

POLICY BRIEF

Ending Impunity for Child Marriage in India:

NORMATIVE AND IMPLEMENTATION GAPS



CENTRE FOR
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GLOSSARY

AB INITIO From the moment it was agreed upon or entered into.

ADOLESCENTS This publication generally uses the term “adolescents” to refer to young people in recognizing the continuum of harm resulting from child marriage. The World Health Organization defines adolescents as ages 10-19, while the Committee on the Rights of the Child has not yet adopted a definition of when an individual is an adolescent, but has focused generally on ages 10-18. In certain instances, it was necessary to deviate from this term in order to maintain accuracy, such as where specific data encompassed a different grouping of young people or where laws or policies apply to all minors, and not only adolescents. For the purposes of this paper, adolescent is no older than 19 years of age.

ANNULMENT When a marriage is terminated and treated legally as though it never occurred.

CEDAW Convention on the Elimination of All Forms of Discrimination against Women: International treaty codifying states’ duties to eliminate discrimination against women.

CEDAW COMMITTEE Committee on the Elimination of Discrimination against Women: The United Nations body charged with interpreting and monitoring states parties’ implementation of the Convention on the Elimination of All Forms of Discrimination against Women.

CHILD Any person below 18 years of age.

CHILD MARRIAGE A legal or customary union between two people, in which one or both spouses are below the age of 18. In India, the minimum legal age of marriage is 18 for females and 21 for males. For the purposes of this publication child marriage is referred to as marriage below the age of 18.

CLPR Centre for Law and Policy Research.

CMPO Child Marriage Prohibition Officer.

CRC Convention on the Rights of the Child: International treaty upholding the human rights of children.

CRC COMMITTEE Committee on the Rights of the Child: The United Nations body charged with interpreting and monitoring states parties’ compliance with the Convention on the Rights of the Child.

DISSOLUTION The termination of a marriage through legal action, requiring a petition or complaint for dissolution by one party. Used interchangeably with “divorce,” but originates from the concept of a no-fault divorce.

DIVORCE The termination of a marriage through legal action, requiring a petition or complaint for divorce by one party. Used interchangeably with “dissolution,” but historically associated with termination of marriage when one or both parties are at fault.

DOWRY Property or money brought by a bride to her husband on their marriage.

GAWA Guardians and Wards Act, 1890 (amended in 2016).

GENDER-BASED VIOLENCE Violence that targets women or affects women disproportionately. Includes acts that inflict physical, mental, or sexual harm.

GENERAL LAW Civil and criminal law that is applicable to the general population. It is sometimes referred to as “secular law.”

HABEAS CORPUS PETITION A writ (legal action) that requires a person under arrest to be brought before a judge or into court.

HMA Hindu Marriage Act, 1955.

HMGA Hindu Minority and Guardianship Act, 1956.

IPC Indian Penal Code.

JJA Juvenile Justice Act, 2015.

KHAP PANCHAYAT An assembly of village elders; a community organization unaffiliated with formally elected government bodies.

LAKH One hundred thousand.

LEGAL CAPACITY The attribute of a person who can acquire new rights or assume duties, according to his or her own will, without any restraint arising from his or her status or legal condition.

MAHR In the Muslim context, a mandatory payment in money or property from the groom to the bride. Legally, the *mahr* is specified in the marriage contract and becomes the wife's inviolable property at the time of the marriage.

MATERNAL MORBIDITY Illness or disability in women caused directly or indirectly by factors relating to pregnancy, childbirth, or the puerperal (post-delivery) period.

MATERNAL MORTALITY Deaths of women caused directly or indirectly by factors relating to pregnancy, childbirth, or the puerperal (post-delivery) period.

MWCD Ministry of Women and Child Development.

MONITORING CELL A unit within the government dedicated to monitoring implementation of the law, in this context, relating to child marriages.

NCPCR National Commission for the Protection of Child Rights.

NCW National Commission for Women.

NGOS Non-Governmental Organizations.

NHRC National Human Rights Commission.

NPAC National Plan of Action for Children, 2016.

NPC National Policy of Children, 2013.

PCMA Prohibition of Child Marriage Act, an Indian law passed in 2006.

PERSONAL LAW Law typically relating to family and succession issues that are applicable to individuals belonging to a specific religion (unlike general law). Often allows for autonomous governance of matters such as marriage or divorce.

PIL Public Interest Litigation: Litigation filed in a court of law for the protection of the public interest.

POCSO Protection of Children from Sexual Offenses Act.

PRO FORMA Latin, 'as a matter of form.'

PWDVA Protection of Women from Domestic Violence Act, 2005.

REPUDIATE A MARRIAGE To reject the authority or validity of a marriage.

SAARC South Asian Association for Regional Cooperation.

STREEDHAN In the Hindu context, any gifts received by a woman prior to her marriage, at the marriage, or during the marriage, over which her property rights are inviolable.

SUO MOTO Latin, 'on its own motion'; when a Court takes action through its own initiative rather than as a result of a party moving the Court to act.

VOID MARRIAGE The term given to marriage with no legal validity because it is prohibited by law; also referred to as marriages that are void *ab initio*.

VOIDABLE MARRIAGE Marriage with legal force and effects that can later be annulled by a court through a recession process.

INTRODUCTION AND OVERVIEW OF CHILD MARRIAGE IN INDIA

In 2006, India passed the Prohibition of Child Marriage Act (PCMA)¹ to combat the widespread practice of child marriage. The PCMA prohibits the solemnization of child marriage below the age of 18 for girls and 21 for boys,² and allows child marriages that have already been conducted to be voluntarily voidable by the child who was party to the marriage within two years of their attaining the age of marriageability.³ The PCMA was intended to be a positive step forward from India's prior legislation on child marriage, the 1929 Child Marriage Restraint Act, which had failed to curtail child marriages and to provide any remedies for married girls.⁴ However, despite the PCMA and other legal and policy commitments to end the practice, India continues to account for the highest number of child marriages in the world.⁵ One-third of the world's child brides live in India.⁶ While child marriage is a reality for both boys and girls, empirical evidence reinforces its disproportionate prevalence and impact on the latter.⁷ Recent government studies have found the incidence of child marriage to be 26.8-30 percent nationally, with this figure reaching as high as 40 percent in some states.⁸ Analysis of the government's District Level Health Survey has also shown that the marriage rate of girls aged 15-17 has been slow to decline.⁹ Further, a closer look at the National Family Health Survey 2015-16 data shows serious socio-economic disparities in the incidence of child marriage—for example, the percentage of girls marrying below 18 years is as high as 44 percent in the lowest wealth quintiles.¹⁰ The incidence is also much higher than the national average in rural areas (31.5 percent) as compared to urban areas (17.5 percent).¹¹ The incidence of child marriage also varies by other factors, including caste,¹² religion,¹³ and education.¹⁴

Factors Contributing to Child Marriage

Child marriage in India is rooted in gender inequality, including patriarchal social norms that value women less than men and consider married women and girls to belong to their husband's family.¹⁵ Further, child marriage is also linked to barriers in access to education, concerns about girls' safety, and the view that women are an economic liability, a belief fueled in part by practices such as dowry and the high cost of weddings as well as the undervaluing of women's work which is typically done in the home.¹⁶ The Planning Commission of India has recognized the complex causes of child marriage to include, "the growing insecurity of girls and

increasing violence against them, adolescent pregnancy resulting from sexual ignorance and neglect, increasing dropouts from post-primary schooling due to various reasons, and deep neglect of the physical and cultural development of girls, with no provisions for games/sports, healthy entertainment and reading facilities.”¹⁷

Legal and policy barriers play a significant role in perpetuating child marriage by denying girls alternatives to marriage and remedies following child marriages.¹⁸ Child marriage is fueled by the failure to strengthen and implement laws and policies to eliminate discrimination faced by women and girls, including within marriage and in seeking maintenance and inheritance, freedom from and remedies for physical and sexual violence, education, employment, and reproductive health services. Impunity for child marriage persists due to poor enforcement of laws, gaps and weaknesses in the legal framework to end child marriage, and barriers to access to justice faced by women and girls seeking remedies for child marriage.¹⁹ Child marriage in India is also linked to low awareness of the law and consequences of violations, limited capacity and willingness of officials to report child marriages, and limited trust in institutions enforcing child marriage laws.²⁰

Continuum of Harms Resulting from Child Marriage

Child marriage affects both boys and girls; however, it disproportionately affects girls’ ability to enjoy their rights and freedoms, especially due to the serious risks of sexual and reproductive harms associated with this practice. Courts in India have repeatedly recognized that child marriage is a human rights concern that creates a broad continuum of harm and perpetuates discriminatory, submissive, and stereotyped roles of women.²¹ Child marriage triggers reproductive rights and other human rights violations, exposing women and girls to an increased risk of coerced sex; early, frequent and unintended pregnancy; maternal mortality and morbidity, including obstetric fistula; and sexually transmitted infections, including HIV/AIDS; as well as a heightened vulnerability to all forms of violence.²² Child marriage is linked to sexual violence—32 percent of married women aged 15-24 in India have experienced forced sex,²³ and young girls are three times more likely to experience marital rape.²⁴ Child marriage prevents girls from accessing education, including comprehensive sexuality education,²⁵ thereby trapping generations of women and girls into a cyclical pattern of poverty.²⁶ When girls are married young, they become increasingly vulnerable to exploitative labor, poverty, physical and sexual violence, and a range of reproductive and sexual health concerns.²⁷ They are also deprived of accessing and enjoying educational and employment opportunities.²⁸



Child marriage is actually ‘a solemnised invasion’ of a girl, her bodily integrity, her sexuality and her mind. Child marriage condemns a girl to a daily life in a war zone fought between unequals, with predictability on who would be conquered and finished. It is not a social evil caused by the country’s tradition and culture. It is a form of exploitation that takes advantage of the tradition and culture. There is nothing sacred about child marriage. It has to be made void once and for all.

Putting an end to the ‘solemnised invasion’ cannot be resolved through slogans, tokenism and cash transfers to postpone marriage. It has to be resolved by the state education, health services, nutritional support and the protection to girls. The state cannot pretend that the marital home is a safe place for the child and thus, abdicate its responsibility towards protecting her.



- **Shantha Sinha**, former head of the National Commission for the Protection of Child Rights²⁹

Purpose of the Policy Brief

The purpose of *Ending Impunity for Child Marriage in India: A Review of Normative and Implementation Gaps* is to identify and inform policy makers, law enforcement officials, and human rights defenders of the key legal gaps and inconsistencies that have undermined efforts to address child marriage in India, particularly in light of constitutional guarantees, national laws, and international human rights standards. The government has publicly conceded that “implementation of Prohibition of Child Marriage Act 2006 (PCMA), has not been as effective as expected,”³⁰ a sentiment which has been recently reiterated by the Supreme Court of India.³¹

This brief addresses the current state of child marriage in India and analyzes the prevalence of the practice and the continuum of harm that results from it and examines the legal framework on child marriage, and the key legal challenges in ending the practice and ensuring remedies to girls for rights violations related to child marriage. The report

concludes by offering recommendations for law reform in order to ensure access to justice for victims of child marriage. This report uses a broad definition of access to justice that includes “access by people, in particular from poor and disadvantaged groups, to fair, effective, and accountable mechanisms for the protection of rights, control of abuse of power, and resolution of conflicts. This includes the ability of people to seek and obtain a remedy through justice systems.”³²

After an analysis of the national legal and policy context on child marriage, this brief delves more deeply into a case study of legal reform efforts in the state of Karnataka, which has recently adopted amendments to the PCMA to strengthen implementation and address certain gaps and weaknesses. Given the critical role left to states to develop rules and appoint local officials to implement the PCMA under the current legislative framework,³³ this case study aims to review proactive action that can be taken up by state governments to strengthen efforts to end impunity for child marriage.

The study does not examine issues pertaining to cross-border child marriages or self-initiated marriages.

Methodology

This report has been developed by the Centre for Law and Policy Research, based in Karnataka, and the Center for Reproductive Rights (the Center). The Center developed a research paper with a preliminary mapping of legal and policy reform needed to address child marriage that was discussed at a roundtable held together with Dr. Asha Bajpai of the Tata Institute of Social Sciences School of Law in December of 2015. This event brought together legal experts, lawyers, and academics to discuss the legal framework regarding child marriage in India and to identify recommendations for reform. The Centre for Law and Policy Research continued this research together with the Center, including engaging with government officials, local stakeholders and functionaries, and academics. In May 2017, the Centre for Law and Policy Research and the Center held a state-level consultation to bring together stakeholders working at the national, state, and local levels who are working on accountability for child marriage to share the findings of the mapping and seek inputs on suggested recommendations for government action.

CURRENT LEGAL FRAMEWORK ON CHILD MARRIAGE

Because child marriage is rooted in gender-based discrimination and linked to several forms of sexual and reproductive rights harms, national obligations and commitments to end the practice extend beyond just statutory legislation primarily aimed at prohibiting child marriage. This section analyzes how laws and policies— including specific child marriage laws and those related to ensuring women’s and girls’ equality and freedom from discrimination— must be harmonized with fundamental and human rights to end impunity for child marriage and bring about an end to the practice.

National Legal Framework

Child marriage is a violation of the Constitution of India, which establishes the Government of India’s obligation to prevent and ensure remedies for infringements of women’s and girls’ rights, as well as of the legal guarantees in the Prohibition of Child Marriage Act (PCMA) and the Indian Penal Code (IPC).

Constitution of India. The Supreme Court of India has recognized that child marriage is discriminatory and constitutes a violation of women’s and girls’ constitutional rights: it limits equal benefit of the law, and denies girls a life of dignity and liberty.³⁴ Child marriage results in a continuum of harms, including violence and reproductive health risks,³⁵ and violates constitutional fundamental rights which guarantees every Indian citizen to life and personal liberty, non-discrimination and equality, free education between ages six to 14 years, and freedom from forced labor.³⁶ Lower courts in India have additionally enumerated several rights falling within the ambit of the right to life and personal liberty that protect against child marriage, including the:

- Right to freedom from torture and cruel, inhuman, and degrading treatment,³⁷
- Right to health,³⁸ reproductive health, and survival of pregnancy and childbirth,³⁹
- Right to autonomy, dignity, and reproductive rights,⁴⁰ and
- Right to privacy, which encompasses protection of the personal intimacies of the home, the family, marriage, motherhood, procreation, and child rearing.⁴¹

The Constitution also establishes directive principles of state policy to provide children the opportunity to develop in a healthy manner with freedom and dignity, without exploitation or abandonment in addition to promoting the interest of marginalized groups and protecting them from social injustice and improving public health.⁴² There has also been clarification from the judiciary that the PCMA does not violate the rights to religious freedom granted under the Constitution.⁴³

Prohibition of Child Marriage Act (2006). Child marriage is established as a cognizable and non-bailable offense under the PCMA, which aims to prohibit the solemnization of child marriages.⁴⁴ “Child marriage” is defined as a marriage where either of the contracting parties is a “child,” defined as 21 years of age for a male and 18 years for a female.⁴⁵ Under Section 3(1) of the PCMA, child marriages are legally voidable at the option of the party who was a child at the time of the marriage within two years of their attaining the age of marriageability.⁴⁶ For women and girls, this provides the option to seek a decree of nullity at any time until the age of 20 years. Further, Section 12 lays down three situations when child marriages are void *ab initio*— first, when the girl is “enticed out of the keeping of the lawful guardian”; second, when marriage is through compulsion or deceitful means or for the purpose of trafficking; and third, where a marriage is solemnized despite a court injunction against the solemnization of marriage.⁴⁷

The PCMA establishes the power of courts to issue injunctions to prohibit solemnization of a child marriage either *suo moto* (on its own motion) or in response to complaints filed by any person or non-governmental organization having reasonable information relating to a child marriage.⁴⁸ Solemnization of child marriage is punishable by imprisonment for up to two years or fines of up to one lakh rupees (approximately USD 15,000) for male contracting parties to a marriage who are older than 21 years of age; anyone who knowingly performs, conducts, directs, or abets any child marriage; and parents, guardians, religious officials, and others for knowingly promoting, negligently failing to stop, or attending and participating in child marriages.⁴⁹ Women are exempt from imprisonment under the PCMA.⁵⁰ A court issuing a decree of nullity may also make an order for maintenance from a woman’s or girl’s husband or his parents if he is a minor, and to provide for her residence until any remarriage.⁵¹ Further, the PCMA recognizes legal status for all children born from child marriages “for all purposes” and states that district courts issuing decrees of nullity shall make appropriate orders for their custody and maintenance.⁵²



There can be no dispute that every citizen of this country has the right to get good health care. Every citizen can expect that the State shall make best endeavours for ensuring that the health of the citizen is not adversely affected. By now it is well settled by a catena of judgments of this Court that the “right to life” envisaged in Article 21 of the Constitution of India is not merely a right to live an animal existence. This Court has repeatedly held that right to life means a right to live with human dignity . . . Without good health, there cannot be a good life. In the case of a minor girl child good health would mean her right to develop as a healthy woman. This not only requires good physical health but also good mental health.

