child rights organizations and experts, are concerned that the term ‘early marriage’ is less concrete than ‘child marriage,’ and fear that prohibitions against early marriage can allow for marriage at any age based on social norms and customs. This is because the term early can be very subjective and can mean different ages in different contexts.

There are however some other, especially such as Breakthrough that are working on sexual and reproductive rights, who are very particular about using only the term “early marriage”.

Forced marriage, is a marriage to which one or both of the spouses did not give their free and full consent.¹⁰ Forced marriage has been interpreted by many organizations to encompass child marriage, since children inherently lack the ability to consent to marriage.¹¹ The United Nations Population Fund, for example, says that “children, given their age, are not able to give free, prior and informed consent to their marriage partners or to the timing of their marriage.”¹²

But this is where there are further confusions. Different laws define different ages for different issues. The issue of sexual consent is fundamental to the laws related to sexual abuse. The Protection of Children from Sexual Offences Act 2012 defines 18 years as the age of consent and hence any sexual intercourse before the age of sexual consent is treated as rape and the males involved are booked for rape.



Need for clarity of terminology

“At HAQ we have been talking about the use of terms like early marriage, child marriage and forced marriage. These are three different terms used to refer to the same issue, and we need to understand and decide what the difference is between them, do we continue to use these different terms or look at all marriages below the legal age as child marriage? Our clarity alone will guide our policies, our laws, our actions.”

Bharti Ali

8 Jaya Sagade. Child Marriage in India. Socio-Legal and Human Rights Dimensions. Second Edition. OUP. 2012 Convention on the Rights of the Child, art. 1.

9 <http://sexualrightsinitiative.com/wp-content/uploads/SRI-Analysis-of-the-Language-of-Child-Early-and-Forced-Marriages-Sep2013.pdf>

10 <http://sexualrightsinitiative.com/wp-content/uploads/SRI-Analysis-of-the-Language-of-Child-Early-and-Forced-Marriages-Sep2013.pdf>

11 See A/HRC/21/41, para. 27

12 United Nations Population Fund, MARRYING TOO YOUNG (2012), p. 11.

This highlights a big area of concern regarding the question of consent . We find an increasing number of boys in consensual sexual relationships having to pay a penalty for it as they get booked for rape and when young people elope , the charge includes kidnapping along with rape. However when they elope and get married, their marriage remains valid. Here the confusion is multiplied by the courts, especially in the case of those aged 16 years and above. But are they forced marriages? So can we say ALL child marriages are forced?

For the purpose of this report, we have used the term ‘child marriage’ to describe underage marriages as per the Prohibition of Child Marriage Act 2006 and the definition of the ‘child’ as given in the UN Convention of the Rights of the Child.

“ANATOMY” OF CHILD MARRIAGE IN INDIA

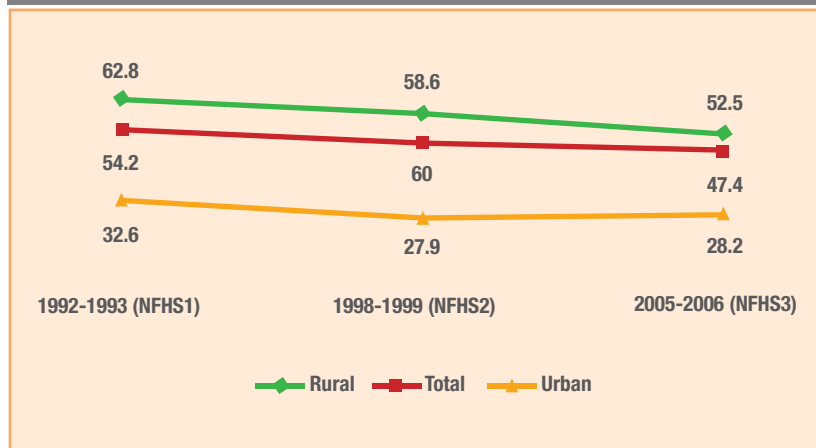
Child Marriage is an age old custom in India and has continued despite social reform movements and legislations against it. Over the years, along with culture “safety of girls”, “having to pay lower dowry for younger girls” have become additional reasons given to justify early marriage.

According to the NFHS III, 69% of girls in Bihar were married before the age of 18 and this figure is 65.2% in Rajasthan; the all India figure is 47.4%. NFHS III indicates that Child Marriage occurs in every state in India in varying degrees.

“Girls are going to school but once girls start menstruating, their parents start worrying about getting the child married. They feel that it is no longer safe for their girls. They know that they cannot do so in Delhi as they are aware of the law, so during the vacation they take them to the village and get them married off. How can this be prevented?”

Bharti Sharma

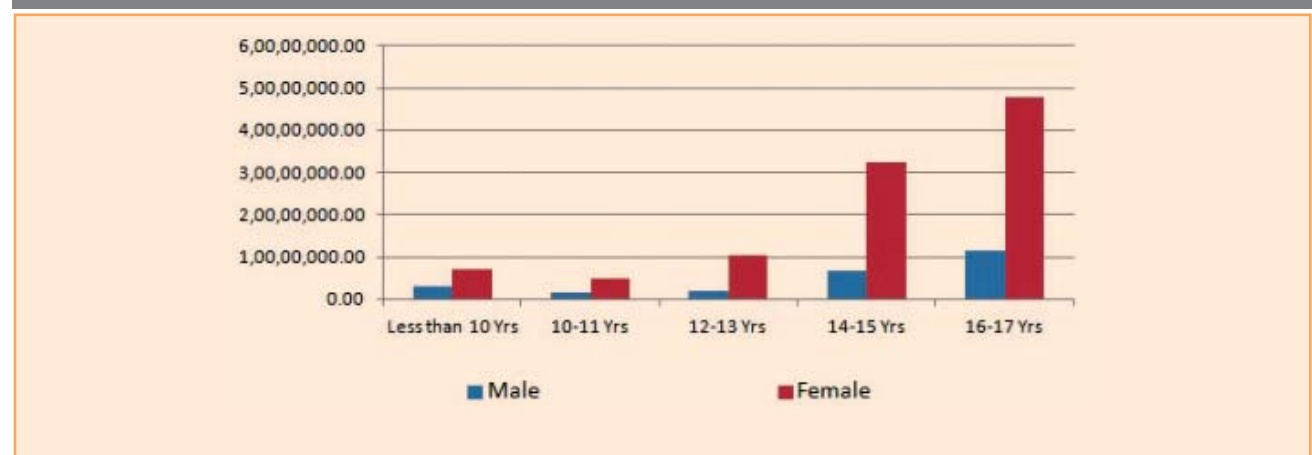
Trends in Marriage Below Legal Age for Girls (NFHS)



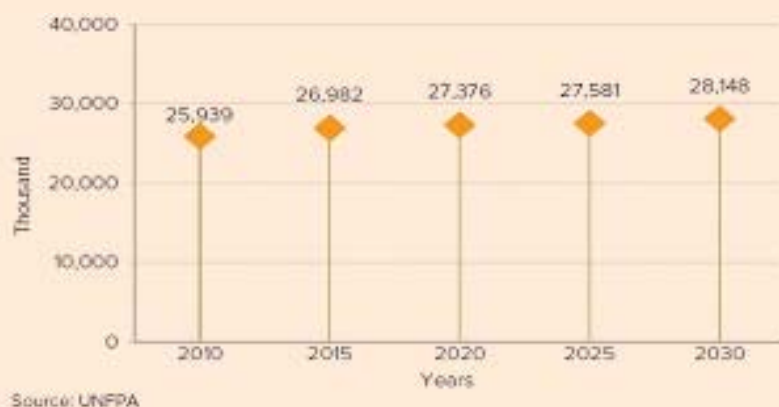
Percentage of boys and girls getting married below the legal age

CHILD MARRIAGE	DLHS II (2002-2004)	DLHS III (2007-2008)
Girls	28.0%	22.1%
Boys	20.7%	23.4%

Mean age at marriage as per Census 2011



Future Child Brides: Projections for the Next Two Decades



Although the incidence of Child Marriage in India has been decreasing, 23.5% girls were married before the age of 15 from 1989-99. This dropped to 8.2% from 2005-06. However, for girls between ages 15-18 the marriage rates have risen from 26.7% from 1989-99 to 29.2% from 2005-06.¹³

Rates of child marriage among girls under age 15 are falling twice as fast as those among girls under 18. But the progress is not sufficient to guarantee children their full rights, says UNFPA and far too many girls would have been trapped in a marriage depriving them of their childhood and violating their basic rights.

In 2010, 25,939,000 women aged 20-24 were married/in union before age 18. If present trends continue, 28,148,000 of the young girls born between 2005 and 2010 will be married/in union before age 18 by 2030.

CONSEQUENCES OF CHILD MARRIAGE

The impact of marriage on children not ready physically or mentally for it manifests itself in numerous ways. The immediate consequences are early onset of sexual activity, pressure to prove fertility leading to early motherhood leading, responsibilities beyond ones age. But there are long term consequences as well such as irreversible health conditions, sometimes even leading to loss of life, mental trauma, loss of education and limited opportunities for personality development and of livelihood leading to a lifetime of dependency.

All in all it is a loss of childhood.

The impact of Child Marriage is trans-generational and gets passed on from mother to child. Young mothers apart from being at threat themselves during child bearing do not have the necessary maturity to rear their children, this immaturity leads to feeding children inappropriately, physically mishandling their children – after all the parents are children themselves. Child Marriages contribute to virtually every social problem that keeps India behind in women’s rights. The problems include soaring birth rates, grinding poverty and malnutrition, high illiteracy and infant mortality, and low life expectancy, especially among rural women.¹⁵

In a historic judgment on the issue of Child Marriage, division bench comprising of Mr. Justice A. K. Sikri and Mr. Justice Ajit Bharihoke held that the “child marriage is a violation of human rights, compromising the development of girls and often resulting in early pregnancy and social isolation, with little education and poor vocational training reinforcing the gendered nature of poverty”.¹⁴

¹³ DHS 1998-1999; DHS 2005-2006

¹⁴ Delhi High Court recognises Child Marriage as human rights violation:

<http://www.hrln.org/hrln/newsroom/media-reports/476-delhi-high-court-recognises-child-marriage-as-human-rights-violation-.html#ixzz3LHRtChoB>

¹⁵ A Study on” Child Marriage in India: Situational Analysis in Three States

AFFECTS HEALTH AND SURVIVAL

Early pregnancies not only weaken the mother but increase the chance of maternal mortality. Between the years 2007-2009 the Maternal Mortality Rate (MMR) in India was 212¹⁶ as against the Millennium Development Goal (MDG)¹⁷ target of 109 by 2015. 9% of the MMR is contributed by girls in the age group 15-19 years.¹⁸ A young girl has not attained full physical development, and her body may strain under the effort of child birth, which can result in obstructed labour and obstetric fistula. Obstetric fistula can also be caused by the early sexual relations associated with child marriage, which take place sometimes even before menarche.

Weaker mothers increase the risk of Infant Mortality Rate (IMR) as is evident from the Sample Registration System (SRS) results; one in every 20 children die within one year of birth as against 1 in 37 under the MDG. 81.2% of IMR is contributed by mothers of the age group 15-19.¹⁹ Often husbands are considerably older and have more sexual experience, sometimes already infected with Sexually Transmitted Infections (STIs) or Human Immunodeficiency Virus (HIV) which they pass on to the young girls. A number of organisations working with People Living with HIV/AIDS (PLHIVs) have discovered that all the women in their programme contracted the HIV virus from their husbands.

Reduces Access to Education, Recreation and Leisure

Girls particularly lose their childhood; once they are married they must lead adult lives. Marriage is most often the end of education. Once married they are no longer children and so play and leisure is never part of their life. They are often socially isolated – cut off from their own family and friends and other sources of support – with limited opportunities for education and employment. Girls are pulled out of school at an early age they have no knowledge about their bodies much less about their reproductive systems. Lack of education contributes to intergenerational child marriage.

Although much less in number, the burden of marriage also reduces access to education and recreation for boys, burdening them with adult responsibilities of earning and looking after the family.

Make children more vulnerable to abuse and exploitation

Married girls have to take on the responsibility of domestic chores given their tender ages these responsibilities border on abuse and neglect. They are more vulnerable to domestic violence than older women. According to a report by UNICEF in 2005 India has the highest levels of domestic violence among women married by 18. Often girls are married to men much older than themselves and cannot negotiate on issues of consent to physical engagement or contraception. Due to the adverse ratio of girls to boys, kidnapping for marriage is becoming more rampant. In 2013, National Crime Bureau Records reported that 13,876 girls were kidnapped for marriage.

Takes away the right of choice and participate in decision concerning them

Neither boys nor girls have a space to voice their opinion on the issue of getting married. Young girls leave parental domination when they marry, only to move into their matrimonial home and be dominated by their in-laws and husbands. At the end of the day these young girls do not have control even over their own body.

16 Sample Registration System (SRS) 2011

17 The Millennium Development Goals (MDGs) are eight international development goals to be achieved by 2015 that were established following the Millennium Summit of the United Nations in 2000

18 Report on the National Consultation on Prevention of Child Marriage held at New Delhi on 25th May 2012 Ministry of Women and Child Development (MWCD)

19 Report on the National Consultation on Prevention of Child Marriage held at New Delhi on 25th May 2012 Ministry of Women and Child Development (MWCD).

CAUSES OF CHILD MARRIAGE IN INDIA

There is no single cause of child marriage. The causes of Child Marriage in India are complex and the drivers are multilayered. The reasons behind this continuing practice are manifold- entrenched in the socio-economic context of backwardness, poverty, illiteracy, patriarchy, feudalism, falling sex ratio, lower status of women and girls characterised by practices such as dowry, female foeticide and infanticide, lower levels of education and unequal rights to property etc. There are also cultural and social practices which are region or community specific.