The girl child must be encouraged to bloom into a healthy woman. The girl child must not be deprived of her right of choice. The girl child must not be deprived of her right to study further. When the girl child is deprived of her right to study further, she is actually deprived of her right to develop into a mature woman, who can earn independently and live as a self-sufficient independent woman. In the modern age, when we talk of gender equality, the girl child must be given equal opportunity to develop like a male child. In fact, in my view, because of the patriarchal nature of our society, some extra benefit must be showered upon the girl child to ensure that she is not deprived of her right to life, which would include her right to grow and develop physically, mentally and economically as an independent self-sufficient female adult. ””

- **Justice Gupta**, *Independent Thought v. Union of India*, Supreme Court of India (2017)⁵³

Under the PCMA, state governments shall implement the law by appointing child marriage prohibition officers (CMPOs), who are duty bound to prevent solemnization of child marriages, collect evidence and facilitate prosecutions under the PCMA, and to advise and sensitize communities about the harms associated with child marriage.⁵⁴ CMPOs may act as a “guardian or next friend” for minor girls seeking decrees of nullity and move the court for orders or injunctions. The PCMA gives the District Magistrate authority to stop mass child marriages by “employing appropriate measures” and minimum police force, in addition to authorizing all of the powers of the CMPO. The PCMA also states that state government may make rules for implementing the law.⁵⁵

Indian Penal Code (IPC). Child marriages are not specifically penalized under the IPC, but Section 366 on forced marriage establishes the kidnapping or abduction of a woman to compel her to marry and the use of any method of compulsion as a punishable offence.⁵⁶ The IPC also contains other provisions that may be applicable to child marriage in certain cases, such as Section 496 which establishes that going through a marriage ceremony with fraudulent intent as a punishable offense and Section 370 which was amended in 2013 to address human trafficking for the purposes of sexual exploitation, slavery, and servitude.⁵⁷ As later sections of this policy mapping will discuss, the continuum of harms resulting from child marriage can also result in violations of several provisions of the IPC and related laws that criminalize violence against women and children.

Gaps and Loopholes in India’s Laws on Child Marriage

The Government of India has recognized that the Prohibition of Child Marriage Act (PCMA) has had limited impact on ending child marriage.⁵⁸ In addition to practical barriers in accessing the legal system, gaps and weaknesses in the legal framework lead to ongoing impunity for the marriage of girls. In India, rights and obligations within the context of marriages are governed by dual legal systems—general laws that are applicable to the population as a whole versus religion-based personal status laws which only apply to certain communities. These gaps are compounded by weaknesses in criminal and civil laws on women’s rights, including laws on dowry, rape, domestic violence, and child sexual assault; guardianship laws; and laws on reproductive rights, education, and child labor. Ending child marriage requires strengthening the legal system to eliminate sources of discrimination that leave women and girls more vulnerable to child marriage and limit accountability where girls are married.

Gaps and Weaknesses within the PCMA

Differing ages of marriage for boys and girls. The PCMA provides a different definition of “child” based on sex and establishes a lower age for girls than boys. This contradicts the Juvenile Justice Act (Care and Protection Act) 2000 (JJA) and the Indian Majority Act, which define “child” as any person below 18, regardless of sex.⁵⁹ Legal experts have emphasized that a lower minimum age of marriage for girls promotes discriminatory stereotypes and “assume[s] incorrectly that women have a different rate of intellectual development from men, or that their stage of physical and intellectual development at marriage is immaterial.”⁶⁰ Further, this provision may impact girls’ ability to leave child marriages, as they can only invalidate the marriage until 20 years of age while boys can void a marriage until he is 23 years of age.⁶¹ The Law Commission in its report, “Proposal to Amend the Prohibition of Child Marriage Act, 2006 and Other Allied Laws,” has recommended that “the age of marriage for both boys and girls should be 18 years as there is no scientific reason why this should be different.”⁶²

Child marriages are voidable & consent is not required for marriage.

Under the PCMA, child marriages are not recognized as categorically constituting forced marriage. Section 12 treats marriages entered into by force or coercion as void *ab initio*, distinct from other child marriages which are treated as voidable under Section 3 if a minor contracting spouse to the marriage is able to successfully pursue a decree of nullity within two years of attaining majority.⁶³ Neither the PCMA nor any other general laws on marriage establish or affirm that consent is an essential element of any valid marriage. Ultimately, this means that a child marriage solemnized at any age could potentially be considered valid under the PCMA, unless states have passed their own amendments on this front. The Law Commission has also stated that the law needs to clearly establish that girls whose marriages are recognized as void *ab initio* are eligible for maintenance and residence, which is available to girls whose seek to nullify marriages that are considered voidable.⁶⁴

Solemnization of child marriages have largely been prohibited when parties have approached courts prior to solemnization.⁶⁵ However, courts have adopted different approaches regarding the validity of a child marriage already performed, treating it inconsistently as a void marriage,⁶⁶ valid though voidable marriage,⁶⁷ and ‘voidable but not valid’ marriage,⁶⁸ based on the specific facts of the case, including factors such as girl’s age, relevant personal law, and the presence of some form of implicit or explicit consent by the girl. Courts have also been reluctant to declare child marriages as void in several cases. For example, the Delhi High Court in *Association for Social Justice & Research v. Union of India and Ors.*,⁶⁹ which involved a girl below 18 years of age who was alleged to have been sold by into marriage by her parents to a 40 year old man, the court directed that the girl shall stay with her parents and that her parents shall not allow the consummation of her marriage with her husband until

she is 18, while the husband himself was also released on bail. No steps were taken to initiate proceedings for declaring the marriage as void,⁷⁰ which was the right of the girl under the PCMA. Even when High Courts become aware of a child marriage, the courts often do not direct the legal services authority to provide legal aid and advise girls on their right to have the marriage recognized as void.

Onus on girls who seek to annul marriages. Making child marriage under the PCMA ‘voidable’ requires the minor child to initiate the legal process, within two years of attaining majority. Even for girls who are aware of their legal protections, the onus on girls to initiate the process constitutes an excessive and prohibitive burden, particularly given financial constraints, lack of familial/societal support and decision-making authority, and barriers in accessing police and other government functionaries. For minor girls, filing a complaint under the PCMA requires a parent, guardian, or “next friend;” however, given that parents and in-laws typically play a role in the solemnization of child marriages, this can pose an additional barrier. Only permitting a girl to void a marriage within two years of attaining majority may also pose additional challenges. For instance, young girls often face pressures to prove fertility early in their marriage and thus could be pregnant or have young children during their first two years of marriage, which may pose additional difficulties when seeking to leave a marriage. Further, as discussed below, girls may also lack access to documents that prove their age at birth or marriage due to a lack of effective mandatory registration systems for birth and marriage.

Confusion as to the primacy of the PCMA over personal laws. Historically, there has been confusion as to whether the PCMA has primacy over religion-based personal laws, which establish their own standards and procedures concerning solemnization and dissolution of marriage. The standards in personal laws often contradict those established in the PCMA, including lower ages of marriage, limits to girls’ rights to invalidate or leave child marriages, and recognizing parental consent as sufficient for child marriage.⁷¹ *For more information, see box, Personal Laws and Child Marriage in India, p.21.* The PCMA itself is essentially silent on personal laws, other than a modification to punishments under the Hindu Marriage Act (HMA),⁷² which has led to ambiguity concerning which law prevails.

In a 2017 judgment, Justice Gupta of the Supreme Court of India indicated that the status of the PCMA as a special law means that it should have primacy over personal laws:

In my opinion, the PCMA is a secular Act applicable to all. It being a special Act dealing with children, the provisions of this Act will

prevail over the provisions of both the Hindu Marriage Act and the Muslim Marriages and Divorce Act, in so far as children are concerned.⁷³

The Supreme Court's decision provides an important clarification and could have significant impact if it is disseminated and enforced. Prior to this decision, high courts had taken inconsistent approaches concerning the status of personal laws vis a vis the PCMA.⁷⁴ Efforts need to be made to raise awareness that personal laws cannot deprive women and girls of the rights and remedies provided under the PCMA, and to ensure that courts properly reference the PCMA rather than personal laws in determining the legal status of child marriages.

Personal Laws and Child Marriage in India

The section below highlights the contradictions that persist in India's plural legal system⁷⁵ with regard to consent, the minimum legal age of marriage, punishments for child marriage, and married girls' right to dissolve child marriages.

Hindu Marriage Act (HMA): Under the HMA, marriages of girls and boys below the age of 18 and 21 respectively are punishable. However, the punishment provisions apply only to the couple; even where a child marriage occurs without the agreement of the parties themselves, there is no penalty for the parents or guardians who arranged the marriage or for the officials who solemnized it.⁷⁶ Marriages below the age of 18 are voidable only if a girl was married before the age of 15 and challenges the marriage before she turns 18.⁷⁷ This means that a girl married after the age of 15, even if married without regard to her preference, is considered to be a valid marriage. While the HMA does not explicitly require consent for marriage, it requires that neither party be incapable of giving consent due to “unsound mind” or “even if capable of giving a valid consent, is not suffering from a mental disorder or insanity.”⁷⁸ Further, marriages are voidable where the “consent of the petitioner... was obtained by force or by fraud.”⁷⁹ However, child marriages are not specifically recognized as involving force or fraud. To dissolve a child marriage under the HMA a girl must seek a divorce.⁸⁰

Muslim personal laws: Although uncodified in India, Muslim personal laws establish puberty—which is presumed to be 15 years of age—as the minimum age of marriage.⁸¹ Since marriage is considered a contract under Muslim law, the marriage of a girl above this age without her consent is legally void.⁸² Parents or guardians are permitted to arrange marriages on behalf of girls below the age of 15,⁸³ but girls can utilize the “option of puberty” to render such marriages void—however, this option is only available if a girl challenges the marriage before turning 18 and if the marriage has not yet been consummated.⁸⁴ This decision must also be confirmed by a court.⁸⁵

Indian Christian Marriage Act: The Indian Christian Marriage Act requires that a preliminary notice for all marriages involving girls below the age of 18 and boys below the age of 21 be published at least 14 days prior to the marriage.⁸⁶ Minors (defined as anyone below the age of 21) are not allowed to marry before the preliminary notice period has expired, unless there is consent from a parent or guardian.⁸⁷ After this notice period, a marriage involving minors can go forward without consent from a parent or guardian.⁸⁸ No consent is required for the marriage of anyone above the age of 21.⁸⁹ The section discussing penalties for the marriage of minors lays out penalties only with regard to marriages performed without the parents' or guardians' consent before the preliminary notice period has expired.⁹⁰ In other words, the marriage of minors is considered valid; being a minor at the time of marriage is not recognized as a ground for dissolution of marriage under the Indian Divorce (Amendment) Act, 2001, which sets forth regulations for divorce for Christians.⁹¹

Parsi Marriage and Divorce Act: Under the Parsi Marriage and Divorce Act, the marriage of a girl under the age of 18 is considered invalid.⁹² However, in the provision on grounds under which a marriage can be declared void, age is not included.⁹³ The failure of the Parsi Marriage and Divorce Act to clearly state whether a child marriage is invalid from the outset or needs to be invalidated through a legal process creates ambiguity about girls' right to leave such marriages.⁹⁴ The Parsi Marriage and Divorce Act is silent on the issue of consent. It also fails to discuss penalties for the violation of the minimum age of marriage.

Jewish personal laws: Under Jewish personal laws, which are uncodified, the minimum age of marriage for girls is puberty, which is presumed to occur at 12 years.⁹⁵ Marriage before puberty is strictly prohibited, but any marriage after that age is recognized as legal and valid.⁹⁶

PERSONAL LAWS AND CHILD MARRIAGE IN INDIA

	HINDU MARRIAGE ACT (HMA)	MUSLIM PERSONAL LAWS	INDIAN CHRISTIAN MARRIAGE ACT (ICMA)	PARSI MARRIAGE AND DIVORCE ACT (PMDA)	JEWISH PERSONAL LAWS
Minimum legal age under which marriage is invalid	No minimum. 18 years and 21 years for girls and boys respectively are the minimum age for a valid marriage, but marriages solemnized below this age are not considered <i>void ab initio</i> and require a decree of divorce. ¹	No minimum.	No minimum age if a preliminary notice is published at least 14 days prior to the marriage or there is consent from a parent or guardian ² Otherwise, 18 for girls and 21 for boys. ³	21 ⁴	12 ⁵
Minimum legal age under which marriage is voidable	Girl married before 15 years old can repudiate her marriage after 15 and before she turns 18. ⁶ For girls married after 15, marriages are not voidable unless consent of her guardian was obtained by force or by fraud. ⁷	Girl married before puberty (presumed to be 15 years old) has the “option of puberty,” meaning she can repudiate her marriage after 15 and before she turns 18, ⁸ if marriage has not yet been consummated.	No minimum.	Age is not included in the PMDA as a ground to void marriage. ⁹	No minimum.
Is consent a requirement?	No, but parties should not be incapable of giving consent due to “unsound mind,” or suffering from “mental disorder” or “insanity.” ¹⁰	Yes. Girl above 15 must consent to her marriage. Parents or guardians can provide consent for marriage of girl below 15, which can be repudiated under the “option of puberty.” ¹¹	Yes. Girl above 18 and boy above 21 must consent to their marriage. ¹² Parents or guardians can provide consent for marriage of minors. ¹³	No.	No.
What’s the process to dissolve a marriage in contravention of the minimum legal age?	Decree of divorce. ¹⁴	Decision to void marriage must be confirmed by a court. ¹⁵	N/A. Being a minor at the time of marriage is not considered a valid ground for dissolution. ¹⁶	Decree of nullity of marriage, dissolution or divorce or judicial separation. ¹⁷	Not specified.
Who is punishable? What is the sentence?	Punishment provisions apply to the couple who marry below legal age of 18 for girls and 21 for boys and to the person who procures such a marriage. Sentence was amended under the PCMA to increase the punishment to rigorous imprisonment up to two years or a fine of up to 100,000 rupees (USD 1561), or both. ¹⁸	Not punishable by law/no sentence.	<i>Penalties only for marriages performed without parents’ or guardians’ consent before expiration of notice period. Sentence entails imprisonment up to three years and a fine.</i> ¹⁹	Not punishable by law/no sentence.	Not punishable by law/no sentence.

Other Legal Issues Contributing to Violations of Women's and Girls' Rights from Child Marriage

In addition to laws pertaining to the age of marriage, several related laws also impact women's and girls' access to alternatives to child marriage, such as education or employment, as well as to legal remedies once married. This section outlines several areas of law where greater harmonization is necessary to respect, protect, and fulfil women's and girls' rights with regard to child marriage.

Need for greater linkages between PCMA and other laws on violence against women and children

The law allows marriage to legitimize rape. Indian laws on sexual violence shrink the legal rights, protections, and remedies of married women and girls. In a positive step, the Supreme Court of India recently addressed legislative barriers that meant that rape within marriage was not criminalized in the Indian Penal Code (IPC) unless it involved a girl below the age of 15.⁹⁷ The 2012 Protection of Children from Sexual Offenses Act (POCSO) raised the age for statutory rape to 18 and did not incorporate a marriage exception.⁹⁸ However, the Criminal Procedure Code (Amendment) Act, passed in March 2013,⁹⁹ retains 18 years as the age of statutory rape but retrogressively reaffirmed the existing IPC standard, which failed to recognize rape within marriage for girls above age 15.¹⁰⁰ Thus, the status of the law, until recently, was contradictory since the PCMA criminalized the marriage of girls under 18 years of age while the IPC allowed for an exception within child marriage which legitimized what would otherwise be considered rape.¹⁰¹ In a 2017 decision, the Supreme Court clarified that the PCMA and POSCO have primacy over the IPC,¹⁰² and that rape of a child between the ages of 15 and 18 within marriage is a crime.¹⁰³ With this verdict, the law on age of consent, both within and outside marriage, has been harmonized. *For more information on this decision, please see page 30.*

However, despite this progress, marital rape above 18 years of age is still not recognized as a crime.¹⁰⁴ Further, the decision states that there is a one year statute of limitations for reporting marital rape within child marriage, which compounds existing barriers in accessing justice faced by adolescent girls and survivors of rape. This is particularly problematic given the fact that marital rape is not criminalized after 18 years of age, so there is no possibility of seeking legal remedies at a later stage.¹⁰⁵

Child marriage is closely linked to control of female sexuality and reproductive capacity, and parents often feel social pressure to marry girls at a young age to avoid loss of virginity, which often leads to girls

to be perceived as “unmarriageable.”¹⁰⁶ The laws, as they stand, do not allow for any consensual adolescent sexuality, including between two adolescents, and therefore stigmatize adolescent sexuality. Since laws do not allow for consensual adolescent sexuality, this prohibition may encourage parents or adolescents themselves to marry early to avoid the risk of legal and social sanction for sexual activity.¹⁰⁷ These gaps and weaknesses have led to a situation where POCSO is typically invoked by parents to control adolescent sexuality rather than by married girls themselves to seek legal remedies for sexual violence.¹⁰⁸ While the verdict in *Independent Thought v. Union of India* case harmonized the conflict in laws relating to age of consent, this remains a continued issue of concern.

Although marital rape of women above the age of 18 is not criminalized, laws and policies on domestic violence and juvenile justice outline some remedies and establish protection mechanisms for violence against women and children. Because of the increased risk of violence faced by women and girls married as children, these laws could provide significant legal relief and protection if applied and properly enforced in the cases of child marriage.

Need to ensure girls’ accessibility to legal relief from domestic violence.

Under the Protection of Women from Domestic Violence Act, 2005 (PWDVA), physical, sexual, verbal, emotional, and economic abuse of women within marriage is recognized as domestic violence.¹⁰⁹ The PWDVA aims to improve access to justice for women who have experienced domestic violence, which up until that point, had been criminalized under sec. 498-A of the IPC as “cruelty by husband or relative.”¹¹⁰ The law establishes a broad range of reliefs that go beyond the remedies provided in the PCMA to married girls, despite evidence of various forms of violence linked to child marriage. For example, in addition to allowing for orders of residence and maintenance, the PWDVA establishes that magistrate judges can issue orders of protection, temporary custody orders in favor of a woman, monetary relief for loss of earnings or reimbursement of medical expenses due to domestic violence, legal services and counseling, and other compensation for harm suffered.¹¹¹ However, a review of high court judgments has shown that the PWDVA has not been substantively raised in cases involving child marriage, and that courts at all levels have not recognized the particular form of violence experienced by girls who are entered into a marriage. The lack of free and informed consent afforded to girls who have been entered into a marriage is a form of violence, and once married, girls suffer from a loss of autonomy and an increased vulnerability to other forms of domestic violence. The lack of legal recognition of the additional forms of violence to which married girls are exposed creates concern as to whether they will be afforded adequate protection and compensation.

Married girls seeking the protections under the PWDVA, in addition to those of the PCMA, face a double burden of substantiating both their age at marriage as well as ongoing violence within such marriages. Further, the absence of any judicial ruling on applicability of the PWDVA in the context of child marriage also has meant that protection mechanisms created under the law—including protection officers designated under the law mandated to support victims of domestic violence—may not be available to women and girls in child marriages. Without clarity on the linkages between the laws, there is concern that officers designated under the PWDVA and CMPO are working in silos.

Need to recognize married girls as children in need of care and protection. Similarly, the Juvenile Justice Act (JJA) 2015, also establishes procedural mechanisms that may provide legal protection and remedies in the case of child marriage. The JJA mandates state governments to establish Child Welfare Committees in every district to dispose cases for the care, protection, treatment, development and rehabilitation of children recognized as “children in need of care and protection” and to ensure their basic needs and protection.¹¹² The JJA recognizes children who are at “imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnization of such marriage” as children in need of care and protection.¹¹³ The JJA does not mention married girls themselves, although children at risk of abuse, neglect, or exploitation are considered in need of care and protection under the law.¹¹⁴ The Supreme Court has recently clarified that married girls who experience rape need to be considered children in need of care and protection, but enforcement of this decision is necessary to ensure local functionaries implement this broadened definition.¹¹⁵

Under the JJA, when the Child Welfare Committee receives information of a child in need of care and protection, committee members are mandated to hold an inquiry and may pass an order—taking into account the right of the child to be heard and participate—to send the child to a children’s home, a “fit facility,” or a “fit person” and pass directions relating to counseling, medical attention, legal aid, skills trainings, education services, and other developmental activities.¹¹⁶ JJA provisions guaranteeing shelter to children in need of care and protection have been cited by some courts to provide married girls who did not wish to return to their parents’ home with access to state children’s homes.¹¹⁷ However, government shelter homes available to children under JJA lack basic amenities, and often children are at risk of exploitation,¹¹⁸ contributing to the court’s unwillingness to send girls to these homes,¹¹⁹ and impeding girls’ access to viable alternative options to marriage.

NEED FOR STRENGTHENING OF, AND COORDINATION BETWEEN, LOCAL FUNCTIONARIES MANDATED UNDER THE PCMA AND LAWS ON VIOLENCE

Under the PCMA, as well as the PWDVA, JJA, and POCSO, officers and welfare committees have been established to ensure that individual women and girls have support and protection against violence and coercion. However, state governments often fail to appoint these functionaries entirely, add these duties as additional charges to existing officers' already full workload, or appoint officers without sufficient training or oversight to ensure effectiveness.

Coordination of these mechanisms would avoid duplication and allow resources to be utilized effectively so that properly trained officers, who can actually provide protections to girls affected by child marriage, are appointed throughout the country.¹²⁰ Ensuring accountability for child marriage requires that officers tasked with enforcing legal prohibitions on the practice have adequate training on the harms of child marriage and receive institutional support to respond to community opposition and protection against retaliation. Social pressure against law enforcement seeking to intervene in child marriages can be significant, and can even rise to violence.¹²¹ Coordination with similar mechanisms could also allow for greater safety and support for functionaries on the ground.

Gaps, weaknesses, and poor implementation of laws that impact women's financial and social autonomy

Child marriage contributes to married girls' lack of monetary and social autonomy. Girls are often pulled out of school immediately before or after their marriage, preventing them from acquiring an education and gaining financial independence, thereby increasing their dependence on their marital homes.¹²² Laws mandating education and criminalizing dowry and child labor have the potential to reduce child marriage, however the weaknesses in these laws and their enforcement have rendered them ineffective. It is necessary to strengthen these laws to ensure practical alternatives to child marriage.

Dowry. Parents living in poverty often marry their daughters at an early age since child marriages lead to smaller dowry payments.¹²³ The Dowry Prohibition Act of 1961 penalizes the act of giving and demanding or taking dowry and those who participate in the practice can be punished with imprisonment and/or fines.¹²⁴ However, the Dowry Prohibition Act is rarely implemented due to loopholes in the law, including the failure to define “dowry,” as well as ingrained social norms, which prevents reporting of these crimes.¹²⁵ Further, reported cases suffer from poor prosecution rates and have high acquittals. For instance, the police are more than three times more likely to find cases of deaths of women related to disputes over dowry false than all other cognizable crimes.¹²⁶ Dowry-related cases are also far more likely to see acquittals, where two out of three persons tried for dowry deaths were acquitted in 2013.¹²⁷ In addition, the law penalizes the parents of the daughter for giving dowry¹²⁸, which prevents the girl’s family from reporting dowry demands to officials under the Dowry Prohibition Act.¹²⁹ This provision of penalizing the giving of dowry ignores the circumstances within which dowry transactions are made – where the daughter’s family is often compelled to give dowry to secure her well-being in her matrimonial home.¹³⁰ Thus, entrenched social norms, poor reporting of crimes, and low prosecution by the government under the Dowry Prohibition Act contributes to the lack of enforcement of the Act, and the risk of larger dowry payments for older girls increases young girls vulnerability to child marriages.

Education. Girls without education are five and a half times more likely to get married before 18 than girls with at least 10 years of education.¹³¹ While Article 21A of the Indian Constitution and the Right of Children to Free and Compulsory Education Act, 2009 mandate that the government provide free and compulsory education to children from the age of six until 14,¹³² these guarantees continue to be poorly implemented due to lack of institutional support structures as well as poor quality of education and facilities in government schools.¹³³ Importantly, children from 14-18 years continue to be excluded under the law. Parents of daughters often consider child marriage in the absence of safe and accessible educational institutions as well as other available alternatives to ensure girls’ physical security or financial stability.¹³⁴ Thus, adolescent girls are denied their constitutionally protected right to education due to loopholes in the law and are left without practical alternatives to marriages.¹³⁵

Labor. Recognizing that child marriage results in forced pregnancies, domestic servitude, maternal mortality and morbidity, and heightened risk to girls’ sexual and reproductive health,¹³⁶ the Special Rapporteur on Slavery has recognized child marriage as a form of “servile marriage” that gives rise to domestic servitude.¹³⁷ Courts in India have also found that child marriages force girls into domestic slavery and to raise children when they too are children.¹³⁸ The Constitution of

India says that no child below the age of 14 years shall be engaged in any hazardous employment,¹³⁹ and Child Labor (Prohibition and Regulation) Act, 1986 states that children shall not be employed as domestic workers¹⁴⁰ until the age of 14.¹⁴¹ However, courts have not treated domestic work done by married girls below the age of 14 as hazardous labor, and have not taken action against the offenders despite the clear harms done to girls' lives. Moreover, married girls above the age of 14 engaged in domestic servitude are not treated as child laborers under the Child Labor (Prohibition and Regulation) Act, 1986. This loophole in the law needs to be explicitly interpreted by the courts in favor of child brides.

Marital property and inheritance. Discrimination in women's and girls' access to marital property and inheritance from parents limits their financial autonomy. Typically, assets acquired during marriage are purchased in the husband's name, which means that women are left without such assets upon separation.¹⁴² There is no legislation recognizing the right of women to marital property if they are divorced. Regardless of the personal law governing her community, a married woman who seeks to leave a marriage in India is essentially left with only the right to maintenance from her spouse,¹⁴³ along with the return of her *streedhan* and dowry or *mahr*. The amount of the maintenance is left up to the courts' discretion,¹⁴⁴ and does not provide the financial support that would allow girls and women to safely survive with her children, let alone live in a manner similar to that in which they lived during the marriage.¹⁴⁵ Obtaining maintenance is difficult for girls and women with already strained resources, as the legal proceedings often take years and may require multiple rounds of costly litigation.¹⁴⁶ For financial support, separated women and girls are often left with no other choice than to return to their family homes, where they may no longer be welcome.¹⁴⁷

Girls and women suffer additional limits on financial autonomy through discriminatory inheritance laws. As a wife's right to marital property is highly limited upon dissolution of marriage, the ability of a girl or women to inherit property from her parents becomes paramount. Inheritance laws have inconsistent application across the country, based on differing personal laws, as well as regional and tribal variances.¹⁴⁸ Though inheritance laws in India have recently undergone some positive changes,¹⁴⁹ their basis in patrilineal assumptions remains, leaving daughters at a disadvantage. For example, under the Hindu Succession Act,¹⁵⁰ daughters now can inherit an equal share of parental inheritance in cases where there is no will, although parents still can draft wills to prevent daughters from inheriting property.¹⁵¹ Outside the legislative realm, social norms also serve to coerce daughters into relinquishing their shares in land or property to male siblings in order to maintain peace within their family.¹⁵²

Lack of effective and mandatory birth and marriage registration. Birth registration and marriage registration are essential in preventing child marriages, as they allow an accurate assessment of the girl's age at

marriage and help in substantiating that the marriage was in fact a child marriage. Although birth registration is mandatory in India under the Registration of Births and Deaths Act, 1969,¹⁵³ less than 25 percent of children in the poorest 20 percent of households—the most vulnerable to child marriage—had their births registered between 2005 and 2012.¹⁵⁴ Expert panels and commissions convened by the government have recommended reforming weak birth and marriage registration systems; however, these suggestions have not been implemented.¹⁵⁵ Further, there is no national law mandating marriage registration, although the National Commission for Women (NCW) has recommended a draft Compulsory Marriage Registration Bill.¹⁵⁶ The Supreme Court of India, recognizing the importance of marriage registration in eliminating child marriage, issued directions for marriage registration which were to include reporting of the spouse's age in every state.¹⁵⁷ This resulted in many states drafting rules for marriage registration. However, there are several states that are yet to draft rules to make marriage registration compulsory, including Madhya Pradesh, Uttar Pradesh, Haryana, and Bihar— all states with a high prevalence of child marriage.¹⁵⁸

Laws on guardianship and custody. In child marriage cases, courts often deal with issues of guardianship and custody of married girls, which is regulated by the Guardians and Wards Act (GAWA), applicable to Muslims, Christians, and Parsis; and Hindu Minority and Guardianship Act (HMGA) applicable to Hindus.¹⁵⁹ Both Acts reinforce the notion that husbands are the natural guardians of their wives,¹⁶⁰ and courts have often interpreted these laws to hand custody of married girls to their husbands.¹⁶¹ GAWA states that in the case of a married minor girl, her husband, unless pronounced unfit by a court, will be treated as her guardian, even if the husband is also a minor.¹⁶² Similarly, the HMGA states that the husband is the natural guardian of a Hindu minor girl.¹⁶³ These laws contradict the PCMA, which treats an adult man entering into a child marriage as a criminal.¹⁶⁴ Despite the PCMA, several state high courts have referred to GAWA and HMGA in order to give custody of a minor girl to her husband or her marital family.¹⁶⁵ As discussed above, the JJA also establishes guidelines on shelter for children in need of care and protection, but there is no uniform jurisprudence on applying JJA to married girls, despite the risk of violence in child marriages.