There is no literature on Child Marriage and its practices in Ancient India, and it is difficult to trace the origins of this practice.²⁰ What is clear however is that Child Marriage was commonly practiced in India till the turn of the 19 Century, and in the 21st Century it has been observed that Child Marriages occur in educationally and economically deprived societies. Research has indicated that Child Marriage is higher in Hindu, Muslim, and Buddhist women than in Christian and Sikh women, and those of other religions.²¹

Child Marriage is deeply entrenched in tradition and culture and being a practice that has been passed down from generation to generation, trying to remove it results in a backlash from communities that have practiced this for as long as they can remember.

Certain challenges' that are faced by those fighting this practice are listed below.

Social and Cultural Compulsions

Patriarchy

The Indian society is largely patriarchal, where men and boys are the main earners and the decision makers and women and girls are brought up to support their men, look after the home and bear them sons. In the patriarchal family structure of India, women are not left to be independent and they are expected to live under the dominion of one male family member, father, husband or son. Indeed the purpose of marriage is “the transference of the father’s dominion over a girl in favour of her husband. Further such transfer is expected to be done at an age before she can question the decision”.²²

Some communities believe in the ritual of '*kanya daan*' which is described as the gift of a virgin, by her father. This assures the father salvation²³ after his death.

Protecting Girls

Very often, parents believe that marriage is the best way to protect their young daughters from unwanted male attention, and to ward off sexual advances and sexual assault. This is also the best way they know of to protect the girl’s chastity

“There are many factors of child marriage and many laws and mechanisms etc, in case of Assam we did not have the dowry system but gradually it is entering our state and at the same time we have observed that that is one reason parents are citing for having child marriages, so is there any relation between dowry and child marriage?”

Nirjumoni Dutta Bharali from Mahila Samakhya, Assam

20 A Study on” Child Marriage in India: Situational Analysis in Three States

21 The Lancet, Volume 373, Issue 9678, Pages 1883 - 1889, 30 May 2009 Prevalence of child marriage and its effect on fertility and fertility-control outcomes of young women in India: a cross-sectional, observational study. Anita Raj et al

22 Karkal M. and Rajan I. “Age at marriage: how much change”, *Economic and Political Weekly*, 1989 in Sagade, J. *Child Marriage in India: Socio-Legal and Human Rights Dimensions*, New Delhi: Oxford University Press, 2005

23 Related to the Hindu belief of transmigration of the soul.

and virginity, and ensure the family's honour. However, they fail to understand, or do not consider that the imposition of family honour on a girl's individuality, is in essence robbing the girl of her honour and dignity, as well as her freedom to choose. Khap Panchayats have also petitioned for Child Marriage, as they feel it will prevent rape.

Low Levels of Education

It has been found that the highest prevalence of child marriage was recorded in women who had less than a secondary education, those residing in rural areas or in the central or eastern regions of the country, and those in the lower two quintiles of wealth. Child Marriage was also more common in women with less educated husbands than those with more educated husbands. Child Marriage was reported by 77.1% of women whose husbands had no formal education and 33.7% of those whose husbands had some higher education.²⁴

Gender discrimination

Child marriage is a product of cultures that devalue women and girls and discriminate against them. "The discrimination," according to a UNICEF report on "Child Marriage and the Law," "often manifests itself in the form of domestic violence, marital rape, and deprivation of food, lack of access to information, education, healthcare, and general impediments to mobility."

Girls are always regarded as being born to be sent away to another's home, across the country the term 'another's property'²⁵ is used to describe girls. Therefore a parent's dream and a girl's ultimate goal in life is 'marriage'. Investment in her is believed to bring no return since she will belong to another family after her marriage. This mind set makes the parents feel "the education of girls is like watering the neighbour's garden."²⁶

Getting their daughters married is a major worry for parents, marrying of a daughter is one of the most important duties of parents and an unmarried daughter after a certain age as defined by the community²⁷ is not socially respected or accepted in some communities.

Economic Compulsions

Parents see marriage as a way to secure the girl's future socially and economically. Despite The Dowry Prohibition Act, 1961; the giving and receiving of dowry continues and the younger the girl and the older the man, the smaller is the dowry. This is yet another reason for parents to get their daughters married at a younger age.

Poor families sell their children into marriage either to settle debts or to make some money and escape the cycle of poverty. Child marriage fosters poverty, however, as it ensures that girls who marry young will not be properly educated or take part in the workforce.

24 The Lancet, Volume 373, Issue 9678, Pages 1883 - 1889, 30 May 2009 Prevalence of *child marriage and its effect on fertility and fertility-control outcomes of young women in India: a cross-sectional, observational study*. Anita Raj et al

25 In Hindi this is 'paraya dhan'.

26 Saxena, 2007, p. 106 as reported in *Childhood to Womanhood- Child Brides and the Inefficiency of the Indian State* Sule Tomkinson

27 The age range varies from 1-18 years.



“One big structural reason of child marriage is poverty, data has clearly shown that the poorest are the ones who get their children and girls married before the rich do, and it’s also of course related to education. If you look at communities, and child marriage specifically in certain religions, you will see that it happens almost equally among both Hindus and Muslims, but hardly among Parsis and Christians. Also if you go deeper and look at SC, ST castes, when you are looking at highly marginalized populations, you will also see that the rural and urban differences are quite stark.”

Vanita Nayak Mukherjee

Trafficking

There is enough evidence that there are traffickers to ‘help’ parents sell their girls into a marriage. With the adverse sex ratio in India, there are enough customers to buy wives. These young girls are then used as domestic help.

ROOT CAUSES OF EARLY MARRIAGE

- Economic factors - economic uncertainty
- Labor of women- married girls as an economic asset, unpaid labor
- Sexuality - Chastity, Premium on virginity, honor not only of family but also of community
- Fear of sexual violence – outside and inside the home
- Inevitability of marriage / Anxieties and uncertainties of the future
- Fear of breaking “ideal marriage” norms
- Masculinity - threat to masculinity of fathers, especially girls’ fathers, Marriage is used to control and discipline errant boys

Presentation by Archana Diwedi. Mapping Early Marriage in India. Nirantar trust and Sadhbhavna Trust

Lack of Alternatives to Child Marriage

Non – availability and inadequacy of the educational facilities, such as distance from schools, non existence of functional toilets have led to girl children dropping out of school early and consequently pushing families to get them married early.²⁸

LOCATING CHILD MARRIAGE IN THE HUMAN RIGHTS DISCOURSE

Although traditionally child marriage has been seen as a “Women’s issue” or a “health and reproductive rights issue”, it is increasingly becoming clear that child marriage is definitely an issue of child protection. For example, falling sex ratio in several states has led to a fall in the number of brides available. Trafficking for brides has therefore become a phenomenon to be reckoned with.

²⁸ Report on Prevention of Child Marriages in the State of Karnataka by the Core Committee Headed by Justice Shivraj V. Patil Vol.I

Kidnapping is another phenomenon that contributes to child marriage and that has raised its head in India. It affects both boys and girls and in 2013, 13876 girls and 336 boys below the age of 18 were kidnapped for marriage.²⁹ DLHS III indicates that the percentage of boys getting married below the legal age is increasing. There is not enough information on the impact of Child Marriage on boys, or on the reason of this increase.

Interestingly, when the Prohibition of Child Marriage Act was being framed there was a lot of discussion as to whether child marriages should be null and void and hence invalid. The stronger voice, which came from the women's movement based its concern on what will happen to the girl once she has been married.

Hence, the option of making child marriage voidable at by either parties was adopted, being very hopeful that girls will have the courage to opt out of a marriage. Till then the marriage remains valid.

While this debate goes on, we must ensure that we do not have generation of young people deprived of their fundamental right to live, and live with dignity. It must be recognized as leading to violation of rights of children, making them more vulnerable to abuse and exploitation.

If there is one crime the Bihar police have failed to check in the last few years, it is kidnapping for marriage. The number of such cases has more than doubled over the last five calendar years, from 1,337 in 2009 to 2,935 in 2013. There were 687 cases till March 2014. Close to half of all kidnapping cases have been for marriage.

Source- *The Indian Express: Kidnapping for marriage unchecked in Bihar.* <http://indianexpress.com/article/india/india-others/kidnapping-for-marriage-unchecked-in-bihar/>

Concluding observation no. 39 (c) of the CEDAW Committee recommends –

“Automatically void all child marriages and ensure that the Protection of Children from Sexual Offences Act (2012) also applies to child brides”.

UNREACHED GOALS

None of the goals set out internationally and nationally for children have been achieved and progress is slow. For example, the goals of achieving elimination of child marriage and 100% registration of births, deaths and marriages by 2010. The need to reach out to the young people was recognised in the National Youth Policy, 2002, but there has been little effort in this direction.

NATIONAL GOALS

- **National Population Policy, 2000:**
 - Achieve 100 per cent registration of births, deaths, marriage and pregnancy by 2010
- **National Youth Policy, 2002:**
 - Sensitisation of youth on the 'correct age at marriage'
- **National Policy for Empowerment of Women, 2001:**
 - Interventions and special programmes should impact on delaying the age of marriage so that by 2010 child marriage is eliminated
- **National Plan of Action for Children, 2005:**
 - 100% registration of births, deaths, marriages and pregnancies by 2010
 - Eliminate child marriages by 2010
 - Stop sale of children and all forms of child trafficking, including for ... marriage ...
 - International Goals

- **Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1962**
 - India has not signed the Convention.
- **World Fit for Children (WFFC)**
 - Protecting children against abuse, exploitation and violence and under general protection to end harmful traditional or customary practices, such as early and forced marriage and female genital mutilation, which violates the rights of children and women.
- **Millennium Development Goals (MDGs)**
 - The MD declaration calls for the protection of children against abuse, exploitation and violence but no goal, target or indicator is included on child marriage.
- **UN Resolution to End Child Marriage by 2015**
 - India is party to this recent resolution.

KEY QUESTIONS AND CONCERNS

- Historically, where has the issue of child marriage been located and how is it being framed within the child rights framework?
- Is child marriage ever going to be seen as a violation of childhood? Does this get reflected in our laws and policies?
- For how long do we allow a crime to take place in the name of culture and traditional practices?
- National and International Goals remain unmet.
- There is dilution of commitment to the issue of child marriage over the years, including in the National Policy for Children, 2013 and the draft National Strategy and Plan of Action for Preventing Child Marriages.
- Implementation of law is tardy and indifferent.
- Despite making strides on prescription of a minimum age for marriage, implementation of the law has remained a challenge. Various courts continue to uphold the customary practices and personal laws of different religious communities, which govern family matters, leading to discrimination in every child's right to protection. Some victims of child marriage are thus entitled to better legal protection under the national law while their peers may remain out of this protective net.
- Registration of Marriages is still not compulsory in all states. The Registration of Births and Deaths (Amendment) Bill, 2012, remains pending.
- There is no budgeted scheme to address child marriage. The only schemes/programmes indirectly addressing the issue of child marriage are conditional cash transfers and schemes for empowerment of adolescent girls and the reproductive health programme.
- There are no programmes for boys who are forced into marriage at an early age.
- Even though part of child protection, the flagship ICPS is geared only towards strengthening the juvenile justice system. Child marriage is still not part of the ICPS action agenda. DCPUs and CPCs are thus not prepared to deal with the issue.
- Good practices demonstrated by NGOs in preventing child marriage do not get institutionalised.



LAW, POLICY AND PROGRAMMES - GAPS AND CHALLENGES

THE QUESTIONS BEFORE US

- Where are the weaknesses and gaps in the Child Marriage law? Has the law helped towards enabling prevention and correction or redressal? Is the Child Marriage Law in place?
- The Child marriage law has been in place for a long time but the condition has remained the same. The numbers have reduced but very little. There is a need to identify whether the gaps are in the legislation or in the policy which give rise to the lack of implementation.
- Who really is the Child Marriage Protection Officer (CMPO) and what are his/her job responsibilities? If the CMPO is the chief implementer of the law, his identity must be known.
- It was seen that after the PCMA came into force, there seem to be no girls left between the age group of 13-14 years. All girls aged below 18 are claiming to belong to the age group of 18-20 years for the convenience of marriage.
- How do we validate age at marriage? Awareness about the law is universal- right from parents to the authorities but there is a lack of documentary evidence of age, which can help in stopping a marriage.

The confusion with the law and its implementation starts right at the beginning, when we talk about who a ‘child’ really is. The laws in India - *The Prohibition of Child Marriage Act, 2006* and its predecessor *The Child Marriage Restraint Act, 1929* both define a ‘child’ as a girl below the age of 18 years and a boy below the age of 21 years, whereas in other Acts such as *The Indian Majority Act, 1875* and *The Juvenile Justice (Care and Protection) Act, 2000* or even the *Protection of Children from Sexual Offences Act, 2012* define children, both male and female, as persons upto the age of 18 years.

This debate and confusion of age began in the 1860s when the debate around child marriage and age of sexual consent started and continues till today.

Till the 1860s girls were getting married below the ages of eight and nine years. This began to change with the interventions of social reform movements such as the Brahmo Samaj and the Arya Samaj and social reformers such as Raja Ram Mohan Roy. It was the late 1860s that saw success when a provision against child marriage was included in the Indian Penal Code.³⁰

30 | Aparna Bhat, Aatreyee Sen and Uma Pradhan (eds). *Child Marriages and the Law in India*. Human Rights Law Network . 2005

The debate that followed on the Age of Consent Bill in the 1860s brought this issue into the public space. This debate was stirred by 11 year old Pulmani's death following rape by her husband. Over 500 women doctors wrote a memorandum to the Viceroy asking him to stop marriage of girls younger than 14 years old. The age of consent was fixed as 10 years (IPC 375) in 1860 and raised to 12 years in 1891. In 1925 it was further raised to 13 and finally to 16 years (IPC) in 1949.³¹ However as per the explanation in Section 375 of the IPC, sexual intercourse by a man with his wife without her consent or will was not rape if she was above 10 years old in 1860, which was later raised to above 15 years in 1949. So even while the law had in place rules for restraining or prohibiting child marriage, it continued to allow a lower age of consent for girls already married.