Laws on trafficking. Trafficking for and through the act of marriage is a significant issue in India.¹⁶⁶ The PCMA¹⁶⁷ and the Supreme Court of India recognize that child marriages may be “used as a means of trafficking.”¹⁶⁸ Trafficking and child marriage converge where the marriage “is used both in conjunction with fraud, coercion or abuse of power and as a means to subject wives to conditions of slavery, often in the form of domestic or sexual servitude.”¹⁶⁹ The IPC¹⁷⁰ criminalizes buying, selling, procuring, or otherwise receiving a person for the purpose of trafficking, which is now defined to include trafficking for

sexual exploitation, slavery, and servitude,¹⁷¹ and provides a mandatory minimum sentence of 10 years for trafficking offences involving minors.¹⁷² However, the IPC does not explicitly recognize that child marriages may be used for the purposes of human trafficking. Though the PCMA explicitly recognizes that marriage occurring after a child has been trafficked is voidable, it does not provide punishments for traffickers of girls for the purposes of marriages. Rather, it provides a significantly lower two-year maximum sentence for individuals “promoting or permitting solemnisation of child marriages.”¹⁷³

Laws on reproductive rights. Control over girls’ sexuality and reproductive capacity are underlying factors in the persistence of child marriage. Married girls face significant reproductive health risks: including unplanned pregnancies; early and repeated childbirth; increased risks of maternal mortality, maternal morbidity; and unsafe abortion.¹⁷⁴ These risks are exacerbated by discriminatory and restrictive legislative, policy, and judicial decisions that impede access to essential reproductive health services and information.¹⁷⁵ In cases on maternal health, access to abortion, and contraceptive information and services, courts in India have recognized the right to reproductive autonomy and health as protected under the constitutional right to life and personal liberty.¹⁷⁶ In a 2009 Supreme Court case on abortion, the Court recognized women’s reproductive autonomy as a fundamental right: “There is no doubt that a woman’s right to make reproductive choices is also a dimension of ‘personal liberty’ as understood under Article 21.”¹⁷⁷ More recently, the Supreme Court noted the increased health risks faced by pregnant girls¹⁷⁸ and recognized a girl’s right to bodily integrity and reproductive choice, reaffirming that the “human rights of a girl child are very much alive and kicking whether she is married or not and deserve recognition and acceptance.”¹⁷⁹

Notwithstanding these pronouncements, legal and policy barriers to reproductive health services persist. For example, despite the significant risks of adolescent pregnancy and the lack of information or control to negotiate sex or contraceptive use afforded to married girls, the Medical Termination of Pregnancy Act, 1971 requires guardian or parental consent for abortion.¹⁸⁰ While the Supreme Court has recently affirmed that spousal consent is not needed for a provider to perform an abortion, it has also found that abortion by a woman without her husband’s knowledge and consent will amount to mental cruelty and constitute a ground for divorce.¹⁸¹ Along with perpetuating discriminatory stereotypes depicting women’s and girls’ bodies as commodities, these positions may restrict married girls’ ability to access abortion services. Legal barriers are exacerbated by policy barriers, including maternal health and nutrition benefit schemes that exclude pregnant women under the age of 19 and contraceptive programs that focus only on permanent methods rather than methods to delay or time pregnancy. *For more information on policy barriers to reproductive health services faced by married girls, please see page 37.*

**INDEPENDENT THOUGHT V. UNION OF INDIA AND ANR.:
AN IMPORTANT STEP TOWARDS HARMONIZATION OF
CHILD MARRIAGE-RELATED LAW WITH FUNDAMENTAL
AND HUMAN RIGHTS OBLIGATIONS**

For the first time, the Supreme Court of India issued a judgment that significantly discussed the harms and consequences of child marriage, and recognized the continuum of fundamental and human rights violations that married girls often experience. This case, *Independent Thought v. Union of India & Anr.*, was decided in October 2017 by Justices Madan Lokur and Deepak Gupta, who issued two separate opinions in favor of recognizing rape within child marriage as a crime. In reading down an existing exception in the IPC that prevented the criminalization of rape within child marriage, the Court affirmed that “a child remains a child whether she is a married child or an unmarried child or a divorced child or a separated child or a widowed child.”¹⁸²

In the decision, the Court affirmed that child marriage is an indisputable “reprehensible practice... an abhorrent practice; that... violates the human rights of a child.”¹⁸³ The decision highlights the serious risks faced by girls when they are denied their reproductive autonomy, providing the clearest recognition to date of the links between child marriage, reproductive health harms, and violations of the human rights and fundamental rights of girls.¹⁸⁴ The Court noted the negative impact early marriages have on girls’ fundamental right to a life of dignity,¹⁸⁵ as child marriages strip away “the self esteem and confidence of a girl child and subjects her, in a sense, to sexual abuse. Under no circumstances can it be said that such a girl lives a life of dignity.”¹⁸⁶

The Court reviewed a wide range of material detailing the harmful effects of child marriage, and summarized their understanding as follows:

...an early marriage and sexual intercourse at an early age could have detrimental effects on the girl child not only in terms of her physical and mental health but also in terms of her nutrition, her education, her employability and her general well-being. To make matters worse, the detrimental impact could pass on to the children of the girl child... an early marriage therefore could have an inter-generational adverse impact... the sooner [early marriage as a traditional practice] is given up, it would be in the best interest of the girl child and for society as a whole.¹⁸⁷

The Court emphasized that girls “cannot be treated as a commodity having no say over her body or... no right to deny sexual intercourse.”¹⁸⁸ The Court stated that allowing a husband “full control over [a girl’s] body”¹⁸⁹ can be understood as having “effectively destroyed”¹⁹⁰ a girl’s constitutionally protected rights to bodily integrity and “freedom of reproductive choice.”¹⁹¹

This was the first decision rendered by the Supreme Court on the substance of the Prohibition of Child Marriage Act (PCMA). In both opinions, the justices emphasized the need for greater efforts by the government to implement the PCMA and end child marriage. Justice Lokur stated, “Welfare schemes and catchy slogans are excellent for awareness campaigns, but they must be backed up by focused implementation programmes, other positive and remedial action, so that the pendulum swings in favor of the girl child who can then look forward to a better future.”¹⁹² Justice Gupta also spoke to the ambiguity about the primacy of the PCMA, and stated that,

*...in my opinion, the PCMA is a secular act applicable to all. It being a special act dealing with children, the provisions of this act will prevail over the provisions of both the Hindu Marriage Act (HMA) and the Muslim Marriages and Divorce Act, in so far as children are concerned.*¹⁹³

The Court further clarified that the PCMA also has primacy over the IPC.¹⁹⁴ The opinions also emphasized that married girls should be considered children in need of care and protection under the Juvenile Justice Act (JJA).¹⁹⁵

Implementation of this decision is critical, especially given the greater barriers in access to justice faced by married girls. The judgment made significant pronouncements, not only on the issue of marital rape within child marriages, but also more broadly on issues of gender equality and the harms of child marriage more generally. It remains to be seen how lower level courts apply the reasoning of Independent Thought, including if the judgment may ultimately be relied upon in future cases concerning criminalization of marital rape regardless of age.

Judicial Perspectives

Although courts in India have issued many decisions recognizing the harms of child marriage, gaps and contradictions in the legal framework have led to inconsistent judicial decisions concerning the legal status of child marriage and remedies to be issued to married girls, including residence and guardianship. The 2017 decision by the Supreme Court of India in the case *Independent Thought v. Union of India*, reading down an exception in the Indian Penal Code (IPC) that limited remedies for married girls who experienced rape, aims to address several of these gaps and weaknesses.¹⁹⁶ The section below analyzes this decision as well as high court decisions on child marriage to understand courts' perspectives in navigating the inconsistencies and gaps in the legal framework, including how to determine remedies for married girls. It is important to note that since most cases on child marriage that reach the high court are brought by parents and not girls themselves, the jurisprudence has yet to meaningfully resolve key legal gaps and inconsistencies that girls themselves face when seeking legal remedies for child marriage or to obtain a decree of nullity to void the marriage.

Legal status of child marriages. Reflecting the onus placed on girls who seek to challenge child marriages that they were entered into by others, most high court cases concerning child marriage are actually brought by parents or guardians seeking to challenge self-initiated child marriages. As a result, the jurisprudence on the legal status of child marriage thus far concerns this particular subset of child marriages, rather than the broader practice where girls' preferences are typically not sought. Courts do not seem to dismiss claims under the PCMA in these cases, despite the fact that the PCMA does not give a right to anyone but a minor contracting party to seek to void a child marriage. Where marriages involving minor girls are viewed as self-initiated, courts ultimately seem to decide on the legal status of the marriage on a case-by-case basis, looking at the unique set of factors at play in each case. Some of the factors that impact the courts' decision are the personal law regulating the marriage, the age of the girl on the date of her marriage, the age of the girl on the date the case is being heard, and the girl's wishes. Notably, the PCMA does not mention any factor other than the age of the girl on the date of her marriage.¹⁹⁷

In *Independent Thought*, the Supreme Court expressed its view that any marriage of a child should be void *ab initio* throughout the country, and the issued opinion that the PCMA has primacy over personal laws.¹⁹⁸ State high court decisions prior to the recent Supreme Court decision have adopted differing approaches in deciding the validity of a self-initiated child marriage, varying between treating it as a void marriage; a valid though voidable

marriage; and a ‘voidable but not valid’ marriage.¹⁹⁹ In one case, the High Court of Punjab and Haryana implied that all child marriages are void *ab initio*, stating that under the Indian Majority Act, a minor girl cannot consent to marriage since she would have entered into the contract when she under 18 and therefore must be considered to have been “enticed” into marriage in violation of S. 12 of the PCMA; marriages in violation of this provision of the PCMA are considered void *ab initio*, which means no further legal process is required to have the marriage considered invalid.²⁰⁰

In many cases, high courts first assess whether a marriage is legal under the conditions established in personal laws and if legally performed, courts typically treat the marriage as valid but voidable at the option of either contracting party as per S. 3 of PCMA. Courts have usually reconciled PCMA with personal laws by stating that in case of conflict between the two laws, PCMA will supersede the personal law.²⁰¹ In hearing these cases, several courts have urged the legislature to declare child marriages void.²⁰²

Rape, kidnapping or child sexual abuse within child marriage. As discussed above, the Supreme Court of India has recognized that forced sex within child marriage can be considered rape,²⁰³ but stated that modifying the legal age of sexual consent in the Protection of Children from Sexual Offenses Act (POCSO) and the IPC is under the purview of the legislature.²⁰⁴ *For more information, see discussion on page 34.* Because most cases that come before high courts on child marriage are brought by parents, reflecting power dynamics in who has access to courts and the legal system, high courts have typically not been requested to consider claims of kidnapping or child sexual abuse made by married girls themselves. High courts have typically dismissed claims of rape, kidnapping, and POCSO made by parents in cases involving self-initiated marriages.²⁰⁵

Custody of girls once married. Questions concerning custody of married girls typically arise in self-initiated marriage cases where parents are seeking custody of their daughter. Courts have taken different approaches where girls have expressed wishing to stay with their husband, including granting custody of the girl to her parents irrespective of her wishes;²⁰⁶ granting custody in accordance to her wishes and allowing her to stay with her husband;²⁰⁷ permitting the couple to stay together but are not permitted to consummate the marriage;²⁰⁸ or lastly, handing over custody of the girl to a government shelter home irrespective of the girl’s wishes.²⁰⁹

While the Guardians and Wards Act (GAWA) and Hindu Minority and Guardianship Act (HMGA) are understood to say that a husband is a wife’s guardian even if they are both minors, unless he is pronounced unfit by a court— court decisions have considered additional factors

in making this determination. For example, the full bench in the Delhi High Court landmark decision in *Court on Its Own Motion (Lajja Devi) v. State*, stated that with respect to girls above the age of 15, the court's decision should depend on a variety of factors including her level of maturity and her knowledge of the consequences of her actions, and the attitude of the families or parents. The court says that it would be preferable to order the girl to stay with her parents but in case of "sound and good reasons," courts may direct otherwise. The court further says that the husband should not be permitted to consummate the marriage with minor girls, as it goes against the objects and purposes of PCMA.²¹⁰ This guiding principle has been cited often by high courts in determining custody of the girls.²¹¹

In cases where the courts have voided the marriage, the courts have either handed custody of the minor girl to the parents or have remanded her to a shelter home. Some courts have used Sections 17 and 19 of GAWA to say that her husband is her natural guardian,²¹² while other courts have treated the girl as a 'child in need of care and protection' (CINOCAP) under the Juvenile Justice Act (JJA),²¹³ and yet others have refused to use JJA in cases where the girl has a fit guardian, irrespective of her wishes.²¹⁴ For example, the Rajasthan High Court in *Pratapa Ram v. State* handed custody of the girl to the parents rather than providing her access to a shelter home as she did not fall within the JJA since she was not homeless nor without a fit guardian. The court did not consult the girl regarding her preference, opining that the girl is "neither mentally nor morally" in a position to make decisions regarding the consequence of her elopement and handed her custody to her father.²¹⁵ The decision illustrates how the failure to recognize married girls as falling within the JJA can lead to the denial of access to shelter homes in instances where returning to their parents may be unsafe or unwanted.

Law reform suggested by the courts. The Supreme Court of India has encouraged the Government of India and state governments to develop stronger initiatives for ensuring the effective implementation of the PCMA, criticizing the Act as being "breached with impunity,"²¹⁶ and suggested its review. The Supreme Court stated that, "The time has come when this Act needs serious reconsideration, especially in view of the harsh reality that a lot of child trafficking is taking place under the garb of marriage including child marriage."²¹⁷

A decision of the High Court of Karnataka in a public interest litigation concerning child marriages ultimately led to amendments to the PCMA in the state.²¹⁸ *For more information on the court's orders and implementation, please see page 47.* The High Court of Karnataka stated that

“forced marriage of the girl child, one realizes, is one of the manifestations of cruelty, possibly without any equivalent comparison. It seems that the practice is common place in this part of the world. It may have remained unchecked for a variety of reasons including, poverty, lack of education, culture and ignorance. We are of the view that allowing the evil to continue without redressing it, would make us a party to the disgraceful activity.”²¹⁹

The Supreme Court has recommended the approach of the High Court of Karnataka as a possible method of addressing legislative gaps.²²⁰ Several other high courts have called for greater implementation²²¹ and reform of laws on child marriage.²²² Suggested reforms have included addressing the IPC provisions that legitimize child marriage;²²³ recognizing child marriages as void *ab initio*; addressing the failure in the PCMA to clarify whether it supersedes personal laws; and requiring registration of marriage.²²⁴

Other Government Responses to Address Child Marriage

There is no dedicated national policy or program on child marriage in India. The Government of India has developed, but is yet to officially adopt, a proposed national strategy and national action plan relating to the prevention of child marriage. *See box below: Proposed National Strategy on the Prevention of Child Marriage and Draft National Action Plan to Prevent Child Marriages.*

However, the Government has made several official commitments to end child marriage, including specifically in policies and plans related to children. While these measures are a step in the right direction, there is still a need to adopt dedicated policies on child marriage. Further, efforts on child marriage must be harmonized with government responses on related issues, such as schemes on maternal health, which typically exclude girls.

PROPOSED NATIONAL STRATEGY ON THE PREVENTION OF CHILD MARRIAGE AND DRAFT NATIONAL ACTION PLAN TO PREVENT CHILD MARRIAGES

Although a draft national strategy and national action plan to prevent child marriage have been developed in India, these documents remain to be finalized and officially adopted. In 2013, the Ministry of Women and Child Development proposed a National Strategy on Prevention of Child Marriage (National Strategy) to accelerate the decline in the incidence of child marriage.²²⁵ The proposed National Strategy commits to promoting an enabling environment and strengthening protection mechanisms, including the enforcement of the Prohibition of Child Marriage Act (PCMA).²²⁶ It also calls for the government to appoint and train Child Marriage Prohibition Officers (CMPO) under the PCMA, employ state implementing rules for the PCMA, build awareness of the law, and sensitize the judiciary. The proposed National Strategy emphasizes the need to ensure that married girls are provided solutions other than institutionalization; do not face discrimination in access to services, such as in programs for health, nutrition, education, and employment; and are not targeted in incentive schemes that promote their “dowry or commodification of girls through lump sum disbursal at the age of marriage.”²²⁷

The National Strategy was a “guiding force” in the formulation of the Draft National Plan of Action to Prevent Child Marriages in India which aims to achieve seven 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 and 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.²²⁸

The Draft National Plan of Action to Prevent Child Marriages calls for a participatory review of the PCMA in order to gather inputs for new legislation, adoption of implementing rules and appointments of CMPOs in all states, and awareness raising of the public as well as law enforcement and child protection functionaries on child marriage laws.²²⁹

While these measures would be an important step forward, the outcomes and goals of the Draft National Action Plan to End Child Marriage and the National Strategy should be amended to reflect developments that have occurred since these documents were originally drafted. Further, these documents would be strengthened if they went beyond a prevention approach and also helped to secure the rights of married girls. Several of the legal and policy gaps below may provide guidance on steps needed to achieve this goal. State strategies and action plans, such as those developed by a judicial committee in Karnataka in 2011 and those adopted in Rajasthan in 2017, may also be useful in this endeavor. *See p. 56 for more information on state action plans.*

Policy Commitments to Address Child Marriage

The 2013 National Policy for Children recognizes every person below the age of 18 as a child with universal, inalienable and indivisible human rights, including the right to health and to a dignified life free from exploitation.²³⁰ Further, the National Policy for Children commits to ensuring that out-of-school married children have access to education.²³¹ To guide the implementation of the National Policy for Children, the Ministry of Women & Child Development adopted the National Plan of Action for Children, 2016.²³² The National Plan of Action for Children recognizes child marriage and the ensuing health

risks particularly in cases of girls, as a key area of concern, and commits to reducing child marriage especially amongst girls, reducing sexual offences against children, and addressing child mortality.²³³

Under several national policies, the Indian government had committed to eliminating child marriage by 2010²³⁴ and ensuring 100 percent registration of births and marriages by the same date.²³⁵ The National Youth Policy 2014 called for greater monitoring and media attention to prevent child marriage.²³⁶ Similarly, the National Population Policy 2000 highlighted the need to address unwanted pregnancy amongst adolescents and called for delayed marriage and first pregnancy.²³⁷ The National Population Policy advocated for strict enforcement of the then-in-force Child Marriage Restraint Act and monetarily rewarding women who marry: after legal age of marriage, have delayed pregnancy, and have adopted birth control measures after birth of second child. Despite this, state-level population policies have taken a punitive approach that instead penalizes women with more than two children from government employment and other entitlements.²³⁸

Government Programs and Schemes Related to Child Marriage

In addition to these national level policy documents, central and state governments have introduced a number of schemes that incorporate provisions to raise awareness around child marriage and encourage measures for prevention.²³⁹ Some of these schemes—including the Integrated Child Protection Scheme, the Rajiv Gandhi Scheme for the Empowerment of Adolescent Girls, and the Kishori Shakti Yojana—provide important guarantees to address adolescent girls' development, reproductive health, and survival; establish mechanisms that would be instrumental for protection and redress in the case of child marriage; and empower adolescents through education.²⁴⁰ For example, under the Integrated Child Protection Scheme, child protection were created at the village, block, and district level, children's homes were set up, and a helpline was developed for children.²⁴¹ The Rashtriya Kishor Swasthya Karyakram was launched in 2014 as a holistic program²⁴² that emphasized specific preventive interventions with various communities in order to influence cultural norms so as to reduce the incidence of early marriage and generate awareness as to its adverse effects.²⁴³ Through the Rashtriya Kishor Swasthya , adolescent clinics, walk-in centers, and specialty adolescent-friendly health clinics have been established at community and district levels in order to address adolescent contraceptive, management of sexually-transmissible infections, pregnancy testing, sexual abuse counseling, and a variety of other sexual health services.