In 2012 the Government of India enacted the Protection of Children from Sexual Offences Act which raised the age of sexual consent for both boys and girls to 18 years.

The first law addressing child marriage – *The Child Marriage Restraint Act* was enacted in 1929. Because it had been introduced by Rai Saheb Harbilas Sarda, it came to be popularly known as the Sharda Act. In 1929, a child in this Act was defined as one who is 14 years old in the case of girls and 18 years old in the case of boys. This age for girls was raised to 15 years in 1949 and was raised to 18 years for girls and 21 years for boys in 1978. When the Child Marriage Restraint Act of 1929 was amended in 1949 and then 1978, at both times, the amendment solely dealt with what was the 'biologically appropriate' age at which a man could have *legal* sexual intercourse with his wife. At no point was the girl's emotional maturity or will to say no, considered.

Further, it was not concerns of protecting 'child rights' that motivated the age increase. In fact as has been pointed out by Jaya Sagade, it was clear from the statement of objects and reasons for the amendment in 1978 that the concern was to control population by increasing the minimum age and thereby lowering the total fertility rate. The awaited result was more responsible parenting as well as better maternal health.

In 2006, The Prohibition of Child Marriage Act, 2006 (PCMA) was enacted. Like with the earlier law, the age of marriage for was 18 and 21 years old for girls and boys respectively. According to Dr. Jaya Sagade this was gender discrimination. No one has ever challenged the constitutional validity of different age prescriptions of age for a girl and a boy, although Article 14 of the Constitution states explicitly that all are equal before law.³²

The PCMA does not declare a child marriage null and void but has a provision for making child marriage voidable. Jaya Sagade pointed out that a married girl will need either an agency, access to the court and/ or support from the family if she wants annulment. In case the marriage had been consummated, there is no way the girl will seek annulment and similar will be the case if the girl gets pregnant because of marriage. Child marriage is voidable and will be valid if no petition of nullity is filed. The terms- void, voidable and validity need to be debated and discussed further.

Further, as pointed out by Dr. Jaya Sagade, when the petition for decree of nullity needs to be filed on attaining majority i.e. 18 years within 2 years for girls, the courts are silent on what will then happen to the boys who attain the age of 20 years.

The **custody of minor girls** is a major area of concern. If the girl is above the age of 16, which can also be considered as the age of discretion/ maturity- she can refuse to stay with her parents.

The whole legal framework is fraught with contradictions. For example under The Protection of Children from Sexual Offences (POCSO) Act, 2012, sexual relations with a girl under 18 is considered rape. Boys, under the age of 18 years old, as well as men, in consensual sexual relationships with girls aged below 18 get booked for rape. If they were to elope, the boys and men would be charged with kidnapping. However, if the same acts occur under the shroud of marriage, they are considered legal.

31 Child Marriage In India: Socio-legal and Human Rights Dimensions. Second Edition, Jaya Sagade

32 Ibid. page 45

While there are problems with the PCMA, only amending it is not enough. As Dr. Jaya Sagade pointed out, child marriage creates rights and establishes relations, so it will not be possible to prohibit it by itself. Further, no minor can be a guardian except under the cases of child marriage where the minor girl's guardian would be her minor husband. Domicile of a girl will change according to that of her husband. **Therefore, if the law targeting child marriage needs a re-look, then all the corresponding laws need will also need to be looked at again. Conflicting laws disturb the prohibition of child marriage.**

A PIL has been filed by 'Independent Thought' seeking a writ of declaration that Exception 2 to Section 375 of the Indian Penal Code, [as amended by Criminal Law (Amendment) Act, 2013] is a violation of Articles 14, 15 and 21 of the Constitution to the extent that it permits intrusive sexual intercourse with a girl aged between 15 to 18 years only on the ground that she has been married. In this matter, the state has filed a counter affidavit. According to Mr. Shrivastava (Independent Thought) the court has not shown keenness in taking up this issue since it keeps postponing the hearings. The Court also keeps referring to the previous full bench Delhi judgment without considering that there is now a new law –POCSO- that is in contradiction with the PCMA.

Concerns about different religion – based personal laws and special laws

In India, different religions have different laws concerning child marriage. Hindus, Muslims, Christians and Parsis have different marriage laws. They lay down conditions of a valid legal marriage, including age of the parties in marriage. Marriage of girls under the age of 18 is legally permissible under some of these laws, which implies that this is condoned. While the PCMA mentions the Hindu Marriage Act, it does not mention any other personal law.

The Muslim personal law recognises the age of puberty as the age of marriage and unless proved otherwise, the age of puberty is presumed to be 15 years for both girls and boys.

The Hindu Marriage Act lays down 15 years as the age of marriage for girls and 18 years as the age for boys. It requires consent of guardians for girls in the 15-18 age bracket. What is more, Section 18 of the Hindu Marriage Act provides for punishment of the bride and groom if a marriage is solemnised between a bride below 18 years or a bridegroom below 21 years. It however does not specify that failure to comply with minimum age is grounds for making the marriage void or voidable. Hindu law gives a special provision for divorce in case the girl has been married before the age of 15 years. However, legally, divorce and annulment are separate. Therefore, there is a lack of clarity.

The Indian Christian Marriage Act mentions that girls need to be at least 18 years old, and boys 21 years old in order to legally marry. The Parsi Marriage and Divorce Act 1936 considers child marriage as invalid.

Concerns about Confused Legislators and the Judiciary

In the absence of clarity in the law itself and the contradictions between the PCMA and the personal laws, the judiciary has been giving disparate orders. In 2005, two high courts in India allowed minor girls to marry after they acknowledged that they had eloped voluntarily with their beaus, leading the National Commission for Women to rush to the Supreme Court expressing fear that this would legitimize marriage of minors.

On the 24th of July 2013, a bench comprising of Justices Khehar and Misra said, “How can we say all cases must fit the same formula? As long as there is no extraneous consideration, coercion, malice, misuse or assault, the High Courts were perfectly placed to pass these orders. The parties have remained together. The families have remained united. The two cases dealt by the high courts were not those where the girls were lured away or enticed? Can we pass an order annulling the marriage now? Have the girls who have now become adults given a statement contrary to what they had told the High Court's then?”

COURTS STILL CONFUSED ABOUT LEGAL AGE OF MARRIAGE?

MAITREYEE BORUAH, TNN | JUL 28, 2013, 12.00 AM IST

A large number of minor girls are voluntarily stepping into matrimony. Going by the law in India, the marriageable age of a girl is 18. While that rule is routinely flouted in communities in which child marriage is prevalent, what if a minor girl voluntarily decides to marry the person of her choice and stay with him? In the wake of a large number of girls opting to marry before the set legal age, the Supreme Court recently observed that it is difficult to arrive at a “straitjacket formula on marriageable age of girls to fit every case”, and experts feel that the complex issue needs to be addressed soon.

The Supreme Court’s comment came after a National Commission for Women (NCW) plea about Delhi High Court and Andhra Pradesh High Court rulings allowing minor girls to remain married, as they acknowledged that they had eloped voluntarily with their beaus.

A full bench decision of Madras High Court (I. Shivakumar 2010) and the Delhi Court full bench (Lajja Devi) of 2013 are important decisions taken in the light of child marriage. Both these decisions have been taken before the Criminal Amendment after the Nirbhaya incident. The attitude of the courts has been to solemnize the marriage of children.

The following are some other court responses:

Amnider Kaur and Another vs State of Punjab (CRM-M 29790 of 2009) – In this case the child marriage in question was declared void as the court decreed that the girl had been enticed under Section 12 of the PCMA. The court said:

In this case the facts are not in dispute. Petitioner No. 1 was a minor girl being 16 years and 2 months of age at the time of alleged marriage. According to Section 3 of The Majority Act, 1875 every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before. According to Section 2 (f) of the Act “minor” means a person who, under the provisions of the Majority Act, 1875 (9 of 1875) is to be deemed not to have attained his majority. According to Section 2 (a) of the Act, “child” means a person, who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age and according to Section 2 (b) of the Act, “child marriage” means a marriage to which either of the contracting parties is a child. Then according to Section 12(a), the marriage of petitioner No.1 which falls within the definition of child and within the definition of minor being the age of 16 years and 2 months who has been enticed away out of the keeping of the lawful guardian cannot contract the marriage and her marriage shall be null and void.

Sonu Paswan 2012 Allahabad High Court - Granted custody of the minor girl to the Husband

Meera V State 2012 Delhi High Court – The girl below the age of 16 years was sent to State home so as not to consummate the marriage and husband was allowed to visit her twice a week for 2 hours.

Noting the confusion between the provisions in the Hindu Marriage Act and the PCMA, the Madras High Court even while declaring a child marriage null and void has noted (V. Prema Kumari vs M. Palani on 19 October, 2011 C.M.A.Nos. 1420 and 1421 of 2011 and MP Nos.1 and 2 of 2011 in CMA No.1420 of 2011 And M.P.Nos.2 and 3 of 2011 in 1421 of 2011):

As stated above, when sec.5(iii) of Hindu Marriage Act 1955 was amended to substitute 21 years and 18 years for 18 years 15 years respectively, Sec.13(2)(iv) was not amended simultaneously to substitute 15 years in respect of the girl. Had it been amended there would not have been any difficulty in invoking Sec.13(2)(iv). However, the provision under Prohibition of Child Marriage Act 2006 enables a child or his/her guardian or next friend to file a petition for annulling a child marriage before the District Court which includes Family Court.

33. *Though, in view of the position stated above, the amendment to Sec.13(2)(iv) may not be necessary, we are of the considered view that it still requires an amendment by substituting the age 18 years for 15 years, so that in a voidable child marriage, the child or her guardian can have an option either to invoke The Hindu marriage Act 1955 or The Prohibition of Child Marriage Act 2006.*

34. In the result, both the appeals are allowed with costs throughout. The orders passed by the learned Principal Judge, Family Court, Chennai in FCOP Nos.163 and 650 of 2007 dated 25.4.2011 are set aside. O.P.No.163 of 2007 is dismissed and O.P.No.650 of 2007 is allowed declaring the marriage between the appellant and the respondent held on 19.10.2005 as null and void. Consequently, connected MPs are closed.

'12-YEAR-OLD IS A CHILD, NOT A WIFE WHETHER SHE IS MUSLIM OR NOT', OBSERVES BOMBAY HIGH COURT

BHASKAR NEWS | SEP 25, 2013,

MUMBAI: Bombay High Court observed that irrespective of the religion, a 12-year-old is a child and isn't permitted to marry as she has not completed 18 years of age, a requirement under the Prohibition of Child Marriage Act (PCMA). The observation came after the court heard two petitions of Muslim parents that raise questions on the age of marriage.

The petitions, broadly challenged the constitutional validity of the Prohibition of Child Marriage Act (PCMA), 2006. They say that by disallowing a girl to marry before the age of 18, it violates the Constitution's Article 25 (freedom of religion). According to Muslim Personal Law, the marriage of a girl child is allowed once she attains puberty.

A division bench of Justice SC Dharmadhikari and Justice Gautam Patel on said, "A 12-year-old is a child, not a wife. Does it make any difference which religion she belongs to?"

One of the petitions was filed in 2010 by Zakia Begum Karamdar Quereshi, a resident of Aurangabad. It sought the custody of her daughter and the quashing of the FIR against her under PCMA.

Interpreting the Muslim Personal Law the courts have given the following orders:

Mrs. Tahira Begum vs. State of Delhi & Ors.: W.P. (Crl.) 446/2012 – Court examined the Muslim Law and observed that a Muslim girl can get married, without consent of her parents, once she attains the age of puberty. Reference was made to the decision of Mohd. Idris vs. State of Bihar & Ors. : 1980 Crl.L.J. 764 and a decision of this Court in Vivek Kumar @ Sanju and Anjali @ Afsana vs. The State and Another : Crl.M.C. No.3073-74/2006 decided on 23.02.2007. Shamsuddin vs. State : W.P. (Crl.) 13/2009 decided on 15.05.2009 in which the provisions of the Prohibition of Child Marriage Act, 2006 were also considered.

Furqan v State 2013 Delhi High Court (W.P.(CRL) 1025/2012) – In an inter-religious marriage (Boy Muslim, girl Hindu) who eloped, when produced before court, the minor girl Khushboo @Arti admitted that she was married to Furqan and initially agreed to stay at a state run home. Thereafter, on Khushboo @ Aarti, Furqan and parents of Khushboo were spoken to in the chamber. Khushboo expressed her willingness to be with Furqan and not her parents. The court ordered that Khushboo @ Arti be allowed to go to her matrimonial home after counselling sessions for both of them.

The court noted:

The difficulty remains that Khushboo @ Aarti is not 18 years old and her date of birth is 03.01.1996. However, we have spoken to her at great length, in the chamber, and found that she is mature and understands what she is doing. She is clear, fully conscious and aware of the consequences of the choices she is making in her life.

Bholu Khan 2013 Delhi HC (W.P.(CRL) 1442/2012) – In this case both Bholu and his wife Sahama Parveen were Muslims and had got married according to Islamic rites. The court followed the same process of placing girl in a state run home, provided counselling for the family and both the boy and the girl and sent Shama Parveen to her matrimonial home.

The court noted:

We have constrained to pass this order as we find that it will not be correct to detain Shama Parveen in Nirmal Chaya. Even after about seven months' stay in Nirmal Chaya she has not changed her mind which remains firm as ever. She has been counselled and clearly not under influence and pressure from anyone. To her, Nirmal Chaya is a confinement and detention, which infringes upon her liberty and right to live with persons/family of her choice and desire. This confinement it is apparent is depriving her of love, affection and care which only a family can provide and which she requires and needs from Bholu Khan and his family members.

Dr. Jaya Sagade said that this kind of disparate interpretation of the same law shows that the judiciary requires training on the correct interpretation of the law in regard to the annulment and nullity of marriage. Annulment and dissolution cannot happen concurrently but courts are presently allowing the same.