Exclusion of pregnant adolescents from benefit schemes. Many of these schemes have only been piloted in certain districts and there has been no coordinated effort for national-level implementation of the programs. Further, despite adolescents' significantly higher risks of maternal mortality and morbidity, girls are often excluded from schemes aimed at ensuring benefits for pregnant women. These schemes contradict the proposed National Strategy to the Prevention of Child Marriage, which emphasizes the importance of ensuring that children who are married should not be discriminated against when accessing services, such as health, nutrition, education and employment programs.

For example, the Pradhan Mantri Matritva Sahyog Yojana, which is a conditional cash transfer program designed to cover wage-loss during childbirth and childcare to pregnant women who adhere to conditions for "safe delivery and good nutrition and feeding practices," excludes pregnant and lactating women under the age of 19.²⁴⁴ Janani Suraksha Yojana, a maternal health scheme introduced under the National Rural Health Mission (now National Health Mission) to promote institutional delivery, previously excluded pregnant girls from High Performing States who were younger than 19 from participating in the scheme. This prevented them from accessing cash incentives for institutional delivery and receiving prenatal and post-natal care.²⁴⁵ Following widespread criticism of this provision, the Scheme was modified to make it applicable to all pregnant women across low and high performing states.²⁴⁶

Government officials had stated that including married girls in these schemes would only serve to create incentives for child marriage, but given that girls themselves have limited control in entering child marriages or becoming pregnant, such exclusions only serve to exacerbate the risks of adolescent pregnancy. An evaluation of Janani Suraksha Yojana found that this provision led to serious barriers, especially for girls in rural and tribal areas where child marriage is common, and called for it to be reviewed so that vulnerable women were not excluded from participating in the scheme.²⁴⁷ An additional study reveals that these types of provisions further discourage reporting of child marriages, as it leads to local level female health workers, who are the first level contact within the service delivery framework of India's national health programmes,²⁴⁸ to record married pregnant girls/ mothers as 19 years or above so that they are not denied access to government entitlements under maternity cash benefits schemes.²⁴⁹

Focus on conditional cash transfer schemes. Conditional cash transfer schemes aimed at delaying age of marriage have been introduced both at the national and state levels. *See Annex I for information on state schemes.* A recent addition is the Sukanya Samriddhi Yojana which provides incentives²⁵⁰ to parents to create a savings fund for their daughters for education and future marriage expenses; the funds can be used only after she reaches the age of 18 years. However, studies show

that very few schemes and programs target the underlying causes of child marriage for delaying marriage.²⁵¹ A recent study evaluating a conditional cash transfer scheme aimed at child marriage found that the program did not affect the age of marriage for girls in the program and did not increase the number of girls staying in school beyond 8th grade; however, it did result in an increase in girls getting married as soon as they turned 18 as the cash was utilized as dowry and to offset wedding expenses.²⁵² Without linked interventions that facilitate achievement of girls' aspirations and potential beyond marriage and child-bearing, such strategies serve to reinforce the focus on marriage as the end goal for girls.²⁵³

International Legal Obligations and Regional and Global Policy Commitments

Several international human rights treaties, to which India is a party, recognize child marriage as a violation of women's and girls' rights.²⁵⁴ United Nations treaty-monitoring bodies and other mechanisms, including the Universal Periodic Review by the Human Rights Council and special procedures, have repeatedly reminded India of its obligations to eliminate child marriage and ensure remedies to married girls.²⁵⁵ These reports continue to play an important role in securing the rights of girls and women in India, with the Supreme Court citing several recommendations by human rights bodies in its decision affirming child marriage as a violation of human rights.²⁵⁶ Some examples are included below:

Universal Periodic Review: In 2017, India received recommendations from Human Rights Council Member States under the third round of the Universal Periodic Review. Following up on past recommendations, ten member states made recommendations concerning the elimination of child marriage. Thirteen member states further called for the removal of exceptions concerning marital rape, specifically for adolescent girls.²⁵⁷ In response, India accepted nine out of ten recommendations to work to end child marriage, but merely noted each of the recommendations pertaining to marital rape.²⁵⁸

Committee on the Rights of the Child (CRC): In 2014, the CRC called on the government of India to “to ensure the effective implementation of the Prohibition of Child Marriage Act, 2006, including by emphasizing that the Act supersedes the different religious-based Personal Status Laws. The Committee also recommends that the State party take the necessary measures to combat the requirement of dowries, child marriage...including by conducting awareness-raising programs and campaigns with a view to changing attitudes and instituting counselling and reproductive education, with a view to preventing child marriages, which are harmful to the health and well-being of girls.”²⁵⁹ Specifically, the Committee called on the government to

resolve the inconsistency between Protection of Children from Sexual Offenses Act (POCSO) and the Indian Penal Code (IPC) to ensure that all forms of sexual abuse of girls under 18 years of age, including within marriage, are fully criminalized.²⁶⁰

Committee on the Elimination of Discrimination against Women

(CEDAW Committee): In 2014, the CEDAW Committee expressed concern regarding the high prevalence of child marriage, the procedural requirements that mandate that girls must file a petition with court to void a marriage within two years of attaining majority, and that judges will authorize marriages of girls under personal laws. The CEDAW Committee urged the government to enact legislation to ensure compulsory registration of all marriages; ensure the implementation of the PCMA and punishment for violations of the law; automatically void all child marriages; ensure that POCSO also applies to married girls, and to strengthen efforts to raise awareness about the law and the harmful impacts of the practice on girls.²⁶¹ Further, the CEDAW Committee called for the Government to put in place, without delay, a comprehensive national campaign and strategy to eliminate patriarchal attitudes and stereotypes against women, strengthen and implement laws to ensure that girls have access to education, address barriers to reproductive health services, and strengthen and implement laws on violence against women.²⁶² The CEDAW Committee specifically expressed concern about the discrepancy between the POCSO, the IPC, and the PMCA concerning marital rape of girls between 15-18 years of age.²⁶³

Special Rapporteur on Violence Against Women: The Special Rapporteur on Violence Against Women conducted a country visit to India in 2014, finding that “the high prevalence of such marriages continues to endanger the lives of girls, whether in respect of domestic violence, marital rape or early pregnancies. It also deprives them of numerous human rights, including the right to education and the enjoyment of their childhood.”²⁶⁴

INDIA'S GLOBAL AND REGIONAL POLICY COMMITMENTS

India's international human rights obligations are reinforced in its global and regional policy commitments, which include specific targets and goals to end child marriage.

Sustainable Development Goals: For the first time, a standalone Gender Equality Goal (Goal 5) has been included in the newly agreed upon Sustainable Development Goals. Target 5.3 of Goal 5 enjoins upon all States to “eliminate all harmful practices, such as child, early and forced marriage and female genital mutilations.”

South Asian Association for Regional Cooperation

(SAARC): India is a member of the South Asian Initiative to End Violence Against Children, an apex body of SAARC that adopted a **Regional Action Plan to End Child Marriage**. This provides an important opportunity to reaffirm the Government's commitments to ending child marriage, including implementation of a National Plan of Action on Addressing Child Marriage.

Following the adoption of the RAP, representatives of SAARC member states and key stakeholders adopted the **Kathmandu Call for Action to End Child Marriage in South Asia**, which enumerates urgent actions, including but not limited to denouncing child marriage as a human rights violation, harmonizing national laws and policies on child marriage, and eliminating discriminatory provisions concerning marriage in all laws.

KEY CHALLENGES IN THE IMPLEMENTATION OF EXISTING LAW PROHIBITING CHILD MARRIAGE

The government has a due diligence obligation to prevent, protect, prosecute, punish, and provide redress for acts that excuse or perpetrate child marriage, through both legislative and institutional mechanisms.²⁶⁵ The failure of the government to establish accessible accountability mechanisms and procedures for seeking legal redress for child marriage violates its obligation to guarantee legal remedies for violations of human rights.²⁶⁶ In addition to the procedural barriers to filing claims that exist within the Prohibition of Child Marriage Act (PCMA) itself, there are also several structural and social barriers in the legal and institutional mechanisms of the government which impact the effective implementation of the legal framework on child marriage including in the national PCMA, religion- based laws on marriage, guardianship laws, and other civil and criminal laws on girls' and women's rights.²⁶⁷ The implementation of the law is impeded by poor infrastructural support, and further weakened by the unavailability of adequate and equitable legal remedies due to a lack of effective institutional policies. Compounding the effects of these gaps in infrastructure, are the entrenched social norms which make it difficult for girls to exercise the agency to exit child marriages.

ACCESS TO JUSTICE FOR CHILD MARRIAGE IN KARNATAKA

In the consultation conducted by Centre for Law and Policy Research (CLPR), civil society organizations working in Karnataka consistently reported that young girls who are married are not aware of their legal rights, do not have access to legal aid, and have no support to use the legal remedies under the PCMA to annul their marriage or seek any other relief that may be legally available to them. Despite the continued incidence of child marriage, petitions for declaring child marriages as void, even under the grounds available in section of the PCMA, are rarely filed. Married girls lack economic and social independence as they are removed from schools upon marriage, and do not have any vocational training or any other means of gaining economic independence. This impacts their confidence in registering complaints against child marriages.³⁶⁷ Further, even when girls want to file a complaint, poor birth and marriage registration systems create difficulties in substantiating that their marriage was in fact a child marriage.³⁶⁸

Lack of structural support in implementing legal protections against child marriage. For example, the PCMA requires each state government to draft rules to implement the law²⁶⁸ and to appoint trained Child Marriage Prohibition Officers (CMPO) with clearly defined duties.²⁶⁹ However, currently, only 24 states and union territories have drafted PCMA Rules, and only 20 states and union territories have appointed CMPOs from a total of 36 states and union territories.²⁷⁰ Despite requests by the Ministry of Women and Child Development of India (MWCD), state governments have not provided any data on the implementation of these rules.²⁷¹ Even where CMPOs have been appointed, in many states, rather than providing a dedicated officer, prevention of child marriage is added as an extra duty to an existing officer's already broad portfolio, including in Karnataka, Punjab, Puducherry, Bihar, Himachal Pradesh, Madhya Pradesh.²⁷² Training of CMPOs are mostly piecemeal with limited focus on continuing capacity-development and linking them with agencies that work on issues pertaining to child marriage such as Legal Services Authorities.²⁷³ In addition, there is no composite mechanism that coordinates the efforts of various actors implementing the laws including CMPOs, officers under Juvenile Justice Act (JJA), the Protection of Women from Domestic Violence Act (PWDVA), the Protection of Children from Sexual Offenses Act (POCSO), police officers, district magistrates, child helpline coordinators, and shelter homes despite the common agenda.

Social barriers in reporting of cases and filing of complaints. Married girls, family members, concerned individuals, and government officials- including CMPOs, who want to file complaints against child marriage, must be equipped with information concerning their legal rights as well as the mechanisms available to them to challenge social norms.²⁷⁴ Despite widespread awareness regarding the PCMA and the illegality of child marriage; government functionaries, the police, CMPOs and other officials often believe that traditions and norms are stronger than the law.²⁷⁵ CMPOs or activists may also be deterred from reporting cases due to high profile accounts of violent retaliation from communities against those who seek to prevent a child marriage.²⁷⁶ CMPOs need training to equip them with the knowledge and sensitivity needed to deal with child marriage cases and protection from the government to ensure their safety.²⁷⁷

Even in instances where child marriages have been halted, a recent study has found that girls whose marriages were prevented often face stigma, ostracization, or violence from their families due to their anger at their actions of reporting the impending marriage, stress around the loss of money from the canceled wedding, or concerns about family honor if the girl remains unmarried.²⁷⁸ The study called for financial, social, and emotional support for girls in such situations, including support to continue education.²⁷⁹

Girls and their families may also face opposition from Khap Panchayats, conservative extra-judicial bodies present in villages that aim to enforce caste structures and set unofficial laws concerning marriage and daily life. Such bodies play a significant role in the promotion of child marriage in several states, despite Supreme Court directives that recognize them as illegal and call for their eradication.²⁸⁰ Khap Panchayats are known to order forced marriages, including where adolescents are found to be sexually active, as the honor of the community and the family is perceived to be tarnished when girls exercise their sexual autonomy.²⁸¹ In other cases, forced marriages may be ordered by Khap Panchayats as an allegedly protective measure; for instance, a Khap Panchayat from Haryana has recommended that children be married early to protect daughters from sexual assault.²⁸²

Prosecution of cases. Even when child marriages are reported, only a few cases are fully prosecuted. The Supreme Court has recognized that prosecution for promotion or solemnization of child marriages under the PCMA is “abysmally low”²⁸³ given the incidence of child marriage. Even though 47 percent of girls were married as children between 2005-2013, very few cases were registered under the PCMA.²⁸⁴ Moreover, the PCMA has one of the highest percentages of cases pending disposal.²⁸⁵ Additionally, a little more than one fourth of the trials were completed and only 40 people were convicted.²⁸⁶

Lack of available legal remedies. International human rights law and Indian constitutional law provide the right to remedy for children entered into child marriage and for the ensuing reproductive and sexual rights violations that often occur from the practice.²⁸⁷ However, married girls often are unable to get remedies due to lack of bodily, financial, and social autonomy as well as a lack of institutional support in providing facilities for rehabilitation of married girls. Married girls often lack the agency needed to seek legal remedies to get their marriages declared void.²⁸⁸ These harms are compounded by the unavailability of legal aid. While India has a Legal Services Act, 1987, which promises free legal services to women and children,²⁸⁹ legal aid lawyers are hard to access, especially for young girls.