She also mentioned how the Judiciary is not subscribing to the view that child marriage is a violation of child rights and should be made void. As per the Law Commission's recommendations, marriage of those below age 16 years should be void and those between 16-18 years, voidable.

In November 2013, a Trial Court acquitted a youth of raping a minor by saying that a sexual act between a man and his wife is not rape, if the wife is more than 15 years old. The court also termed their marriage valid, stating "child marriage contracted with a female of less than 18 years or a male of less than 21 years would not be a void marriage but a voidable one". This indicates that the 'marriage' in this case would become valid if there were no steps taken to declare the marriage as void.



“The child marriage law reflects the social confusion of the present time. This law has been made to fool people and keep them busy. This law has been fooling people for 20 years now. Even at the level of judiciary, law isn't interpreted as correctly.”

Vikram Shrivastava

FIRST A VICTIM OF CHILD MARRIAGE, THEN OF GOVT LAWS

DHANANJAY MAHAPATRA, TNN | JAN 26, 2013, 02.13AM IST

NEW DELHI: If a minor girl was married off by her parents, should she be ostracized from government service on the ground that employing her will mean encouraging the banned ritual? Ratnarashi, who was married off at 14 years by her parents, suffered years of abuse before divorcing her husband. Studying hard, she qualified for the Madhya Pradesh State Civil Services but found the service rules blocking her from gaining entry into government employment. She moved the Supreme Court challenging validity of rule 6(5) of MP Civil Services (general condition of service) Rules, 1961, which denied employment to those who married as minors. She had cleared the examination twice, but was denied the job because her parents married her off when she was a minor.

<http://timesofindia.indiatimes.com/india/First-a-victim-of-child-marriage-then-of-govt-laws/articleshow/18190103.cms?>

Poor Use of Existing Law

Although it is well known that the number of children being married is quite high not all cases get converted into a legal complaint. Over the years there has been an increase in the number of child marriages cases booked by the police, yet the issue is still not seen as a crime against children.

OFFENCES	2001	2004	2008	2012	2013
Child Marriage Cases registered under CMRA/PCMA	85	93	104	169	222

The NCPCR Chairperson, Kushal Singh pointed out that the law enforcement agents such as the *'thanedars'*, the *'kot-wals'*, or constables, are steeped in the same old, traditional value systems and thus ,at best delay action and at worst do not take any action against a complaint of child marriage being solemnised.

Mr. Joachim Theis added that the interventions by the Government too, are carried out in isolation. For example Child Marriage was not an integral part of the Integrated Child Protection Scheme and so the child protection mechanisms of the Child Welfare Committee and the Special Juvenile Protection Units were not leveraged in the strategies to prevent or prohibit Child Marriages

The Government's half hearted commitment is apparent in the National Policy for Children of 2013 which does not address child marriage as a concern. Nevertheless it provides for ensuring the right to education for married children, which is laudable. But in doing so the Government inadvertently accepts that Child Marriage will be an unresolved issue for some years to come.

India has prescribed a minimum age for marriage but there are issues of marriage registration and the whole aspect of consent to marriage that needs to be resolved.

The National Policy for Children 2013 is a weak document when it comes to the issue of child marriage. It doesn't say much about child marriage specifically and only mentions it within the section on education and development, where the focus is more on bringing young brides back into the school system. The flagship programme for child protection- the Integrated Child Protection Scheme is silent on the issue of child marriage and it doesn't say much about protection and most investments by the government do not go beyond the district level leaving out the vast majority of the children in the villages either unprotected or at the mercy of the limited efforts that NGOs can undertake.



INTERNATIONAL INITIATIVES TO PREVENT CHILD MARRIAGE

International Declarations, Covenants, Conventions and Resolutions enumerate various human rights standards for the protection of children, choice of relationship and the age at marriage, and inform the laws of any country. Since 1948 there have been a number of initiatives recognizing the vulnerability of ‘childhood’ and the human rights violations in ‘Child Marriage’; international initiatives can call upon States Parties to respond and intervene to human rights violations but it is up to national governments to respond.

In 2013, the First-ever resolution on child, early and forced marriage was adopted at the Human Rights Council. Over 100 countries co-sponsored a resolution on child, early and forced marriage at the Human Rights Council, calling for the elimination of child, early and forced marriage to be considered in the post-2015 development agenda. The resolu-

THE INTERNATIONAL MECHANISMS THAT DEAL WITH CHILD MARRIAGE ARE:

- Universal Declaration of Human Rights 1948, (UDHR) Article 16, Article 25
- Economic, Social and Cultural Rights (1966) (Art 10)
- Civil and Political Rights (Art. 23 (3) Art 24 (1).
- Convention on Elimination of Discrimination Against Women

INTERNATIONAL COVENANT ON ECONOMIC SOCIAL CULTURAL RIGHTS 1966

- UN Convention on the Rights of the Child 1989
- International mechanisms and goals specific to child marriage are:
 - Convention on Consent to Marriage, Minimum Age for Marriage and
 - Registration of Marriages, 1962 (India has not signed the Convention).
 - World Fit for Children (WFFC)- Protecting children against abuse, exploitation and violence and under general protection to end harmful traditional or customary practices, such as early and forced marriage and female genital mutilation, which violates the rights of children and women.
 - Millennium Development Goals (MDGs)- The MD declaration calls for the protection of children against abuse, exploitation and violence but no goal, target or indicator is included on child marriage.
 - Resolution on International Day of the Girl Child- In September 2011 the United Nations General Assembly adopted Resolution (A/RES/66/170) and designated ‘October 11’ as Day of the Girls Child. On October 11, 2012 the first International Day of the Girl Child was held, the theme of which was ending child marriage.
 - First United Nations Human Rights Council resolution against child, early, and forced marriages, 2013- The Resolution recognizes child marriage as a human rights violation and pledges to eliminate the practice as part of the U.N.’s post-2015 global development agenda.

tion was unanimously adopted. Over 107 countries including India supported this resolution. The resolution recognises child, early and forced marriage as a human rights violation that “prevents individuals from living their lives free from all forms of violence” and negatively impacts the “right to education, and the highest attainable standard of health, including sexual and reproductive health.”

However, India backed out of co-sponsoring the resolution because, according to officials in the country, the resolution provides a vague definition of an early marriage. “*Since early marriage has not been defined anywhere, there was no clarity on the legal implication*” an Indian government official said.

CONCLUDING OBSERVATIONS FROM TREATY BODIES

Committee on the Elimination of Discrimination against Women. Concluding observations on the combined fourth and fifth periodic reports of India

The Committee considered the combined fourth and fifth periodic reports of India at its 1219th and 1220th meetings, on 2 July 2014 in paras 38 and 39 observed:

38. While noting that the implementation of the Prohibition of Child Marriage Act has led to a certain decrease in the number of cases of early and forced marriage, the Committee is concerned that the State party’s declaration regarding article 16 (2) has not been withdrawn. The Committee also notes with concern the high prevalence of such marriages and that victims of child marriage must file a petition with a court to void the marriage within two years after reaching the age of majority. The Committee is equally concerned at reports that judges often authorize marriages of underage girls based on Muslim personal laws and that no legislation ensuring the registration of all marriages in the State party has been adopted.
39. The Committee urges the State party:
 - a) To speedily enact legislation to require compulsory registration of all marriages and to consider withdrawing its declaration regarding article 16 (2) of the Convention;
 - b) To ensure that the Prohibition of Child Marriage Act is implemented without exception;
 - c) To automatically void all child marriages and ensure that the Protection of Children from Sexual Offences Act applies also to child brides;
 - d) To strengthen efforts to raise awareness about the prohibition of child marriage and the harmful effects of the practice on the health and education of girls and to effectively investigate, prosecute and punish cases of forced and early marriage.

Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1962

Article 1

1. No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law.
2. Notwithstanding anything in paragraph 1 above, it shall not be necessary for one of the parties to be present when the competent authority is satisfied that the circumstances are exceptional and that the party has, before a competent authority and in such manner as may be prescribed by law, expressed and not withdrawn consent.

Article 2

States Parties to the present Convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.

Article 3

All marriages shall be registered in an appropriate official register by the competent authority.

The Convention reaffirms earlier international conventions with regard to consent of both parties contracting a marriage and registration of marriages and adds a clause of specifying a minimum age for marriage. Considering India is a signatory to earlier Conventions and has a law since 1928 specifying minimum age for marriage, it is not clear why (as on August 2014) India is not a party to the Convention.

United Nations Convention of the Rights of the Child (UNCRC)

The CRC holds all adults accountable to ensure that children enjoy their rights and are protected no matter where they are – in homes and in schools, in the streets or in bus stations, in the fields or in the primary health care centres.

The CRC does not mention Child Marriage explicitly but implicitly it is there in every article of the Convention. The underlying principles to be borne in mind in every action that concerns a child are:

- The best interests of the child
- Survival & Development of the child
- Participation – consideration of the child's views in accordance with her or his maturity
- Non-Discrimination – all rights must be available to all children

In connection with the consideration of the combined third and fourth periodic reports of India (CRC/C/IND/3-4) the CRC Committee has observed the following in paras 51 & 52

51. The Committee is deeply concerned at the high prevalence of child marriages in the State party, despite the enactment of the Prohibition of Child Marriage Act (PCMA, 2006). It is further concerned at barriers impeding the full implementation of the PCMA, such as the prevalence of social norms and traditions over the legal framework, the existence of different Personal Status Laws establishing their own minimum age of marriage applicable to their respective religious community as well as the lack of awareness about the PCMA by enforcement officers. It is also concerned about the prevalence of other harmful practices against girls such as dowry and devadasi.
52. The Committee urges the State party to ensure the effective implementation of the Prohibition of Child Marriage Act (PCMA, 2006), including by clarifying that the PCMA supersede the different religious-based Personal Status Laws. It also recommends that the State party take the necessary measures to combat dowry, child marriage and devadasi including by conducting awareness-raising programmes and campaigns with a view to changing attitudes, as well as counselling and reproductive education, to prevent and combat child marriages, which are harmful to the health and well-being of girls.



GOVERNMENT'S RESPONSE

The Government of India has put in place policies, legislation and schemes to empower girls and end child marriage.

Notable among these are: National Population Policy, 2000; National Policy for Empowerment of Women, 2001; National Plan of Action for Children, 2005; The National Policy for Children, 2013 and National Youth Policy, 2014. While the intent and the schemes are laudable, achievements on the ground leave much to be desired. The Plans are falling behind in their objectives. For example, against a goal of achieving 100% birth registration in the National Population Policy by 2010, according to the NFHS 3, only 27% children under 5 years have a birth registration certificate. The National Plan for Children 2005, targeted eliminating Child Marriage by 2010 but India is still far away from realizing that goal. The National Strategy and National Plan of Action for Preventing Child Marriage still remain in their draft forms.

Apart from legislation, there are also certain schemes with significant components aimed at reducing child marriage by empowering young girls: these include Conditional Cash Transfer Schemes like the Dhanalakshmi Scheme; The Integrated Child Protection Scheme (ICPS) Swadhar; Kishori Shakti Yojana (KSY) and the Sabala or Rajiv Gandhi Scheme for the Empowerment of Adolescent Girls, as well as Educational Schemes including the Kasturba Gandhi Balika Vidyalaya (KGBV) and the National programme for Education of Girls at Elementary Level (NLEGEL).

1. Policy

National Population Policy, 2000:

Objectives include:

- Promote delayed marriage for girls, not earlier than age 18 and preferably after 20 years of age;
- Achieve 100 per cent registration of births, deaths, marriage and pregnancy by 2010

National Policy for Empowerment of Women, 2001:

- The goal of this Policy is to bring about the advancement, development and empowerment of women. Specifically, the objectives include:

- Creating an environment through positive economic and social policies for full development of women to enable them to realize their full potential;
- Changing societal attitudes and community practices by active participation and involvement of both men and women;
- Mainstreaming a gender perspective in the development process;
- Elimination of discrimination and all forms of violence against women and the girl child;

National Plan of Action for Children, 2005:

- Objectives include:
- Reducing Infant Mortality Rate.
- Reducing Maternal Mortality Rate.
- Reducing Malnutrition among children.
- Achieving 100% civil registration of births.
- Universalization of early childhood care and development and quality education for all children achieving 100% access and retention in schools, including pre-schools.
- Complete abolition of female foeticide, female infanticide and Child Marriage and ensuring the survival, development and protection of the girl child.

National Youth Policy, 2014:

Describing the Current Status

- there is need for greater monitoring and media attention to prevent illegal social practices such as dowry, Child Marriage,Hence, it is important to create systems of education and moral transformation at the grassroots level to eliminate these practices of stigmatization and discrimination, and deliver social justice for all.

Looking to the Future Imperatives

- Leveraging youth to eliminate unjust social practices: The youth of the country can be leveraged to build awareness and provide education at the grassroots in order to eliminate unjust social practices. Furthermore, the youth can also be trained to monitor and report on the prevalence of unjust social practices at the grassroots.

“We run a ‘maika centre’. This is for mothers, adolescent girls and pre-adolescent children. Mothers are told that they can only avail our services if they send young children and adolescent girls. The girls come with their little brothers. The children are engaged in activities and the others are provided with skill building. Most of these mothers have also faced domestic violence at home. When they get an opportunity to learn and be empowered, they give their daughters the opportunity to be part of such group. For men in the evening, we run a community centre.”

Shilpi Singh

The National Policy for Children, 2013

An excerpt from the policy states that *‘The State is committed to taking affirmative measures – legislative, policy or otherwise – to promote and safeguard the right of all children to live and grow with equity, dignity, security and freedom, especially those marginalised or disadvantaged; to ensure that all children have equal opportunities; and that no custom, tradition, cultural or religious practice is allowed to violate or restrict or prevent children from enjoying their rights.’*

Draft National Strategy on Prevention of Child Marriage³³

The Ministry of Women and Child Development has proposed a National Strategy on Child Marriage in February 2013 that reflects the commitment of the Government of India to curb child marriage. It has suggested ensuring linkages with the Integrated Child Protection Scheme (ICPS) structures and statutory bodies to ensure detection and prompt referral of cases that require care and protection.