Despite the theoretical guarantee of maintenance in the PCMA for girls who nullify a child marriage,²⁹⁰ women and girls face many practical barriers in actually obtaining these payments. In addition to the general barriers women face in accessing the legal system due to their relative lack of autonomy and education,²⁹¹ barriers also arise from the lack of clear guidance within the PCMA on how to calculate maintenance.²⁹² Instead, the PCMA merely states that maintenance should be per the needs and lifestyle of the child, and the means of income of the paying party.²⁹³ Moreover, maintenance is available only in cases of voidable marriages, and not in the case of void *ab initio* marriages.²⁹⁴ Thus, if the court voids the marriage stating that it is a marriage of force, enticement

or trafficking, the girl does not have a right to maintenance. Although the Law Commission of India has recommended amending the law to enable the provision of maintenance to girls in void and voidable marriages, this has yet to be implemented.²⁹⁵

The PCMA states that the court may make a decision regarding a girl's residence until her remarriage but the law does not provide any guidance to assist on making that determination.²⁹⁶ As a result, courts have been inconsistent in adjudicating on girl's guardianship, where some courts have handed the custody of the girl to her parents,²⁹⁷ while other courts have handed her custody over to her in-laws,²⁹⁸ while some courts still have institutionalized girls in a state shelter home.²⁹⁹

This is further complicated by the dismal conditions of shelter homes, particularly in poverty stricken states, where children often lack basic amenities and face exploitation, torture, and sexual violence.³⁰⁰ As a result, girls are frequently unwilling to live in shelter homes and often run away from these homes.³⁰¹ Many girls are also unwilling to stay in their parental homes as well, as they fear for their safety due to threats of harm.³⁰² The unavailability of viable alternate options prevents girls from leaving the marriage.

CASE STUDY: KARNATAKA EXPERIENCE IN IMPLEMENTATION OF THE PCMA

Under the Prohibition of Child Marriage Act (PCMA), states have a significant responsibility to develop rules and appoint and train Child Marriage Protection Officers (CMPO) to implement the law. There is also room for states to go further in their efforts to strengthen the legal framework around child marriage, as illustrated by recent law reform efforts in Karnataka.

An Overview of Child Marriage in Karnataka

Karnataka is one of the states with the highest prevalence of child marriages. The North Karnataka region, which is comprised of 13 districts, has a particularly high prevalence of child marriage. Some of the statistics are as follows:

- Two out of five girls are married before attaining 18 years of age.³⁰³
- In seven districts of the North Karnataka region, the percentage of girls are married before 18 years of age is more than 50 percent; in the remaining districts, it is more than 30 percent.³⁰⁴
- 17 percent of women aged 15-19 years were either pregnant or had become mothers.³⁰⁵

The experience of civil society organizations shows that prevalence of child marriage is equally present in northern and southern Karnataka.³⁰⁶ Across Karnataka, child brides are seen as an extra hand for farming or other economic activities. Poverty is not the only factor for child marriage as there are multiple linkages with societal norms, including amongst certain tribal groups or castes.³⁰⁷

The Justice Shivraj Patil Report: Implementation and Law Reform

In 2017, the government of India approved amendments proposed by the Government of Karnataka to strengthen the PCMA in Karnataka, including the recognition all child marriages as void *ab initio*. This reform was initiated by a 2010 decision of the High Court of Karnataka in a public interest litigation concerning child marriages, which was attended by the then-chief minister of Karnataka and aimed to seek directions for effective implementation of

the PCMA.³⁰⁸ The High Court directed the state to set up a Core Committee with a view to prepare an action plan to prevent child marriages.³⁰⁹ In 2010, this Core Committee was created and retired Supreme Court Justice, Shivraj Patil was appointed as its head (herein known as the Justice Patil Committee). Its objective was to analyze the constitutional, legal, and situational status of child marriage and to make recommendations on the prevention of child marriage based upon their findings.



*Forced marriage of the girl child, one realizes, is one of the manifestations of cruelty, possibly without any equivalent comparison. It seems that the practice is common place in take part of the world. It may have remained unchecked for a variety of reasons including, poverty, lack of education, culture and ignorance. We are of the view that allowing the civil to continue without redressing it would make us a party to the disgraceful activity.*³¹⁰



Following extensive consultations and public hearings, along with a review of existing constitutional and legal provisions, the Justice Patil Committee provided a detailed set of recommendations, involving strategies for a) developing awareness on the consequences of child marriage to prevent its occurrence; b) reforming the legislative and legal framework, including amendments to the existing PCMA and state rules; and c) effective implementation of the PCMA by addressing existing constraints and hurdles. The Justice Patil Committee also recommended several important reforms in the legal framework relating to child marriage and argued for more intensive and structured trainings of enforcement officials at all levels.

The Committee also recommended the creation of a strong institutional mechanism that would collect and monitor data as well as help to coordinate efforts between various government agencies. The Committee proposed several key legal reform measures, including amendments to the Karnataka State Rules of 2008 to strengthen implementation of the law. But the critical recommendation that had overarching implications for effective implementation of the Act beyond Karnataka was amending the PCMA itself so to make child marriage void *ab initio* instead of voidable. The Government of Karnataka accepted the Justice Patil Committee recommendations and since then has taken some important steps towards its implementation.

State Rules: The Prohibition of Child Marriage (Karnataka)

State Rules, 2014 were formulated to replace the 2008 Rules and implemented several of the Justice Patil Committee's recommendations, such as:

- Establishment of a procedure for referral/production of children in need of care and protection (as defined under the Juvenile Justice Act (JJA)) before the child welfare committee and follow-up by the latter;
- Guarantees of confidentiality of the child, and protection to any person/organization reporting a child marriage;
- Detailed provisions relating to specific roles of Child Marriage Prohibition Officers (CMPO), and various departments in providing assistance to CMPOs or taking proactive measures within their respective domains.³¹¹
- Detailed mandatory procedures of mass marriages to ensure that all mass marriages are registered and the age of the participants are verified. Additionally, the Revenue Inspector must be present so to guarantee that no child marriages occur during a mass marriage.
- Detailed norms for proof of age at time of marriage,³¹² with *pro formas* for age certificate etc.³¹³

Monitoring and Accountability: The recommendations pushed for a Monitoring Cell at the state level, and at the district and sub-district levels. The Committee also recommended the appointment of an independent rapporteur to facilitate and coordinate implementation of the Action Plan recommended by the Committee. Although the Karnataka government set up the Child Marriage Monitoring Cell in 2012 within the Department of Women and Child Development (DWCD),³¹⁴ the Monitoring Cell has reported that there continues to be inconsistent reporting from the districts.³¹⁵ Interaction with the Monitoring Cell and the Karnataka State Commission on the Protection of Child Rights also points to the fact that, despite the emphasis on convergent action— particularly on education and birth/ marriage registration issues— child marriage continues to be seen as the responsibility of the DWCD.

Amendments to PCMA for Karnataka: In 2016, the Prohibition of Child Marriage (Karnataka Amendment) Bill, 2016³¹⁶ was passed by the state legislature, accepting the recommendations of the Justice Patil Committee and proposing amendments to Sections 3, 9, 10, 11, and 13(10) of the PCMA to:

- Declare every child marriage solemnized after the enactment of the amendment void *ab initio*;³¹⁷ and
- Prescribe a minimum punishment of rigorous imprisonment of one year that may extend up to two years for offenses under the Act, including contracting, solemnizing/abetting, promoting or permitting solemnization child marriage, and disobeying an injunction of the court.

It also incorporates a new provision that empowers police officers to take *suo moto* cognizance of an offence under the Act.³¹⁸ The bill was pending with the Government of India for more than a year before it was received presidential approval and was passed into law in April 2017.³¹⁹

DATA FROM RIGHT TO INFORMATION PETITIONS ON CHILD MARRIAGE IN KARNATAKA

In 2017, the Centre for Law and Policy Research (CLPR) submitted several petitions seeking information on the status of the implementation of the Committee's recommendations under the Right to Information Act, which allows for citizens to request information from government actors. Government responses reveal significant gaps in the implementation of these recommendations:

- Total number of child marriage cases (excluding those within mass marriages) reported to the Child Marriage Monitoring Unit of the DWCD in 2016-17 was 702.
- Out of the 702 cases reported to DWCD, complaints were only registered with the police in 17 cases. This was a key reason behind the Justice Patil Committee's recommendation to give *suo moto* powers to the police in order to register complaints of child marriage, which has been legislated as part of the recent Prohibition of Child Marriage (Karnataka Amendment) Act, 2016.
- While 39 girls were registered for mass marriages from January-December 2016, the actual number of girls whose marriage was prevented was 104. Thus, despite detailed registration procedure for mass marriages under the Karnataka Prohibition of Child Marriage Rules, minors are still being registered in mass marriages.

Source: Data received from Directorate of Women & Child Development, Karnataka in response to RTI applications filed by CLPR

By recognizing child marriage to be void ab initio, the new Karnataka Amendment Act marks a significant departure from the current legal position on the issue in India. The Justice Patil Committee had strongly recommended this as a means to enforce zero tolerance for child marriage. Making child marriage void also addresses the fact that in its current form, the PCMA implicitly recognizes child marriage as a traditional, cultural, and religious practice and places the onus on girls to invalidate marriages, therefore leading to impunity for violations.

As the amendment is introduced and implemented, it will be critical for the government of Karnataka to ensure that girls whose marriages are solemnized after the amendment has gone into effect are still guaranteed financial security, custody of their children, residence and maintenance, protection orders as needed, and other support services. The PCMA needs to be clarified to establish residence and maintenance as rights in the case of void marriages. Further, remedies provided under related laws, including the Protection of Women from Domestic Violence Act (PWDVA) and the Juvenile Justice Act (JJA), should be clarified to be applicable in such cases. Given that control over adolescent sexuality underlies child marriage, it is also critical that guidance be provided to ensure that adolescent girls do not face harassment for sexual activity prior to marriage and are still able to avail of reproductive health services.

The addition of a mandatory minimum punishment clause for offenses under the new Amendment Act will help to reduce the scope of judicial discretion in sentencing, and, according to the findings of the Justice Patil Committee, will also serve as a deterrent. The impact on girls or others' willingness to report child marriage violations as a result of this provision remains to be seen. The amendment also provides *suo moto* powers to the police to take cognizance of an offence under the Act. This would enable the police to take cognizance in cases where no complaint or First Information Report of the offence (which is necessary to initiate criminal proceedings) has been filed. This is particularly significant for cases of child marriage since they are often arranged by the family and have community sanction.

CONCLUSION: KEY RECOMMENDATIONS FOR THE WAY FORWARD

The government has a due diligence obligation to prevent, protect, prosecute, punish, and provide redress for acts that excuse or perpetrate child marriage, through both legislative and institutional mechanisms.³²⁰ The failure of the government to adequately establish accountability mechanisms and procedures for seeking legal redress for child marriage and to remove barriers to their accessibility violates its obligation to guarantee legal remedies for violations of human rights.³²¹ The Supreme Court called upon the Government to realize and appreciate its duty to “take proactive steps to prevent child marriages so that young girls in [India] can aspire to a better and healthier life.”³²² There are several structural and social barriers in the legal and institutional mechanisms of the government which impact the effective implementation of the legal framework on child marriage. These are present in the national Prohibition of Child Marriage Act (PCMA), religious based laws on marriage, guardianship laws, and other civil and criminal laws on girls’ and women’s rights.³²³ The implementation of the laws is impeded by poor infrastructural support, and further weakened by the unavailability of adequate and equitable legal remedies due to lack of effective institutional policies. Underlying the poor infrastructure on rehabilitation of married girls are entrenched social norms, which deny girls’ the agency to exit child marriages.

National and state executive bodies, including governmental ministries and law commissions:

- Strengthen implementation of the PCMA and accountability mechanisms under the law.
 - » Frame rules to implement and strengthen the PCMA, similar to the steps taken by the Karnataka 2014 Rules which aim to reduce the problem of mass child marriages by introducing provisions on mandatory registration of mass marriages and *pro formas* for age verification/certification during such ceremonies; provide for *suo moto* powers to police to register a complaint under the PCMA, as incorporated under the

Prohibition of Child Marriage (Karnataka Amendment) Act, 2016.

- » Monitor women's and girls' access to justice for child marriage. States should develop and implement a mechanism for empirical data collection on cases filed for annulment, injunctions and enforcement of the PCMA in the courts.
- » Along with key stakeholders, coordinate and lead national initiatives involving a cross-section of governmental ministries and agencies to strengthen, implement, and enforce prohibitions on child marriage and protections for married girls.
- Appointment, training, and oversight of Child Marriage Prohibition Officers (CMPOs):
 - » Ensure that CMPOs are appointed in all states including at local levels.
 - » Create coordination mechanisms for functionaries established under the PCMA, the Protection of Women from Domestic Violence Act (PWDVA), and the Juvenile Justice Act (JJA) and ensure proper training. Establish an oversight mechanism to track responsiveness of local functionaries to complaints concerning child marriage.
 - » Include penalties for non-compliance or failure to discharge statutory duties by implementing agencies under the Act, including CMPOs, and police. This may be in the form of administrative penalties as was recommended by the Justice Patil Committee in Karnataka.
 - » Establish a dedicated Child Marriage Monitoring Cell at the state level and monitoring committees at district and sub-district levels to coordinate efforts in implementing the PCMA.
- Address systemic barriers to women's and girls' access to justice in cases of child marriage.
 - » Develop a comprehensive curriculum for engaging the judiciary, CMPOs, police, and public prosecutors concerning child marriage and girls' rights under the PCMA and allied laws. Integrate periodic follow up sessions for all functionaries on legal developments.
 - » Increase women's and girls' access to information regarding legal remedies, including awareness raising campaigns for women and girls on their rights.
 - » Strengthen the capacity of legal actors to provide legal services to women and girls affected by child marriage, including public legal aid services (i.e. the Legal Services Authorities and para-legal functionaries). Build linkages with private legal service providers, including private lawyers and NGOs/non-profits providing legal services.
 - » Provide girls seeking to prevent or leave child marriages with access to protection measures and other referral

mechanisms, including protection measures, residence, medical support, and psychosocial counseling.

- Immediately implement the Supreme Court's order that recognizes rape within marriage as a crime until the age of 18 and that married girls are in need of care and protection. This should include the development of programs to train functionaries under the PCMA, the Protection of Children from Sexual Offences Act (POCSO), the Juvenile Justice Act (JJA), and the Protection of Women from Domestic Violence Act (PWDVA) as well as the development and execution of programs to raise girls' awareness of how to seek legal protection and remedies should rape occur.
- Eliminate the age-qualifying provisions in existing Government schemes on maternal health and other schemes that discriminatorily prevent adolescent girls from accessing maternal and reproductive health benefits.

National and state legislative bodies:

- Amend existing laws to remove legal obstacles faced by girls who seek enforcement of the PCMA and legal remedies under the law.
 - » Take steps to make child marriages void *ab initio*, including measures necessary to ensure that girls in legally void marriages have access to special measures of protection. Ensure adequate awareness of this legal change before it is implemented and ensure the protection of girls who are married under local custom and may be left vulnerable due to the lack of legal status accorded to their marriage.
 - » Ensure that legal requirements are considered in the performance of marriage ceremonies, including the establishment of mandatory marriage registration in line with the National Commission for Women's (NCW) proposed Draft Compulsory Registration of Marriages Bill.
 - » Recognize the rights of girls in marriages that are void *ab initio* to maintenance and residence, as exists for marriages that are voidable under the PCMA.
- Harmonize the PCMA with laws on violence against women and children.
 - » Expand the scope of remedies available to women and girls affected by child marriage to include the broader support services included in the PWDVA and the JJA.
 - » Extend the one year statute of limitations for reporting rape within marriage under the age of 18 and criminalize marital rape regardless of age.
 - » Decriminalize consensual sex between adolescents.

- » Strengthen implementation of laws on violence against women and children, recognizing that child marriages often occur due to fears of increased risk of sexual violence when girls remain unmarried.
 - » Review and amend the definition of trafficking in relevant provisions of Indian Penal Code and anti-trafficking legislation to explicitly include child marriage for the purpose of trafficking and trafficking for the purpose of child marriage.
- Ensure greater respect for adolescent girls' autonomy and practical alternatives to child marriage, address gaps, weaknesses, and poor implementation of laws on education, labor, dowry, and reproductive health.
 - » Provide free education for girls until age 18, extending the current provision of free education as guaranteed until age 14 under the Right of Children to Free and Compulsory Education Act, 2009.
 - » Strengthen implementation of the Dowry Protection Act (DPA).
 - » Recognize child marriage as a form of servile marriage and amend the Child Labor (Prohibition and Regulation) Act, 1986 to recognize that domestic servitude below the age of 18 within marriage may constitute child labor.
- Reform the law to ensure that married girls are not deterred from seeking abortions, including by:
 - » Removing the parental and guardian consent requirements under the Medical Termination of Pregnancy Act; and
 - » Reforming the mandatory reporting requirements for sexual violence under the POCSO to uphold the right to confidentiality.

National, state, and local judiciary:

- Hold government officials accountable for not taking action as per the law to prevent child marriage.
- Recognize child marriage as a fundamental rights violation, take *suo moto* action to address poor implementation of legal prohibitions and to harmonize legal gaps and inconsistencies between child marriage and other related laws.
- Establish a mechanism to systematically track progress in terms of implementing the judicial rulings in cases of or related to child marriage.

National human rights institutions:

- Collect, monitor, and investigate reports of child marriage and liaise with law enforcement agents, including CMPOs, to ensure the provision of effective legal remedies.

- Conduct a national inquiry to identify barriers faced by women and girls in seeking access to justice in the context of child marriage, including legal remedies following a child marriage.
- Develop recommendations to create awareness and promote legal accountability for child marriage.
- Initiate a national conversation on child marriage as a human rights concern with key actors from government and the private sector about the concerted efforts needed to end the practice.

State government of Karnataka:

- Ensure that the PCMA (Karnataka Amendment) Act, 2016 is implemented, and increase awareness amongst law enforcement agencies, the judiciary, legal and community service providers, and girls and families that child marriages are void *ab initio* and do not require a court decree of annulment.
- Review existing legal protection mechanisms on a periodic basis, and ensure that girls and women whose child marriage is void *ab initio* have remedies such as maintenance, residence, and social support services available to them.
- Ensure compliance of the Karnataka Rules to the PCMA, particularly the provisions relating to mandatory registration of mass marriages, which includes collecting and maintaining regular, accurate data, and prosecuting instances of child marriages within such mass marriage.

ANNEX I

State schemes

In addition to National Schemes, many key States have developed schemes/programs addressing the issue of child marriage:

- 1. Rajasthan** – After Bihar, Rajasthan has the second highest prevalence of child marriage in India.³²⁴ The state has adopted various schemes/programs pursuant to its stated commitment to reduce the incidence of child marriage. Samuhik Vivah Yojana is a conditional cash transfer scheme that seeks to address the issue of high wedding costs by providing cash incentives to conduct community marriages after attaining the minimum age of marriage. However, the effectiveness of these such strategies remains to be seen, considering that they are rarely supported by efficient funds disbursement and adequate implementation.³²⁵ Rajshree Yojana, the conditional cash transfer scheme which seeks to link financial assistance to girls who reach critical educational milestones, was recently launched in Rajasthan, demonstrating the state's commitment to girls' education. Rajasthan has launched further positive initiatives including the recognition and provision of cash awards to Panchayati Raj Institutions (PRIs) as well as to girls who take steps to prevent child marriage. In 2017, Rajasthan Government announced a draft State Strategy and Action Plan for Prevention of Child Marriages which is a significant step in abolishing the practice of child marriage in the state.
- 2. Karnataka** – Karnataka has drafted a State Child Policy 2015. A conditional cash transfer (CCT) scheme operational since 2006-07 is the Bhagyalakshmi scheme, which is for BPL families for up to two girl children in the form of an insurance component with a maturity grant in the name of the girl child after completion of 18 years of age, if she remains unmarried. Importantly, the girl child can use the maturity bond to take a loan for higher education, after she completes 15 years. However, recent budget figures show that there has been a 30 percent decline in the allocations for 2016-2017 compared to 2015-2016.³²⁶
- 3. Haryana** - *Apni Beti Apna Dhan*, launched by the Haryana Government in 1994, was India's first cash incentive program aimed at girls to delay the age of marriage and increase community awareness around the issue of child marriage. Although the scheme showed some impact on reversing school dropout rates and delaying the age of marriage, evaluation studies³²⁷ of the

Scheme once again underscored the limitation of financial incentive strategies at bringing long-term change and dismantling underlying attitudes that make child marriage possible. The Ladli Scheme is another CCT scheme being implemented in the state.

- 4. Bihar** – Bihar reports the highest number of underage marriages in India.³²⁸ The Mukhya Mantri Balika Cycle Yojana, which distributed bicycles to girls to encourage secondary school enrollment and retention, triggered similar programs in other states. An evaluation study³²⁹ of the scheme noted its success as being much more cost effective at increasing girls' enrollment than comparable conditional cash transfer programs. There are also incentive schemes such as the Mukhya Mantri Kanya Vivah Yojana in Bihar that are based on the bond issuance model.
- 5. Andhra Pradesh** – Andhra Pradesh is another state where more than 50 percent of marriages are child marriages.³³⁰ The AP - Girl Child Protection Scheme (GCPS), the Dhanalakshmi Scheme, and Bangaru Thalli Scheme are the cash incentive schemes which require girls to be unmarried and to complete schooling up to specific points in order to be eligible for the scheme. The GCPS lists family planning measures undergone by either parent as a specific eligibility condition and the cash incentive is received only after completing 20 years of age. However, low levels of awareness of these programs have marred their effectiveness.³³¹

ANNEX II

National Commissions

National Commission for the Protection of Child Rights (NCPCR)

The NCPCR was created under the Commissions for Protection of Child Rights Act of 2005.³³² Its functions include: examining the safeguards provided by existing laws and making recommendations for their implementation; inquiring into violations of child rights; examining treaties and other international instruments and making recommendations for their implementation; promoting research and awareness; and inquiring into complaints or taking *suo moto* notice of matters related to child rights.³³³

In a press release issued in August 2014, the NCPCR reported that it had registered 222 complaints under the PCMA during 2013, 169 in 2012, and 113 in 2011.³³⁴ In 2012, 40 people were convicted for violating the PCMA, and, in 2011, 76 people were convicted under the PCMA.³³⁵ In April 2016, in connection with the upcoming Akshya Tritiya/ Aakha Teej (a holy day for Hindus and Jains on which an increased incidence of child marriages has been observed), the NCPCR chairperson wrote to the state governments, state directors, general of the police, and the chairpersons of all state commissions for the protection of child rights asking them to send Action Taken Reports on their efforts to prevent child marriages.³³⁶ In August 2016, the NCPCR launched a new online complaint system, which allow for children who have experienced abuse to report the incident. Although coverage of the online complaint system makes no mention of child marriage and the presentation on the NCPCR's website is directed toward sexual abuse and harassment, the complaint system presumably could be used by child marriage victims as well.³³⁷

National Commission for Women (NCW)

The NCW was created under the mandate of the National Commission for Women Act of 1990.³³⁸ Its jurisdiction covers all matters related to safeguards provided for women under the Indian Constitution and other laws. Its functions include: making recommendations for the effective implementation of those safeguards and improving the conditions of women; reviewing the provisions of the Indian Constitution and other laws and recommending amendments; taking cases and looking into complaints; calling for special studies; undertaking promotional and educational research; and funding litigation for issues that affect a large group of women.³³⁹ Based on the material available, of the three relevant national commissions, the NCW appears to be the most active in child marriage issues.

The NCW has commissioned studies at the state level on topics related to women's rights, including child marriage, and has been involved in numerous NGO projects, seminars and legal awareness programs that pertain to the issue of child marriage.³⁴⁰

In 2014, as part of its annual report, the NCW submitted recommendations on the implementation of child marriage laws in India. The recommendations were made after the commission engaged in national and regional consultations and held a meeting with government ministries and other stakeholders. The recommendations were then forwarded to the Ministry of Women and Child Development. The recommendations included: (1) declaring marriages in which a party is under eighteen void; (2) identifying and amending laws that recognize child marriages as valid; (3) incorporating the provisions of the Prohibition of Child Marriage Act in the Hindu Marriage Act 2005, Special Marriage Act 1954 and Christian Marriage Act 1872; (4) making marriage registration compulsory; and (5) appointing Child Marriage Prohibition Officers to enforce the existing laws.³⁴¹

The NCW has made inquiries in response to reports of crimes against women including child marriage. At the conclusion of one investigation, the NCW's recommendations to the state government included: the development of a state government helpline coupled with the provision of a team of specialists who are equipped to handle issues related to child marriage; the appointment of a Child Marriage Prohibition Officer; awareness campaigns; and the opening of school and vocational training facilities in order to help young people become gainfully employed as an alternative to child marriage.³⁴²

The commission has also intervened in court cases related to child marriage.³⁴³

- The NCW provided assistance in the case of Bhanwari Devi, who was raped in 1992 in retaliation for her intervention in a child marriage. NCW supported Ms. Devi in her appeal, request for security, and the appointment of a special prosecutor to argue her case.³⁴⁴
- In 2006, in connection with the matter of *Smt Seema v. Ashwani Kumar*, the Supreme Court requested the NCW's views regarding the registration of marriage as well as its proposed legislation regarding compulsory registration of marriage.³⁴⁵ In issuing its judgment, which made registration of all marriages mandatory, the court stated: "as rightly contended by the [NCW], in most cases non registration of marriages affects the women the most – and directed the states and central government to initiate steps including framing of the rules for registration of marriages."³⁴⁶ The court also stated that registration "would be of critical importance to various women related issues such as:

(a) prevention of child marriages and to ensure minimum age of marriage; (b) prevention of marriages without consent of the parties; . . . (g) deterring parents/guardians from selling daughters/ young girls to any person . . . under the garb of marriage.”³⁴⁷

- In 2005, the NCW filed a petition with the Supreme Court to register its protest against a Delhi High Court decision (*Ravi Kumar v. State and Anr. and Shikha Sharma v. State* (Delhi High Court, 2005)),³⁴⁸ which declared two instances of child marriage involving underage girls as valid. The NCW stated: “A girl of 15 is not capable of making a decision relating to marriage. The judgment will encourage child marriage rather than discourage it.”³⁴⁹
- In 2011, the Madras High Court heard the case of *T. Sivakumar v. the Inspector of Police*, a habeas corpus petition filed by the father of a 17-year-old girl against a man that he alleged had kidnapped his daughter and married her. The girl filed an affidavit stating that she had left her parents’ home of her own accord and had not been kidnapped. In making its ruling, the court cited to recommendations made by the NCW, including that: the government appoint Child Marriage Prohibition Officers immediately; the punishment provided under the PCMA be made more stringent; marriages performed in contravention of the PCMA should be made void; and the offences under the PCMA should be made cognizable.³⁵⁰

National Human Rights Commission (NHRC)³⁵¹

The NHRC was created under the mandate of the Protection of Human Rights Act of 1993.³⁵² It is responsible for the protection and promotion of human rights in India. In a list of major initiatives, it includes the generic description of the “rights of women and children,” but does not list child marriage specifically.³⁵³ However, the available information shows that the NHRC has been involved in child marriage issues, and that the commission was active in making recommendations that resulted in the Prohibition of Child Marriage Act of 2006.

In 2011, in its decision in the case of *T. Sivakumar v. the Inspector of Police* (discussed further above), the Madras High Court cited the NHRC’s review of and recommendation to repeal the Child Marriage Restraint Act, 1929.³⁵⁴

In 2013, the NHRC took *suo moto* notice of a media report that in the Maharajanj District of Uttar Pradesh, 70 percent of women were married before the age of eighteen. In response to the report, the commission directed the state and district governments to report on the issue, conduct surveys of villages to determine whether the allegations were true, and inform the commission on the steps taken to prevent child marriage.³⁵⁵

In 2014, the NHRC chairperson, in a statement before the Committee on the Elimination of Discrimination Against Women, recommended

overhauling the Indian justice system in response to its failure to respond to wide-spread gender-based violence, including child marriage.³⁵⁶

State Commissions

Like the NCPCR, the corresponding state commissions were formed pursuant to the Commissions for Protection of Child Rights Act of 2005,³⁵⁷ and like the NHR, the corresponding state commissions were formed pursuant to the Protection of Human Rights Act of 1993.³⁵⁸

The National Commission for Women Act of 1990 makes no provision for state commissions, which have been created pursuant to independent state action.

The NCPCR, NCW and NHR have no specific legislative powers or oversight authority over the corresponding state commissions. In practice, however, national commissions appear to work with the state commissions.

For example:

- In early 2016, NCPCR organized regional consultations with state commissions and other stakeholders to make recommendations regarding the 2016 education policy related to child marriage.³⁵⁹
- In April 2016, NCPCR asked all corresponding state commissions to submit reports on Action Taken Reports detailing the state commissions' efforts to prevent child marriage.³⁶⁰
- NCW states on its website that “State Commissions, the NGOs and other experts” are part of its complaint investigation process.³⁶¹
- NCW also sponsors research studies, workshops, and seminars by various stake holders, including state commissions.³⁶²
- In at least 2011 and 2013, NCW organized inter-state meetings bringing together various state commissions to discuss the issue of child marriage.³⁶³
- In 2003-2004, NHRC requested, and received from, the Chhattisgarh State Human Rights Commission, a report on the status of child marriage in certain villages of the state.³⁶⁴

State commissions also engage with corresponding national counterparts for assistance. For example, in 2016, the Jharkhand State Commission for Women reached out to NCW and other stakeholders for intervention in a reported incident of child marriage involving the son of a local politician.³⁶⁵ At least one state commission, the Maharashtra State Commission for Women, has included cooperating with its corresponding national and state commissions as part of its mandate.³⁶⁶

Endnotes

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- 29 Shanta Sinha, The Wire, *The Centre Has Solemnised the Invasion of a Girl's Bodily Integrity, Sexuality, and Mind* (2017), available at <https://thewire.in/167674/child-marriage-invasion-of-body-mind-sexuality/>.
- 30 Government of India, Ministry of Women & Child Development, Annual Report 74 (2012-13), available at http://wcd.nic.in/publication/AR201213_english.pdf [hereinafter Annual Report (2012-13)].
- 31 Independent Thought v. Union of India & Anr., W.P. (C) 382 of 2013, S.C.C., para. 87 (Justice Madan Lokur), 11 Oct. 2017.
- 32 Office of the High Commissioner of Human Rights (OHCHR) In Nepal, Opening the Door to Equality: Access to Justice for Dalits in