One of the strategic directions is:

‘In cases in which children have already been married, they should not be discriminated when accessing services such as health, nutrition, education and employment programmes’.

The Strategy seeks to provide unified vision and a clear direction to Government at all levels, NGOs, media, private sector, children and other stakeholders concerned with prevention of Child Marriage. It is also based on the principle of co-responsibility of the UN Convention on the Rights of the Child, thus transferring responsibilities to all stakeholders at different levels. Further, it relies on the idea that all settings in which the child thrives and the different stakeholders interact to create a protective environment for children.

GOALS:

- To enforce PCMA 2006 and related laws and policies that can discourage child marriage.
- To improve access to quality education and other vocational opportunities.
- To initiate programs that enable community mobilization and outreach to change social norms and attitudes.
- To build skills and capacities of adolescent girls and boys.
- To collect data, initiate research to inform programming and interventions.
- To develop monitoring and evaluation systems for measuring outcomes.
- To improve co-ordination, communication and monitoring among those involved in the implementation.

Draft – National Plan of Action Preventing Child Marriage³⁴

Explaining how the Draft National Plan of Action was drafted, Dr. Sunil Mehra said that an Inter-ministerial core group consisting of organizations such as Population Council, ICRW, UNICEF, Ford Foundation, European Union, MAMTA, Ministry of Women and Child Development (MWCD) had put up a draft on its website inviting comments. Regional level meetings were held which brought in some valuable inputs and questions, such as those on the role of the community and religious leaders.

The National Plan of Action has evolved from the Strategy on Prevention of Child Marriage (although both are yet to be finalised). The long term goal of The National Plan of Action on Prevention of Child Marriage is: Girls and boys in India are free from child marriage and can realise their full potential and live a life of dignity.

33 Available at <http://www.wcd.nic.in/childact/Strategychildmarriage.pdf>

34 Available at <http://wcd.nic.in/childact/draftmarriage.pdf>

The Plan adopts strategic interventions which will be implemented using convergent and multi-dimensional approaches. It covers seven objectives and specific strategies, each of which is important in its own right but which also complement and reinforce one another and address the Prevention of child marriage.

ACHIEVEMENTS AGAINST POLICY OBJECTIVES³⁵

COMMITMENT / GOALS SELECT INDICATORS		DATA AND SOURCE		ACHIEVEMENT
		DLHS II (2002-2004)	DLHS III (2007-2007)	
National Population Policy, 2000	% of girls and boys married below the age of 18 and 21 years respectively	28.0% girls 20.7% boys	22.1% girls 23.4% boys	Goal not achieved; increase in number of boys below 21 getting married
Achieve 100% registration of births, death, marriage and pregnancy by 2010				
National Policy for Empowerment of Women, 2001	Mean age for Marriage →	19.5 yrs girls 24.5 yrs boys	19.8 yrs girls 24.0 yrs boys	Mean age for girls increasing, but decreasing for boys
Interventions and special programmes should impact on delaying the age of marriage so that by 2010 Child Marriage is eliminated.				
	Child Marriage as Crime	Crime in India 2001 ↓	Crime in India 2012 ↓	
	a) Child Marriage cases registered under CMRA and PCMA	85	169	Although small in absolute numbers there has been a 98.8% increase between 2001 and 2012 in the number of cases registered under CMRA and PCMA
	b) Kidnapping and Abduction of children for marriage	4250	10572	Between 2001 and 2012, cases of kidnapping and abduction for the purpose of marriage have increased by 148.75%
National Plan of Action for Children, 2005				
a) 100% registration of births, deaths, marriages and pregnancies by 2010				Birth Registration 58%. The state disparities in registration coverage (range from over 90 percent to under 30 percent).
b) Eliminate Child Marriage by 2010				India ranks 6th among the top 10 countries with the highest rates of Child Marriage

2. Legislation

Data shows, child marriages are widely prevalent in India country despite the promulgation of various laws, largely due to well-entrenched social dogma. “Towards Equality: Report of the Committee on the Status of Women in India”; was described as a ‘historic benchmark’ in exploring the dynamics and values of inherited social institutions like family and marriage and the impact of law as an instrument of social change. One of the recommendations very relevant even today is, “We recommend legislation prohibiting courts from granting any relief in respect of a marriage solemnised in violation of the age requirements prescribed by law unless both the parties have completed the age of 18 years”.

35 Source: Response to Question for OCHR Report on Preventing Child, Early and Forced Marriages, by HAQ; Centre for Child Rights

A Relevant Sections of various Prohibition/Restraint of Child Marriage Acts

The Prohibition of Child Marriage Act, 2006

The Prohibition of Child Marriage Act 2006 is the latest in a string of legislative and policy efforts to prohibit Child Marriage. The purpose of the Child Marriage Act, 2006, is not simply to restrain but prohibit child marriages. It lays down the minimum age for marriage as 21 for males and 18 for females.

Section 2 (a) “child” means a person who, if a male has not completed twenty one years of age and a female, has not completed eighteen years of age.

Section 2(b) “child marriage” means a marriage to which either of the contracting parties is a child.

Section 3. Sub Section(1). Every child marriage, whether solemnized 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. Provided that a petition for annulling a child marriage by a decree of nullity may be filed in the district court only by a contracting party to the marriage who was a child at the time of marriage.

Section 9. Whoever being a male adult above eighteen years of age, contracts a child marriage shall be punishable with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both.

Section 10. Whoever performs, conducts or directs or abets any child marriage shall be punishable with rigorous imprisonment which may extend to two years and shall be liable to fine which may extend to five lakh rupees unless he proves that he had reasons to believe that the marriage was not a child marriage.

Muslim Law

One of the important elements of Muslim marriage is Puberty. ‘Puberty is a biological phenomenon. It is generally presumed to have been attained at age 15. A person who has attained puberty is called baligh(major). The possibility of attaining puberty at an earlier age is not ruled out-in exceptional cases boys and girls have found to have attained puberty even at age 12 and 9 respectively.’

The Indian Christian Marriage Act, 1872

Section 60. Every marriage between Indian Christians applying for a certificate, shall, without the preliminary notice required under Part III, be certified under this Part, if the following conditions be fulfilled and not otherwise-

(1) The age of the man intending to be married shall not be under twenty one years, and the age of the woman intending to be married shall not be under eighteen years.

The Parsi Marriage and Divorce Act, 1936

Section 3 Sub Section (1) No marriage shall be valid if-

Cl. (c) in the case of any Parsi has changed his or her religion or domicile or not who if a male has not completed twenty one years of age and if a female has not completed eighteen years of age.

The Special Marriage Act, 1954

Section 4. Conditions relating to solemnization of special marriages-

Cl. (c) the male has completed the age of twenty-one years and the female the age of eighteen years.

Section 24. Void marriages-Sub Section (1). Any marriage solemnized under this Act shall be null and void and may on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if-

Cl. (i) any of the conditions specified in clauses (a), (b), (c) and (d) of section 4 has not been fulfilled.

The Hindu Marriage Act, 1955

Section 5 (iii). The bridegroom has completed the age of twenty one years and the bride the age of eighteen years at the time of marriage.

Section 18. Punishment for contravention of certain other conditions for Hindu marriage-

(a). in the case of a contravention of the condition specified in clause (iii) of Section 5, with simple imprisonment which may extend to fifteen days or with fine which may extend to one thousand rupees or with both.

B The Juvenile Justice (Care and Protection of Children) Amendment Act, 2011 (JJ Act)

The Juvenile Justice (Care and Protection of Children) Act, 2000 is the primary legal framework for juvenile justice in India. The Act provides for a special approach towards the prevention and treatment of juvenile delinquency and provides a framework for the protection, treatment and rehabilitation of children in the purview of the juvenile justice system. A child or juvenile is defined as a person who has not completed his/her 18th year of age. The act outlines two target groups: Children in need of care and protection and Juveniles in conflict with law.

There have been periodic amendments to the Act to address gaps and anomalies as well as the changing situation in a dynamic society, the latest being in 2011.

C Compulsory Registration of Marriages Act, 2006

Every marriage solemnized or contracted between citizens of India or where at least one of them is citizen of India, performed in the country or elsewhere, under any law or custom governing such marriages, shall be compulsorily registered with the appropriate Registrar of Marriages within a period of 30 days from the date of marriage.

D The Dowry Prohibition Act, 1961

If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable.

E Protection of Women from Domestic Violence Act, 2005

The Act is aimed at protecting women from domestic violence. The term domestic violence includes all forms of actual abuse or threat of abuse of physical, sexual, verbal, emotional and economic nature. The definition is wide enough to cover child sexual abuse, harassment caused to a woman or her relatives by unlawful dowry demands, and marital rape

F The Protection of Children from sexual offences (POCSO) Act, 2012

The Protection of Children from Sexual Offences Act, 2012 defines a child as any person below the age of 18 years and provides protection to all children under the age of 18 years from the offences of sexual assault, sexual harassment and pornography.

3. Schemes

A. Dhanalakshmi³⁶

Dhanalakshmi is a Conditional Cash Transfer Scheme provided to the family of girl child, after fulfilling certain conditions such as birth registration, immunization, school enrolment, and delayed marriage of the girl child till the attainment of 18 years of age.

B. Kishori Shakti Yojana (KSY)³⁷

The Scheme of Kishori Shakti Yojana (KSY) is being implemented in the Integrated Child Development Scheme (ICDS) projects for adolescent girls (11 to 18 years) using the infrastructure of ICDS for addressing the needs of self development, nutrition and health status, literacy and numerical skills, vocational skills, etc of adolescent girls.

C. Integrated Child Protection Scheme (ICPS)

The scheme aims at creating a protective environment for children and creating child protection systems at the local level in the form of village, block and district child protection committees, which are in place to oversee the functioning of the scheme and laws relating to children's protection. Created under the ICPS the Children's Helpline - CHILDLINE at 1098 enables children or anyone on their behalf to reach out for help; Children's Homes have been set up in most districts for Children in need of care and protection.

D. Swadhar Greh³⁸

Swadhar Greh is the new name of 'Swadhar' merged with the Short Stay Home Programme (SSH). Swadhar is a scheme of government of India for women living in difficult circumstances through a home based holistic and integrated approach.

Short Stay Homes were established a decade ago through voluntary organisations for responding to the situation of women who did not have family support. Institutional services where counselling and guidance, medical and psychiatric check-up and treatment, facilities of development of skills and relationships were set up. The effort was to help the women to rehabilitate themselves within a short period of time. Currently there are 311 homes functioning in the country.



E. Rajiv Gandhi Scheme for the Empowerment of Adolescent Girls

A comprehensive scheme for the holistic development of adolescent girls Rajiv Gandhi Scheme for the Empowerment of Adolescent Girls- Sabla introduced in 2010, is currently being implemented in 205 districts in the country. Sabla aims at all round development of adolescent girls (11 to 18 years) improving their health and

36 <http://wcd.nic.in/>

37 <http://wcd.nic.in>

38 Ministry of Women and Child Development Annual Report 2013-14 available at <http://wcd.nic.in/publication/English%20AR%202013-14.pdf>

nutritional status, upgradation of home skills, life skills and vocational skills. The Scheme has two major components i) Nutrition and ii) Non Nutrition.³⁹

Nutrition containing 600 calories of protein and micronutrients to 11-14 years out of school girls and all girls of 14-18 years In the Non Nutrition Component, the out of school adolescent girls are being provided health and referral services; nutrition and health education, counselling & guidance on family welfare and adolescent reproductive sexual health (ARSH), child care practices.

F. Educational Schemes

Kasturba Gandhi Balika Vidyalaya (KGBV), the National programme for Education of Girls at Elementary Level (NLEGEL) has significant components which aim at preventing Child Marriages by way of empowering the girl child.

G. Ahimsa Messenger⁴⁰

The focus of the programme is the mobilisation of adolescent girls and to generate awareness about legal rights, procedures and provisions. To give intensive training to various front line functionaries across different programmes throughout the country to enable them to reach to a large community. The programme envisions generating awareness amongst adolescent boys and girls about their civic rights and responsibilities.

39 Ministry of Women and Child Development Annual Report 2013-14 available at <http://wcd.nic.in/publication/English%20AR%202013-14.pdf>

40 Ministry of Women and Child Development Annual Report 2013-14 available at <http://wcd.nic.in/publication/English%20AR%202013-14.pdf>



APPROACHES & STRATEGIES ADOPTED BY CIVIL SOCIETY

Approaches and strategies include pushing the State to take responsibility; educating and sensitising parents and the community and empowering girls through enhancing their skill and knowledge and providing them a supportive network.

Governance alone will not bring change, society has to change, mindsets must change and accept that with every child married the rights of one more human being are violated. There is a lot of work on the ground but Child Marriage persists. So entrenched is this practice in society that unless the environment changes the practice will persist; for this a favourable ecosystem needs to be created, that addresses all duty bearers that contribute to the persistence of the system.

Most speakers and participants stressed on the need for a multi-pronged strategy and on the importance of convergence – between government, civil society and community and between different departments and ministries of the government.

STRENGTHENING EXISTING STRUCTURES

In some states implementation of the PCMA and ICPS has been converged and all posts for the ICPS are appointed by the State Public Service Commission⁴¹ as against contractual posts in other states. Therefore the appointees take complete responsibility for their assigned role. District Child Protection Units created under the ICPS alert the panchayats and parents regarding the absence of children from schools to keep a track of children.



“NGOs are known for innovating, innovations are what are going to be scaled up. There needs to be a demand being created in the larger system for the innovations. Unless the demand is created, scaling up is not going to take place. We need funds & support for scaling up. But finally at the end of the day, technically what we do need is capacity building & skill development for implementing those innovations.”

Ashok Dayalchand

⁴¹ Since the ICPS is a Centrally sponsored scheme, the State bears the extra cost of appointment permanent staff.

The Right of Children to Free and Compulsory Education Act 2009, Section 9 (d)⁴² is also being used to ensure that the Panchayats⁴³ maintain a record of the children in their area, and any child missing school is tracked. The tracking helps not only in preventing Child Marriage but also prevents children from being trafficked as labour.

A separate Department, Department of Child Rights has been created in Rajasthan to address issues such as child labour, runaway children, and child trafficking. A Standard Operating Procedure has been issued by the Government of Rajasthan on the implementation of the CMPA, which describes roles and responsibilities of all functionaries responsible for its implementation.

FIRST A VICTIM OF CHILD MARRIAGE, THEN OF GOVT LAWS

DHANANJAY MAHAPATRA, TNN | JAN 26, 2013, 02.13AM IST

NEW DELHI: If a minor girl was married off by her parents, should she be ostracized from government service on the ground that employing her will mean encouraging the banned ritual?

Ratnarashi, who was married off at 14 years by her parents, suffered years of abuse before divorcing her husband. Studying hard, she qualified for the Madhya Pradesh State Civil Services but found the service rules blocking her from gaining entry into government employment.

She moved the Supreme Court challenging validity of rule 6(5) of MP Civil Services (general condition of service) Rules, 1961, which denied employment to those who married as minors. She had cleared the examination twice, but was denied the job because her parents married her off when she was a minor.

Govind Beniwal said that village level child protection committees have been created in Rajasthan and these can help in child tracking/ surveys at the village level. He also said that the DCPO should be declared that Child Protection officer. He also said that the **Pehel** scheme for children which provides an incentive for those who report violation of child rights cases and provides an incentive of Rs. 10, 000 to those who inform of child marriage cases.

WORK WITH GOVERNMENT FUNCTIONARIES

District level functionaries including the District Collector, Superintendent of Police and District Magistrate are co-opted to campaign against Child Marriage. PR⁴⁴ members, Headmasters/headmistresses and teachers in local schools are being sensitized and being made aware of their role in preventing Child Marriages.

COMMUNICATION & ADVOCACY

Communication and advocacy is aimed at raising awareness about the adverse impact of Child Marriage and the PCMA. Campaigns are carried out to identify families vulnerable to marrying their young girls. There is a follow up then and the families are counselled to delay their daughter's marriage at the same time the organisations keep a watch on the families.

Theatre workshops and Street plays performed by the youth of villages are platforms used to carry the message against Child Marriage. There is an abundant use of technology to reach out to the community this includes audio- visual, digital, print media and mobile campaigning. IEC materials are produced with the participation of the community thus ensuring ownership for the outcome. Explaining this P.E Reji described how tdh and its partners have worked at multiple levels. Because child marriages often have political sanction and support, they have engaged with political parties, which have given them space to engage in a proper dialogue with them. At the same time they have worked to generate awareness through bike race, cycle race, cycle rallies, theatre etc. They have collaborated and worked with government

42 d) Maintain records of children upto the age of fourteen years residing within its jurisdiction, in such a manner as may be prescribed.

43 Local Government Body at the Village Level

44 Panchayati Raj Institutions

support for organizing street plays in 12 districts of Karnataka. This helped largely in creating community awareness. Several other awareness programmes were carried with the help of media such as reporting of child marriage incidences, success stories, use of FM Radio as a means of communication on which they aired jingles related to child marriage. Awareness was also created through various legal awareness sessions so that the children as well as their parents come to know more about the consequences of child marriage and other related issues such as Dowry Prohibition, Prevention and the compulsory registration of marriage law.

Breakthrough believes that if a normative change needs to be brought about, then an ecosystem needs to be created. For example, Breakthrough tries to create a change through media which includes audio-visual, digital, print media and mobile and Campaigning. Video vans and interactive plays are used as instruments to intervene. Interactive plays are where the communities are asked to participate in the middle of a performance. These methods are used at the Gram Panchayat levels, in schools and in the Kishori Sabhas (meetings with adolescent girls) that are organized by Breakthrough. They also use Pop-Culture to build the capacity of girls and boys affected by child marriage.

Similar initiatives were shared by several other participants.

CHILD MARRIAGE ANNULMENT – A WAY OF CORRECTING MISTAKES

Annulment is a legal procedure for declaring a marriage Null and Void. Annulled marriage is considered to be invalid from the beginning almost as if it had never take place. The difference between annulment and divorce is that an annulled marriage is void. A void marriage never legally existed.

According to Ms. Kriti Bharti, this can be seen as a way of correcting mistakes which is done only because to fulfill some customs which is made to ruin the future of our child. After a drive on the path of Annulment we not only protect our children from further abuse and exploitation but also can eradicate the name of Child Marriage from our society as well as from our country.

However, even though there is a provision for annulling the under-age marriage, as was pointed out by Kriti Bharti, there are no guidelines laid down for the CMPO to follow. Besides, age verification remains a problem with most people not having been educated till class 10 (a valid age proof) and births not registered.

Besides, girl children are threatened and physically abused if they want to annul their marriage. Panchayats threaten girls and their families. “Even activists are threatened them if they wish to annul their marriage”, said Kriti Bharti. The other problems that the children face in annulling their marriage are:

- No guidelines for judicial officers for annulments so they turn annulments into divorce cases but they are both different uses and our judges, lawyers do not exactly know the meaning of annulment, therefore unawareness of PCMA.
- Sometimes cases will have gone on for 8-9 months and the second party has not even received a court notice.
- Victims of child marriage who become aware of this practice, do not have a choice to do this if they have crossed



“Governments and NGOs work on stopping of marriage but if the marriage has been solemnized they are not working on annulment. Why are we not annulling marriages”?

Kriti Bharti

the age of 20, they have to either bear the marriage or get a divorce.

- The Ministry of Women and Child Development has translated the term ‘next friend’ to refer to someone with a legal background which is a problem. So activists cannot step in to assist.

She offered the following solutions:

- Mandatory age verification.
- Counselling for both families involved as also counselling of jati panchayats
- Regular workshops and orientations.
- Anyone at anytime should be able to get a child marriage annulled
- Definitions such as next friend etc should be made clear.

Using Existing Government Schemes like Mahila Samakhya and Integrated Child Protection Scheme, Child Line

The experiences shared by participants from Orissa and Assam were examples of how existing government schemes are effective ways to address the issue. **Sangeeta Puhan** shared the effort being made to make convergence happen at the government level with the departments, with ICDS and police in case of Child Marriage in Orissa. She also highlighted the scope for participation of civil society organizations to strengthen social mobilization, monitoring and reporting. Ms. Puhan also mentioned that reporting mechanisms are slowly coming into place in the state. As per the DCPU report, the cases of child marriage are increasing, most girls aged 14 -15 years have their marriages fixed by parents. The reporters of child marriage cases are not the parents or relative of the child.

She also mentioned that they have been focusing on the role of headmasters/ headmistresses in the prevention of child marriage in vulnerable areas. She said these very important stakeholders are not aware of laws and the DCPUs had taken the initiative of sending notifications regarding the absence of children from schools which can be an indicator of child marriage. It was found that the families and their neighbours did not co-operate while identifying children who were married.

Children have been motivated to report instances of marriage in their neighbourhood. CIF (CHILDLINE India Foundation) reports that many children have initiated calls to the helpline to halt Child Marriages. A total of 443 cases were reported to CHILDLINES for stopping marriage from 24 districts in Tamil Nadu during the year 2012-13.

CARPED –A 25 year old NGO working with tribal groups and people living in rural and remote areas. **M.S. Chandra** said that due to traditional practices thousand of child marriages are performed every year and out of school girls are very vulnerable. CARPED runs the CHILDLINE in Medak. It is a drought hit area and migration is a big problem. The population of Mehdak, the tribals and the dalits (Mathura Lambada, Lambada and Gangireddula) marry off their girls at a very young age. Maternal mortality and neonatal mortality rates are also high.

So CARPED’S responses to these challenges are:

- Using CHILDLINE 1098 – (a 24x7 help line for children in distress) to track children and prevent child marriage).
- Intervention
- Awareness – spreading awareness by campaigning against child marriage with communities, CSOs etc.
- Empowerment of the communities

By involving the District Legal Service Authorities and other enforcement authority, CARPED has been able to prevent 121 child marriages.

Mahila Samkhya programme is specially designed for women and children by the Ministry of Human Resource Development (MHRD). The programme was launched in Kerala in 1998. KMSS (Mahila Samakhya Society)'s Intervention against Child Marriage was a campaign against child marriage and desertion in Mallapuram. A study conducted women status in 21 grama panchayaths.

Apart from all the other activities that Mahila Samakhya undertakes, the focus has also been on providing "alternative spaces to girls" by providing livelihood education, technical education, alternative education, higher education to women/girls and make them self reliant.

Convergence with the social justice department in implementing programmes has been an important strategy. For example, recognising the importance of dowry in the continuance of child marriage, a dowry free village campaign had been initiated by the Department of Social Justice, Govt. of Kerala.

Indrani Bhattacharya of CINI shared their experience of working through SABALA to prevent child marriage.

WORKING WITH THE COMMUNITY

Women's self help groups, religious leaders and youth groups have been trained and co-opted to spread awareness against Child Marriage and report an impending Child Marriage. Biplob Das Mondal shared that an outcome of talking to religious leaders has been that in some areas the Kabilnama or the Muslim marriage register now includes the age of persons getting married.

Child Marriage Prohibition & Monitoring Committees (CMPC) at Village and Mandal/Block Levels have been created that support and counsel parents. They also help in child tracking/ surveys at the village level. Empowered communities do not just mobilise support from the concerned officials, but also hold them accountable for their inaction in preventing Child Marriage.

Recognising the importance of engaging the youth, particularly young men in prevention of child marriage several organizations across the country, including HAQ and its partners are working to involve them. Sharing the work of Vikalp Sansthan in Rajasthan, Usha Choudhary said that they have created a youth task force in the villages. They also work on environment building by going to schools and colleges where they conduct workshops and spread awareness. They also perform street plays in which they involve have school and non school going boys as well as college going youth.

However, the youth face many challenges. Jati panchayats have been thrown them out of their caste for having prevented marriages or for reporting them. Caste Panchayats boycott the family, and the youth volunteers face threats and violence. As a result, many of them succumb to family pressure to stop participating in the initiatives to prevent child marriage and have to be motivated to return.

CONCERNS RAISED BY PARTICIPANTS

What is the prerequisite that should be there in the society which will help us address issues like this which call for a social transformation? Is it just presence of a laws, or good governance? What are those crucial elements that we need to identify? We have so many laws linked to child rights, so what is that one crucial element?

When we try to rescue or rehabilitate a victim of child trafficking, or a rape victim, the reaction of communities is different from when we try to rehabilitate a child victim of marriage. This is because child marriage is a difficult issue and it is an accepted phenomena, they perceive it as protection of children and it is treated as very normal. Child marriages are not recorded or reported. So how do we change this mindset?



CHILDREN AS AGENTS OF CHANGE

Recognising that given the right support the most dynamic agents of change are children, across NGOs and across the country adolescent girls groups have been set up at the village level. They are called Kishori⁴⁵ Sabha or Kishori Balika Sangham. Similarly boys groups too have been set up. These groups are a support network to each other and also send representatives to the panchayats and other village committees like the village education committee; the committee on Child Protection. With regard to Child Marriage, children are encouraged to report instances of impending Child Marriages in their neighbourhood and are rewarded with certificates in recognition of their efforts and as an incentive for others. It would not be sufficient to have separate groups of boys and girls but at least the NGO will have to make efforts to create safe spaces for mix group of girls and boys in their teens to interact and thus learn to live in harmony. This is going to be a challenging task and though some efforts in this direction are being made, there is still a long way to go. Describing the programmes supported by tdh Germany in 12 districts of North Karnataka through seven organisations, P.E.Reji said that the thrust of the initiatives is based on the ideology that children are considered to be the right holders, individuals, citizens, and social actors. Hence focus is on imparting life skill programmes and personality development programmes of children through formation of groups of children, children clubs, both at village and at school level.

In the area of children in governance, Makkad Panchayati (Children Gram Sabha) is organized which provides a platform to the children to discuss the issues prevailing in the society like violence, exploitation and abuse of child rights in various forms like child marriage, child trafficking, child labour etc. This sabha also provides exposure to children by arranging their meetings with local ministers, state authorities, district officials like collectors etc, where they can openly discuss the causes and consequences of child marriage.

STRATEGIES TO ADDRESS CHILD MARRIAGE

Introducing the session, the Chairperson for the session, Aparajit Gogoi said:

First strategy – Working directly with girls. When we work with women and treat girls as a core constituency and work on their well being, life skills, education, etc it can have a big impact. SABLA (The Rajiv Gandhi Scheme for Empowerment of Adolescent Girls) is a programme which looks at this, in a big way.

Second strategy – Working with families, communities, religious leaders, boys etc

Third strategy – Providing services. Whether its young boys or girls, education goes a long way in preventing problems, and secondary education delays age of marriage, young pregnancies etc. Formal and non formal education should be provided and non formal education can be equally important.

Fourth strategy – Implementing the law. Most of the discussion has focused on laws for successful implementation, but the law has given more challenges than solutions so how do we implement and understand this? How do we advise people on what legal recourse people can take? This is something we need to look at when looking at successful implementation.

LEARNING'S FROM THE INTERVENTION

One of the premises for prevention of child marriage is that it will lead to a better life for girls and will enable their access to better opportunities and empowerment.

Addressing the question of whether prevention of child marriage indeed does lead to empowerment, Ashok Dayalchand presented the findings of his study undertaken from a public health perspective. It was found that there is a strong statistical association between life skill education, empowerment and age of marriage.

“We need an integrated approach for both girls and boys. If there are x number of girls getting married then there are x number of boys agreeing to get married. The boys must be also convinced to negotiate with their parents while choosing the girls. Until then social norms cannot be changed.”

Ashok Dayalchand

45 Kishori – adolescent girls

Interventions designed to impart life skill education for girls as well as strongly engage parents to change their attitudes led to several positive outcomes. The girls were taught cognitive skills, negotiation skills, self-esteem skills, social approval, utilization of services and impending marriages were delayed.

P.E Reji said that it is time that the issue of child marriage is recognized in the context of the macro issues confronting the country. Neo liberal development increases the vulnerability of marginalized communities , Increasing agrarian distress leads to a fall in agrarian livelihoods and forced eviction or migration from rural areas , which all come together to cause child marriage. Therefore, although child marriage is an issue of gender discrimination and health, a macro perspective is required to devise strategies in order to tackle this social practice.

RESEARCH AND DOCUMENTATION

Arvind Ojha said that although good research on child marriage exists, most of it is presented in ‘glossy and hard bound reports’. Because most of them are in English, they never reach the practitioners. So the main concern is whatever research we are doing must reach the community and the people implementing it because ultimately we want to change the attitude and culture.

Several studies were presented in the consultation. Ashok Dayalchand presented the methodology that the Institute of Health Management has developed to study the association between life skill education, empowerment and the age of marriage. Mr. Jose from Breakthrough shared some of the early lessons of this action research that have emerged based on the RCT design.

Jitendra from Dehat spoke about the study Dehat has conducted based on a sample collected from 30 villages. Approximately 1270 girl child participated in this study. They found that at least 325 girl child were married in Shrawasti, a small district close to the Indo- Pak border.

The study reiterates the fact that social tradition continues to be one of the factors contributing to child marriages such as the age old tradition called “jangh pavitr karna” wherein people give away their daughter’s hand in marriage before menstruation starts, with the belief that they will go to heaven. However, there are other reasons too. Girls are married off early as it is hard to find a groom after 18 years. There is also the question of security which is more prevalent in educated families than in illiterate ones. Dehat uses their micro-study to develop their programme based on community mobilization, especially work with parents.

Priya Nanda presented ICRW’s research on conditional cash transfer scheme. ICRW has undertaken a research study in Haryana which was where the first scheme was implemented for girls between 1994-1998 called “ Apni Beti, Apna Dhan” to address declining sex ratio and early marriage. It aimed to raise “value “of girls and women in Haryana. This was the precursor to all the other schemes like Laadli, or Dhanalakshmi.



“There is a lack of latest data since the last data available is that of 2008 whereas we are planning interventions and plan of actions as recent as 2013.”

Sunil Mehra



The focus of the research was the impact of such a scheme on the age of marriage, as also on the 'value' of the girl as although delaying marriage was the conditionality, the scheme was developed to enhance the value of girls. Qualitative research was also undertaken to understand what the term 'value' means.

The study showed that there was a significant difference between beneficiary and non beneficiary status in terms of the proportion of girls dropping out from school where the ratio is lower for beneficiaries. Beneficiary girls tend to drop out after completing more years at school compared to non beneficiaries. At the same time, Priya Nanda said that notwithstanding the encouraging status of schools for girls, education for girls is fraught with contradictions. The potential of education to empower girls and enable them to be fully aspirational about their future is circumscribed by the prevailing gender roles and expectations.

For example, the motivation for education is strongly linked to a girl's marriageability and an educated girl is now considered more marriageable the priority is on the value of her being a good daughter or daughter-in-law. However, some families do recognize the intrinsic value of education for girls' economic autonomy.

The age of marriage seems to gravitate around 17-18 or then around 21-22 if it does not occur before. Concerns around sexuality were expressed in articulation of the ideal age of marriage. The common refrain to the appropriate age of marriage today as compared to 20 years ago - "*Earlier they used to marry them early, now it is at or after 18*" was used by about two-thirds of the respondents (both parents and daughters). Even though on an average the age at marriage for girls has increased, a third of the respondents from the villages and two thirds of the state functionaries explicitly note that marrying girls prior to 18 is *not* an uncommon phenomenon.

The increase in age of marriage is linked with the heightened awareness of the law and punitive actions associated with it.

There are some important findings from ICRW study on Conditional Cash Transfer and its impact on child marriage:

- Conditional Cash Transfer Programmes need to also interact with the attitude and aspiration space, apart from providing financial support. Financial incentives can trigger effective change without shifting underlying values or aspirations.
- Because parental aspirations for girls have a significant influence on girls' own aspirations, it is critical that programs and policies that target girls also influence parental attitudes.
- Policy priorities and investments must also support the design of strong rights and skills based education programs that can build girls' confidence and self-efficacy.
- Priority must be placed on efforts to improve the quantity and quality of secondary schools and higher education institutions closer to where girls live.

The study by LEAF Society presented by S.L. Sathiya Nesan was based on the question -Are girl children enrolled in Government schools vulnerable to Child Marriages? The study in 50 of the 81 Higher Secondary Schools in the district showed that 40 schools reported child marriages. Following the study, LEAF has been aggressively taking up the issue of child marriage with District & State officials. They have started a district level campaign against child marriages with the District Collector, SP, Judges & others; they have created Watchdog committees on child sexual abuse and child marriages for school children who are not regular with attending school. They have also formed adolescent groups against 'violence against children' and an awareness campaign on child sexual abuse and child marriage.

Archana Diwedi from Nirantar presented their mapping study on early marriage. Archana Diwedi said that they prefer to use the term Early Marriage instead of child marriage as they have undertaken the study from a feminist lens. Early marriage is an expression of deep underlying structural, social and economic factors which continue to demand the attention of actors committed to social justice and equity.

The mapping aimed to strengthen approaches that understand and address root causes in a framework of intersectional-

ity in a manner which is child/youth centric and transformatory. Archana Diwedi said “We understand child marriage is a dynamic process in many areas. In areas where it was not prevalent earlier, it has now reached or is on the rise. Liberal economics are also pushing this issue. Early marriages must be viewed in the context of the fact that sexuality remains an unexplored area – while most of us talk about violence, the issue of sexuality of young people- girls and boys and their own desire for sex and sexuality remains unaddressed. When parental control is dominant and sex out of marriage is not permissible, then marriage provides that opportunity. The ability to indulge in sexual intercourse is a driving factor behind many elopement cases, rather than they being indicative of emotional maturity for marriage. Hence there is an element of choice rather than coercion and force in these marriages.

The research questions therefore were:

- How is the issue of child marriage best understood?
- What are the main factors that impact decision making on the issue of early marriage?
- Who are the most important movements/ organization/ researchers directly or indirectly engaged in early marriage in India?
- What are the most promising and the most problematic elements of interventions in the field and what makes them so?
- What are the gaps and opportunities?

The findings of this landscape study were the following:

- Early marriage is a dynamic issue-not just traditional or historical
- Every child marriage is not a forced marriage and every above 18 marriage is not a desired marriage
- Early marriage is rooted in the essentiality of institution of marriage
- Child marriage negatively impacts all those involved, but girls bear the brunt more than boys.
- Sex and marriage are so intertwined that it is difficult to see them separately in Indian context

The root causes of early marriage are economic uncertainty, that labour of women is treated as unpaid labour and hence married girls as an economic asset and unpaid labour; The control over sexuality and the premium on chastity and virginity; honour not only of family but also of community; Fear of sexual violence outside and inside the home; Anxieties and uncertainties of the future. Fear of breaking “ideal marriage” norms and the threat to masculinity of fathers, especially girls’ fathers were other causes. Marriage is also used to control and discipline errant boys.

In this context, the following are the gaps in the current interventions:

- **Not enough focus on empowerment** - focus on delaying till age 18
- **Discourse limited to ‘child’**- interventions with adolescents but perception is of children
- **Incomplete understanding of root causes** - desires of young people as they relate to marriage, insufficient appreciation of vulnerability to risk/flux
- **‘Persuasion’ of community** limited to standard, rote arguments
- **Masculinity** – not understood or addressed
- **Young married girls are invisibilised** not part of the agenda
- **Right to Choice** not being addressed–not youth focused



Mr. K. Raghavendra Bhat
Project Coordinator, Local Child Protection Project



Ms. Rajula, P.
Project Prog. Co-ordinator, 2005



Mr. E. Mohana Krishna



Ms. Archana Dwivedi
Nirantar



Mr. Y. Rajendra Prasad
Chief Coordinator, MVF



Dr. Ashok Dyalchand
Director, IHM



AREAS REQUIRING ATTENTION

- A. There is a need to draw the attention of the Government on the urgency of a commitment to eliminating Child Marriage. Currently the commitment appears diluted for example the National Policy for Children, 2013 merges the problem 'Child Marriage' with a commitment for all children to have access to education. Education is a fundamental right now and so it is a given. Child Marriage is a separate issue and must be seen as such. It is also important to note that this right is given upto age of 14 only, more marriage are happening between 14-18 years of age, especially for girls.
- B. The Government must explain the reservations it has to some international initiatives because of which it has not supported the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1962 nor the UN Resolution to End Child Marriage by 2015.
- C. Child Marriage is still not seen as a 'protection issue' but is more concerned with the negative impact on girls' health aspects. Even in the earliest legislation- CMRA 1929, there was no reference to the negative effects on the development of a girl child or her free consent. The law dwelt on what it believed was the correct age to marry. That it is a gross violation of Child Rights is over looked in most policy initiatives, the rights perspective is missing. Child Marriage is approached from the 'Threat to Life and Health' perspective. The issue needs to be looked at from a holistic perspective of violation of Child Rights.
- D. Child Marriage is a complex issue and various policies have an impact on preventing Child Marriage. The Government has committed to laudable goals through various policies; many of them are unmet for example in the National Population Policy 2010 the Government had declared 100% birth registration as one of its objective. However according to the National Family Health Survey III more than 59% children born every year are not registered with any civil authority. Only 27% under the age of 5 years have a birth certificate.
- E. Girls and young women who challenge, or are perceived as challenging, the power dynamics within the family are often subjected to severe consequences, including crimes committed in the name of "honour" and other forms of violence. The Special Representative of the Secretary-General on Violence against Children has drawn attention to how child marriage makes girls especially vulnerable to violence and abuse. The honour killings described above illustrate this.
- F. Conflicts and contradiction between existing corresponding laws that have an impact on the PCMA need to be resolve for example: The Hindu Marriage Act, 1955 gives a special place to divorce in case the girl has been married before the age of 15 years, this is in contradiction to the PCMA; the Indian Majority Act 1875 while describing majority as 18 years also lays down that its provisions will not affect 'religion or religious rites and usages of any

class of citizens of India'. It thus allows a varied definition of the age of majority based on religion.

- G. No specific schemes to address Child Marriage specifically have been drawn up by the Ministry of Women and Child Development, neither do any budgetary heads appear for the specific purpose. Child Marriage is addressed as spin off of other schemes.
- H. Policies made at the Centre are implemented at the State level as a result there is no uniformity in the standing operating procedures. Thus at national level it is not only difficult to monitor the impact it is even difficult to identify the focal contact person for example the responsibility as Child Marriage Prohibition Officer is given to different individuals at district level in different states.
- I. Child Marriage is so deep rooted in the society that any step taken to stop Child Marriage is viewed as a threat to the culture, particularly in the current milieu where each group wants to preserve their identity. As a result of which persons working against Child Marriage have become victims of physical violence. A programme for their protection needs to be in place.
- J. Regarding research, most of the studies are in English and do not reach the community. If change of attitude and change the culture is desired, research should be presented in a way that is accessible to, and understood by the local population. In this context translations of research studies in languages understood by the sample population must become part of the research protocol.
- K. There are widespread good practices on the prevention of Child Marriage and they need to be collated and disseminated to help others working on the issue.
- L. Need to focus on empowerment, adolescents- their needs and aspirations and on attitudinal change not just behaviour and there is need for intensive capacity building on gender, sexuality, marriage.
- M. There needs to be greater investment in research and data collection. Attention needs to be paid to research on Masculinity and its impact on boys, sexuality (desire).
- N. Dialogue among funders about enabling organizations to undertake empowering work



THE WAY FORWARD

Eliminating Child Marriage requires work on many fronts and some examples include:

1. The PCMA is a secular law and it should be considered such at the level of trial courts and High Courts. There can be no exceptions based on religion based personal laws.
2. The PCMA should be debated and discussed in the light of the challenges it presents in its present form. In the drafting of the amendments, the objective should go beyond prohibiting, preventing or discouraging – the objective should be elimination of Child Marriage. All laws pertaining to Child Marriage must be harmonized to ensure that no contradictions exist that defeat the objective of the PCMA.
3. The implementation of PCMA needs to be strengthened through convergence of efforts that include training of government functionaries including police and judiciary and increasing legal awareness with the community. Challenges that CMPOs face in their efforts to respond to complaints of Child Marriage, including lack of training and paucity of resources, need to be addressed. With regard to training it is necessary that the judiciary at the higher courts also be brought on board to speak in one voice with regard to interpretations of the law.
4. ICPS and PCMA should not be seen in isolation but as part of the whole process of providing a safety net for children. Model rules for PCMA should be developed linking it to the ICPS. The role of Special Juvenile Police Units, Child Welfare Committees and Juvenile Justice Boards needs to be enhanced and linked to the implementation of the PCMA.
5. Since there is a National Policy for children and a central law ‘standard operating procedures’ and a uniform protocol to prevent Child Marriage needs to be developed. The standard operating procedures should have the flexibility to respond to the local context of every state and must be institutionalized.
6. A wider debate should ensue before the National Strategy and Plan of Action to prevent Child Marriage is finalized. Latest data must inform the National Plan of Action. The Draft National Plan of Action relies on the last data available which is that of 2008 whereas planning interventions and plan of actions have been drawn up in 2013.
7. There is a need to carry out studies on the situation of children whose marriages have been prevented. For example based on CHILDLINE Data ,78% of the children whose marriage was prevented are living with their parents, 2.9% in shelter homes. Since there is no follow up system in place, many marriages take place quietly after an intervention to prevent it. As seen in CHILDLINE case tracking where 9.7% of the girls had got married after the intervention and lived with their husbands.

8. Encouraging interaction between unmarried girls and married adolescent girls on the one hand and unmarried boys and married young men on the other is a good way to make them aware about the complications of getting married at an early age and the risks and problems that accompany a 'Child Marriage'. There could also be an inter-generational dialogue within the community which could facilitate shifts in social norms.
9. The reservations of the Government of India on the UN Resolution to End Child Marriages by 2015 must be understood and resolved and the Resolution widely publicized.
10. Opportunities in the region for need to be explored to provide leverage for activities and to bring to centre stage the agenda of prevention of Child Marriage. For example the work that SAARC⁴⁶ Convention on Welfare of Children and SAIEVAC are doing on Child Marriage.

46 <http://www.saarc-sec.org/userfiles/conv-children.pdf>

Chapter 9

CONCLUSION

A multi pronged approach addressing the continuum of duty bearers and right holders needs to be in place. There is a decline in the rate of girls under 15 years of age getting married, but the rates of boys marrying underage are rising clearly this situation cannot guarantee the protection of every child. Data has clearly shown that the poorest and the least educated are the ones who get their children married very early.

Legislations and schemes of the Government have failed to deliver what they promised; does this reflect the Governments priorities or does it reflect inappropriate interventions? What is clear is that the law needs to be amended. There exist numerous initiatives and interventions by civil society to prevent and prohibit Child Marriage, however these are scattered and do not converge and neither are they documented for the benefit of others. They must be brought together so that the synergy that is created will have a greater impact.

Change in the tradition of Child Marriages means a change in mind set which cannot be achieved solely by good governance. Good governance is indeed important but by itself it cannot bring about change; without social change good governance will not have the desired impact. To bring about social change, 'education' and 'awareness' of every section of society is essential.



AGENDA “COME TOGETHER”

NATIONAL CONSULTATION ON PREVENTION OF CHILD MARRIAGE

Organised by

HAQ: Centre for Child Rights

Consultation: Lecture Room I, Ground Floor, Annexe, India International Centre (IIC),
40, Max Mueller Marg, New Delhi – 110003



DAY I: 12/08/14			
TIME	SESSION	PANELIST	SESSION FACILITATOR
09.30-10.00	REGISTRATION		
10.00-10.05	Welcome and Introduction to the Consultation		Ms. Enakshi Ganguly - Co-Director, HAQ: Centre for Child Rights
CHILD MARRIAGE AND CHILD PROTECTION			
10.05 -10.45	Linking child marriage to child protection	<p>Introducing the Questions before us Ms. Bharti Ali</p> <p>Locating child marriage within the child protection framework in practice Ms. Kushal Singh, Chairperson, National Commission for Protection of Child Rights (NCPCR)</p>	Dr. Joachim Theis Child Protection Chief UNICEF India Country Office
TEA: 10.45-11.00			
LEGAL FRAMEWORK- GAPS AND CHALLENGES			
11.00- 11.45	<p>PANEL-1</p> <p>Gaps in Prohibition of Child Marriage Act, 2006 (PCMA)</p> <p>Contradiction within different laws for children</p>	<p>Gaps in PCMA and role of courts Dr. Jaya Sagade, Vice Principal, ILS Law College, Pune</p> <p>Conflicting laws and Supreme Court's response Mr. Vikram Srivastava, Founder, Independent Thought</p> <p>National Plan of Action on Child Marriage Dr. Sunil Mehra, Executive Director MAMTA Health Institute for Mother and Child</p>	Dr. Ashok Dyalchand Director, Institute of Health Management, (IHM)
11.45-12.00	CLARIFICATIONS		

12.00-12.30	PANEL 2 Challenges in Implementation	Role of CMPO and Challenges Mr. E. Mohana Krishna MPDO, MPP, Rayaparthi Dist: Warangal, Telangana Child Marriage Annulment: A way of correcting mistakes Ms. Kriti Bharti, Rehabilitation Psychologist, Managing Trustee of Saarthi	Dr. Aparajita Gogoi Executive Director, CEDPA India
12.30-1.00	OPEN DISCUSSION		
LUNCH 1.00-2.00 PM			
PREVENTING CHILD MARRIAGE			
2.00- 3.00	PANEL -1 Using Existing Mechanisms	Challenges of Child Marriages - response of civil society Mr. M.S.Chandra, Director, Centre for Action Research and People's Development (CARPED), Hyderabad Linking Child Marriage with ICPS in Odisha Ms. Sangita Puhan, Consultant, ICPS, DWCD, Odisha Mahila Samakhya's Intervention Against Child Marriage- Kerala context, Ms. Rajula. P, District Programme Co-ordinator, Kerala Mahila Samakhya Society Working with Governance System Mr. Y. Rajendra Prasad, Chief Coordinator, MVF	Ms. Mamta Sahai, Member, DCPCR
3.00-3.45	OPEN DISCUSSION		
TEA: 3.45-4:00			
04.00-5.00	PANEL-2 Working With Stakeholders	Engagement with Young men and marriage service providers Ms. Usha Choudhary, Viklap Sansthan Changing Social Norms-Religious Mutt and Girls Collectives Mr. K. Raghavendra. Bhat, Project Coordinator, Unicef Child Protection Project, Karnataka Addressing Child Marriage prevention through integration Ms. Indrani Bhattacharya, Assistant Director, Child In Need Institute [CINI] Family Centric Approach- bringing girls in leadership role Ms. Shilpi Singh, Director, Bhoomika Vihar and founder member of Beti Bachao Aandolan in Bihar	Ms. Vanita Nayak Mukherjee, Programme Officer, Ford Foundation
5.00-5.30	OPEN DISCUSSION		

7.30 ONWARDS
**RELEASE AND SCREENING OF
*COME TOGETHER- a film on preventing child marriage***
Directed by Avijit Dutt
Produced by HAQ: Centre for Child Rights
VENUE: MULTIPURPOSE HALL, IIC MAIN,

India International Centre 40, Max Mueller Marg, New Delhi – 110003

And

RECEPTION
DAY 2: 13/08/14

TIME	SESSION	PANELIST	SESSION FACILITATOR
10:00-10:15	Recap	Ms. Krinna Shah	
LEARNINGS FROM INTERVENTIONS			
10:15- 11.15	Does prevention of child marriage lead to empowerment of girls and child protection? What strategies work best? Mobilising and empowering communities Messaging and communication	Child Marriage prevention and Empowerment of Girls Dr. Ashok Dyalchand Director, IHM Prevention of Child Marriage with Grassroot NGOs Mr. P.E.Reji, Programme Coordinator, South Zone, Terre des Hommes Germany Prevention of Child Marriage –the importance of communication and messaging Mr. Biplob Mondal, Coordinator, Jabala Action Research Organisation Prevention of Child Marriage: A multi- stakeholder approach Mr. Joshy Jose Director, Program Implementation, Breakthrough	Dr. Jaya Sagade
11.15-11.45	OPEN DISCUSSION		
TEA: 11.45 – 12.00			
RESEARCH and DOCUMENTATION			
12.00 – 01.00	Available research, results and areas needing attention Areas of further inquiry	Study on the Child Marriages in Shrawasti District, UP Mr. Jitendra Chaturvedi , Chief Executive, Dehat CCTS and Child Marriage-recent research on APBAD Haryana Dr. Priya Nanda Group Director – Social & Economic Development Group	Mr. Arvind Ojha, Urmul Trust

		International Center for Research on Women (ICRW) Mapping Early Marriage in India Ms. Archana Dwivedi, Nirantar Trust 'Are Girl Children enrolled in government schools are vulnerable to child marriages?' a study by LEAF Society in Namakkal district of Tamilnadu Mr. S. L. Sathiya Nesan – Director, LEAF Society	
01.00-01.30	OPEN DISCUSSION		
LUNCH: 1.30-2.30			
AGENDA OF ADVOCACY AGAINST CHILD MARRIAGE			
02.30-3.15	Group Work		Ms. Vijayalakshmi Arora Director Development Support , CRY
3.15-4.00	Developing Agenda for Advocacy	Plenary Session	Ms. Vijayalakshmi Arora Director Development Support , CRY
4.00-4.15	Vote of Thanks		Ms. Krinna Shah

ANNEXURE I

AGENDA OF ADVOCACY AGAINST CHILD MARRIAGE- CHAIRED BY MS. VIJAYLAKSHMI ARORA, DIRECTOR, DEVELOPMENT SUPPORT, CRY + GROUP WORK

GROUP ONE

Law: some key questions

- 1. Terminological clarification : early marriage, child marriage in the light of the legal provisions, international and national**
 - We really need a logical legal framework.
 - The uniform terminology for the purpose of our discussion and work would be ‘child marriage’ in the light of current discussion and the framework of the CRC.
- 2. What do we stand for: prohibit, prevent, rehabilitate? Do we want to delay, prevent, protect??**
 - Covering all these three points is quite essential.
 - Protection of married girls is an important aspect, which has to be covered within the legal framework.
 - Lack of clarity on the mechanisms of rehabilitation of married girls, in case of annulment of existing marriages, has to be resolved.
 - The current legal framework does provide a provision where the responsibility of the protection of girl is on the parents/family of the boy.
- 3. The Problem of the law- Clarifying contradictions between laws: IPC, PCMA, POCSO. And what should be done? Definition of child; age verification**
 - Can a PIL be filed on this issue, wherein other parties can also intervene or the parties should go to the court individually?
 - Affidavits have to be filed with supporting data from various parts
 - Affidavits can be put together here in Delhi.

- Work with parliamentarians over the contradictions in PCMA.
- Law Commission's recommendations of 16-18 voidable marriage and below 16 are void marriage. Taking this further, rape provisions in IPC to be raised from 15 years to 16 years, which will also help preventing conviction of boys of 16-18 years age group and pulling them out of POCSO.
- Amendment in POCSO in the light of Age of Consent?
- Audit of legislations is the need of hour and the commissions are the responsible bodies to carry out such audits, which will further lead to the necessary amendments
- PCMA to be brought under the purview of Child Protection?
- There is a need to put pressure on the govt. TO BRING IN model rules of PCMA and linking it with ICPS.
- Age of child has to be uniform for all purposes. (suggestion)
- No security measures in PCMA for those who work towards stopping the marriages
- Including children of proposed child marriage or married children in the definition of children in need of care and protection of JJ Act?

4. **Dissolution of marriage: Make child marriage void or voidable? Appropriateness of annulment**

5. **Operational aspects: aspects that need guidelines, SOPs; addressing gaps emerging from implementation**

6. **Contradiction between awareness about the law and prevailing practice. Can legal framework address these?**

GROUP TWO: ACCOUNTABILITY

1. **Accountability of whom , for what? If there are multiple departments – how do we fix accountability? How do we institutionalize this?**

- Most of the time, families are held accountable.
- Can the State ensure some kind of accountability for the parents to play the part of primary caretakers?
- Enabling the parents by way of giving schemes/programmes OR taking a right based approach and empowering the parents. In any case, accountability still lies with the State.

2. **Duty Bearers : state at different levels and parents as primary care giver.**

3. **Role of the State: where does the buck stop? CMPO, teachers, AWW,ANM , PRI ??**

- Some accountability measures to be fixed for the State functionaries in case of child marriages.
- Information dissemination about the prime duty bearers to be passed on to HAQ
- A separate department for child rights (as it happened in Rajasthan)...could be a great example to push for to bring in the protection angle to the PCMA
- Holding government officials (CMPO) accountable is the most important thing.
- One post-One person

4. **What are the redressal mechanisms at different levels?**

5. **Parents as caregivers : how do we enable them to play their role? What kind of awareness, perspectives and capacities need to be built? What programmes available today? (CCT,SABLA, valuing girl child programme) do they work? What needs to change?**

GROUP THREE: CONVERGENCE MECHANISM

1. What are the existing structures available at local, district ,state and national level?

- Many existing structures at local, state and national level.
- Convergence is mostly facilitated by the civil society organizations or individual efforts.
- The roles of the pre existing structures should be clearly defined keeping all the kinds of child rights violations in mind.
- Convergence plays an important role in enabling a protective environment.

2. Role clarity amongst these structures – DCPU/CWC/CMPO for instance

3. How do we institutionalize them

- Convergence of departments/schemes also help in institutionalizing the structures.

GROUP FOUR : RIGHT HOLDERS

1. If the child is the right holder, how do we empower them in the existing paradigm of childhood, patriarchy? How do we address the contradictions that emerge in this process? Empower them for what?
2. What are the structures, frameworks available?
3. How do we institutionalise these?
4. Rehabilitation options for these children: what are they? Do they really help in empowering them or they merely delay the marriage? Can rehabilitation be community based or more of residential schools for girls? What will our definition of empowerment be? Some children might not be empowered viz. the definition of empowerment. Does that mean that children who might not be empowered should be married off?

GROUP FIVE : RESEARCH

1. Can we identify a set of indicators that will indicate the prevalence? What could be some of the impact indicators?
2. What are the ways in which these indicators are being tracked /monitored periodically or need to be tracked – census, NFHS, CRC , post MDG?
3. Areas /aspects that need to be researched upon ?
4. Evidence of strategies having positive impact that needs to be captured ??
5. PCMA related aspects that need to be researched upon?
 - To study the inter linkages between the issues.
 - A complete understanding of child marriages has to be developed for Research.
 - District level study is needed to study the factors affecting child marriages. And also few remote pockets where child marriages are prevalent.
 - Some research focusing on the factors responsible for child marriage before marriage and the conditions after marriage. The same kind of research is also needed from gender perspective
 - Impact assessment of the strategies being followed for stopping child marriages has to be done.
 - How much are we contributing through our interventions—assessment of strategies and impact is necessary.
 - Social norms perspective needs to be researched.
 - Role and impact of welfare schemes to be assessed.

ANNEXURE II

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