- Nepal 10 (2011), *citing* World Bank, *A Framework for Strengthening Access to Justice in Indonesia* (2007); Adriaan Bedner, *Towards Meaningful Rule of Law Research: An Elementary Approach*, 2 HUMAN RIGHTS LAW JOURNAL (2010); UNDP, *Access to Justice* (2004).
- ³³ S.19, Prohibition of Child Marriage Act, 2006.
- ³⁴ Independent Thought v. Union of India & Anr., W.P. (C) 382 of 2013, S.C.C., 11 Oct. 2017.
- ³⁵ Association for Social Justice & Research v. Union of India & Ors., W.P.(CRL) 535 of 2010, H.C. Del., 13 May 2010; T. Sivakumar v. The Inspector of Police, H.C.P. 907 of 2011, H.C. Mad., 3 Oct. 2011.
- ³⁶ THE CONSTITUTION OF INDIA, 1950, arts. 14-18, 21, & 23.
- ³⁷ Francis Coralie Mullin v. The Administrator, Union Territory of Delhi, A.I.R. 746 of 1981, S.C.C., 13 Jan. 1981.
- ³⁸ Paschim Bangal Khet Mazdoorsamity & Others v. State of West Bengal & Others (1996) 4 S.C.C. 37.
- ³⁹ Sandesh Bansal v. Union of India & Others, W.P.(C) 9061 of 2008, H.C. M.P., 6 Feb. 2012.
- ⁴⁰ Suchita Srivastava & Anr. v. Chandigarh Administration, S.L.P. 5845 of 2009, S.C.C., 28 Aug. 2009.
- ⁴¹ Justice K S Puttaswamy (Retd.) and Anr. V. Union of India and Ors., W.P.(C) 494 of 2012, S.C.C. 24 Aug. 2017; Gobind v. State of Madya Pradesh & Another (1975), 3 S.C.R. 946; Rajopal v. State of Tamil Nadu (1994), 4 S.C.R. 353.
- ⁴² THE CONSTITUTION OF INDIA, 1950, art. 39(a), 39(f), 41, 46, & 47 (“Certain principles of policy to be followed by the State: The State shall, in particular, direct its policy towards securing (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.”).
- ⁴³ Mohammed Abbas v. Chief Secretary, W.P. 3133 of 2015, H.C. Mad., 31 Mar. 2015 (“Prohibition of Child Marriage Act, 2006 would enable Muslim girls to get proper education, empowerment and also opportunity of understanding to lead proper marital life like other girls, which cannot be considered as an Act by implementing the Act against Muslim Community in general.”).
- ⁴⁴ Preamble & S.15, Prohibition of Child Marriage Act, 2006.
- ⁴⁵ *Id.*, S.2(a) (the law defines “child” as 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).
- ⁴⁶ *Id.*, S.3(3).
- ⁴⁷ *Id.*, S.12. See also Aminder Kaur v. State of Punjab and Ors., C.M. 27021 of 2015, H.C. P. & H., 14 Aug. 2015 (the Punjab & Haryana High Court held that in the case of runaway marriages where the minor girl was 16 and she had run away and got married, such a marriage would fall under Section 12 (a) as she was enticed out of the keeping of her lawful guardian and is void; the Court also imposed the punishment prescribed under the Act on the persons who had conducted the marriage).
- ⁴⁸ S.13, Prohibition of Child Marriage Act, 2006.
- ⁴⁹ *Id.*, S.9-11.
- ⁵⁰ *Id.*, S.13(10).
- ⁵¹ *Id.*, S.4.
- ⁵² *Id.*, S.5.
- ⁵³ Independent Thought v. Union of India & Anr., W.P. (C) 382 of 2013, S.C.C., para. 70 (Justice Deepak Gupta), 11 Oct. 2017.
- ⁵⁴ *Id.*, S.16.
- ⁵⁵ *Id.*, S.19.
- ⁵⁶ S.366, Indian Penal Code, 1860.
- ⁵⁷ *Id.*, S.496 & S.370.
- ⁵⁸ ANNUAL REPORT (2012-13) *supra* note 30.
- ⁵⁹ Indian Majority Act, 1875 (however, the Indian Majority Act explicitly does not affect the capacity of persons to marry or divorce).
- ⁶⁰ CHILD MARRIAGE IN INDIA: SOCIO-LEGAL AND HUMAN RIGHTS DIMENSIONS *supra* note 4; Committee on the Elimination of Discrimination against Women, *General Recommendation No. 21: Equality in marriage and family relations*, (13th Sess., 1994), para. 38, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008) [hereinafter CEDAW, *General Recommendation No. 21*].
- ⁶¹ *Id.*
- ⁶² REPORT 205: PROPOSAL TO AMEND THE PROHIBITION OF CHILD MARRIAGE ACT, *supra* note 16.
- ⁶³ S.3 & S.12, Prohibition of Child Marriage Act, 2006.
- ⁶⁴ REPORT 205: PROPOSAL TO AMEND THE PROHIBITION OF CHILD MARRIAGE ACT, *supra* note 16.
- ⁶⁵ Mohammed Abbas v. Chief Secretary, W.P. 3133 of 2015, H.C. Mad., 31 Mar. 2015.
- ⁶⁶ Pratapa Ram v. State, C.M.P. 1154 of 2012, H.C. Ras., 24 July 2012; Amnider Kaur v. State of Punjab, C.R.M. 29790 of 2009, H.C. P. & H., 27 Nov. 2009.
- ⁶⁷ G. Saravanan v. The Commissioner of Police, H.C.P. 190 of 2011, H.C. Mad., 6 Apr. 2011; Bholu Khan v. State of NCT of Delhi & Ors., W.P.(CRL) 1142 of 2012, H.C. Del., 1 Feb. 2013.
- ⁶⁸ T. Sivakumar v. The Inspector of Police, H.C.P. 907 of 2011, H.C. Mad., 3 Oct. 2011.
- ⁶⁹ Association for Social Justice & Research v. Union of India & Ors., W.P.(CRL) 535 of 2010, H.C. Del., 13 May 2010.
- ⁷⁰ *Id.*
- ⁷¹ Prohibition of Child Marriage Act, 2006; The Hindu Marriage Act, No. 25 of 1955 (providing the minimum age for marriage for girls is 18 and for boys, 21); The Muslim Personal Law (Shariat) Application Act, No. 26 of 1937 (though not codified, the personal law gives Muslims the authority to determine when marriage is acceptable; common practice indicates that this is typically understood to be the age of puberty; under Muslim personal laws, a girl who was married as a child can “avoid” the marriage if she repudiates it within 3 years of turning 15 years of age so long as the marriage has not been consummated. Further, a marriage involving a party who has reached puberty requires the consent of that party; without consent, such marriages are void under the law. These legal standards are conflicting, and lead to confusion about the minimum age of marriage, status of child marriages, and rights of girls who are seeking to dissolve a child marriage); The Indian Christian Marriage Act, No. 15 of 1872 (The lack of clarity concerning the PCMA and personal laws is evidenced by several high court cases seeking to answer this specific question; see e.g. T. Sivakumar v. The Inspector of Police, H.C.P. No. 907 of 2011, H.C. Mad., 3 Oct. 2011; Court on Its Own Motion (Lajja Devi) v. State, W.P. (CRL) 338 of 2008, H.C. Del., 27 July 2012 (For example, under the PCMA, marriages of girls below 18 and boys below 21 are voidable at the request of either party who was a minor at the time that the marriage occurred within 2 years of attaining majority. However, child marriages are not void or voidable under the Hindu Marriage Act. Rather, a girl may leave a child marriage through a divorce,

- which can be granted if the girl was married before 15 and she repudiates the marriage after 15 and before 18); The Parsi Marriage and Divorce Act, No. 3 of 1936 (1993).
- ⁷² S.20, Prohibition of Child Marriage Act, 2006.
- ⁷³ Independent Thought v. Union of India & Anr., W.P.(C) 382 of 2013, S.C.C. India, para. 19 (Justice Deepak Gupta), 11 Oct. 2017.
- ⁷⁴ Mrs. Tahra Begum v. State of Delhi & Others, W.P.(CRL) 446 of 2012, H.C. Del., 9 May 2012; Seema Begum v. State of Karnataka, W.P. 75889 of 2013, H.C. Kar, 26 Feb. 2013.
- ⁷⁵ SPECIAL REPRESENTATIVE TO THE SECRETARY GENERAL ON VIOLENCE AGAINST CHILDREN, PROTECTING CHILDREN FROM HARMFUL PRACTICES IN PLURAL LEGAL SYSTEMS 10 (2012) (the Special Representative to the Secretary General on Violence against Children (SRSG on Violence against Children) has defined “plural or multiple legal systems” as indicating “the presence of more than one source of law in a country’s legal system, including formal statutory legislation in force alongside a system based on tradition and religion. The existence of plural legal systems in a given state is in some cases made explicit in the national constitution.”).
- ⁷⁶ S.18(3), The Hindu Marriage Act, No. 25, 1955.
- ⁷⁷ *Id.*
- ⁷⁸ *Id.*, S.13(2)(iv).
- ⁷⁹ *Id.*, S.5(ii)(b) & (c).
- ⁸⁰ *Id.*, S.12 (c).
- ⁸¹ CHILD MARRIAGE IN INDIA: SOCIO-LEGAL AND HUMAN RIGHTS DIMENSIONS *supra* note 4. See also CENTER FOR REPRODUCTIVE RIGHTS, CHILD MARRIAGE AND PERSONAL LAWS IN SOUTH ASIA (2014) citing SIR DINSHAH FARDUNJI MULLA, PRINCIPLES OF MAHOMEDAN LAW 115 (1907).
- ⁸² *Id.*; F.B. TYABJI, MUSLIM LAW 52 (1968) [hereinafter MUSLIM LAW].
- ⁸³ *Id.*
- ⁸⁴ S.2, Dissolution of Muslim Marriages Act No. 8, 1939.
- ⁸⁵ CHILD MARRIAGE IN INDIA: SOCIO-LEGAL AND HUMAN RIGHTS DIMENSIONS *supra* note 4; MUSLIM LAW *supra* note 82.
- ⁸⁶ S.3 & 15, Indian Christian Marriage Act No. 15, 1872.
- ⁸⁷ *Id.*, S.70.
- ⁸⁸ *Id.*, S.33 & S.60(1).
- ⁸⁹ *Id.*, S.19.
- ⁹⁰ *Id.*, S.70.
- ⁹¹ S. 5, The Indian Divorce (Amendment) Bill, Act. No. 51, 2011.
- ⁹² S.3(1), The Parsi Marriage and Divorce Act, No. 3, 1936.
- ⁹³ *Id.*, S.30-S.32.
- ⁹⁴ CHILD MARRIAGE IN INDIA: SOCIO-LEGAL AND HUMAN RIGHTS DIMENSIONS *supra* note 4
- ⁹⁵ *Id.*
- ⁹⁶ *Id.*
- ⁹⁷ Independent Thought v. Union of India & Anr., W.P. (C) 382 of 2013, S.C.C., para. 93 (Justice Madan Lokur), 11 Oct. 2017 (the Court holds that “primacy must be given to pro-child statutes over the IPC.”); S.8, The Criminal Law (Amendment) Ordinance, No. 13, 2013.
- ⁹⁸ S.2, The Protection of Children from Sexual Offences Act, No. 32, 2012.
- ⁹⁹ The Criminal Law (Amendment) Ordinance, No. 13, 2013.
- ¹⁰⁰ S.8, The Criminal Law (Amendment) Ordinance, No. 13, 2013.
- ¹⁰¹ *Id.*; S.2, The Protection of Children from Sexual Offences Act, No. 32, 2012.
- ¹⁰² Independent Thought v. Union of India & Anr., W.P. (C) 382 of 2013, S.C.C., para. 93 (Justice Madan Lokur), 11 Oct. 2017.
- ¹⁰³ *Id.*, para. 105.
- ¹⁰⁴ *Id.* paras. 2, 71-72.
- ¹⁰⁵ S.375-376 Indian Penal Code, 1860.
- ¹⁰⁶ NIRANTAR TRUST, AMERICAN JEWISH WORLD SERVICE, EARLY AND CHILD MARRIAGE IN INDIA: A LANDSCAPE ANALYSIS (2015), available at <http://www.nirantar.net/uploads/files/EM%20Report%20-%20English.pdf>.
- ¹⁰⁷ DR. ASHA BAJPAI, REPORT OF ENDING CHILD MARRIAGE: LITIGATION STRATEGY MEETING 17 (2015).
- ¹⁰⁸ Partners for Law in Development India, *National Consultation on Adolescent Sexuality, Health, and the Law: Mapping Intervention Related Challenges and Strategies*, available at <https://www.youtube.com/watch?v=q4Y5YI2WrWc>; KIRTI SINGH, UNFPA, LAWS AND SON PREFERENCE IN INDIA: A REALITY CHECK 111 (2013) [hereinafter LAWS AND SON PREFERENCE IN INDIA: A REALITY CHECK].
- ¹⁰⁹ S.3, Protection of Women from Domestic Violence Act, No. 43, 2005.
- ¹¹⁰ S.498 Indian Penal Code, 1860.
- ¹¹¹ S.18-S.22, Protection of Women from Domestic Violence Act, No. 43, 2005.
- ¹¹² S.28(4), Juvenile Justice Care and Protection of Children Act, 2015.
- ¹¹³ *Id.*, S.2(14).
- ¹¹⁴ *Id.*
- ¹¹⁵ Independent Thought v. Union of India & Anr., W.P. (C) 382 of 2013, S.C.C., 11 Oct. 2017.
- ¹¹⁶ S.3 & S.37, Juvenile Justice Care and Protection of Children Act, 2015.
- ¹¹⁷ T. Sivakumar v. The Inspector of Police, H.C.P. 907 of 2011, H.C. Mad., 3 Oct. 2011.
- ¹¹⁸ ASIAN CENTRE FOR HUMAN RIGHTS, INDIA’S HELL HOLES: CHILD SEXUAL ASSAULT IN JUVENILE JUSTICE HOMES 1 (2013), available at <http://www.achrweb.org/reports/india/IndiasHellHoles2013.pdf> [hereinafter CHILD SEXUAL ASSAULT IN JUVENILE JUSTICE HOMES].
- ¹¹⁹ Court on Its Own Motion (Lajja Devi) v. State, W.P. (CRL) 338 of 2008, H.C. Del., 27 July 2012.
- ¹²⁰ CHILD MARRIAGE IN INDIA: SOCIO-LEGAL AND HUMAN RIGHTS DIMENSIONS *supra* note 4.
- ¹²¹ See e.g. Mahalingam Ponnusamy, Times of India, *Namakkal village shuts out reform, sticks to child marriage* (2011).
- ¹²² Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19: Violence against women*, (11th Sess., 1992), at 331, para. 23, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008).
- ¹²³ WHAT WE DO, WHY ‘NOT’ CHILD MARRIAGE, *supra* note 16.
- ¹²⁴ S.3, Dowry Prohibition Act, 1961.
- ¹²⁵ See TATA INSTITUTE OF SOCIAL SCIENCES, CHILD MARRIAGE & EARLY MOTHERHOOD, UNDERSTANDINGS FROM LIVED EXPERIENCES OF YOUNG PEOPLE 25-30 (2015), available at <http://coeay.tiss.edu/cmaw/wp-content/uploads/2015/10/CMEM-REPORT.pdf> [hereinafter UNDERSTANDINGS FROM LIVED EXPERIENCES OF YOUNG PEOPLE]; see also C. Maya, *Poor implementation of Dowry Prohibition Act (2006)*, available at <http://www.thehindu.com/todays-paper/tp-national/tp-kerala/poor-implementation-of-dowry-prohibition-act/article3054423.ece>.

- ¹²⁶ Rukmini S., *Dowry: What the data says and what it doesn't*, (2014), available at <http://www.thehindu.com/opinion/blogs/blog-datadelve/article6186330.ece>. See also GOVERNMENT OF INDIA, MINISTRY OF HOME AFFAIRS, NATIONAL CRIME RECORDS BUREAU, CRIME IN INDIA, 2013 (2013), available at <http://ncrb.nic.in/CD-CII2013/compendium%202013.pdf> [hereinafter CRIME IN INDIA, 2013].
- ¹²⁷ *Id.*
- ¹²⁸ S.3, Dowry Prohibition Act, 1961.
- ¹²⁹ See UNICEF & EUROPEAN COMMISSION, DESK REVIEW OF CHILD MARRIAGE, 10 (2011), available at <http://www.khubmarriage18.org/sites/default/files/18.pdf><http://www.khubmarriage18.org/sites/default/files/18.pdf>.
- ¹³⁰ *Id.*
- ¹³¹ UNICEF, IMPROVING CHILDREN'S LIVES, TRANSFORMING THE FUTURE: 25 YEARS OF CHILD RIGHTS IN SOUTH ASIA 70 (2014) [hereinafter TRANSFORMING THE FUTURE: 25 YEARS OF CHILD RIGHTS IN SOUTH ASIA] (teenage pregnancy and childbirth is almost 4 times higher among girls with no education than among those with secondary education).
- ¹³² THE CONSTITUTION OF INDIA, 1950, art. 21 ("The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."); Right of Children to Free and Compulsory Education Act, 2009.
- ¹³³ AZIM PREMJI FOUNDATION, RIGHT TO EDUCATION ACT: KEY GAPS IN POLICY AND IMPLEMENTATION (2011), available at <http://www.azimpremjifoundation.org/pdf/Note%20on%20RTE%20Policy%20and%20Implementation%20Gaps%20for%20NAC.pdf>; CHILD MARRIAGE IN INDIA: SOCIO-LEGAL AND HUMAN RIGHTS DIMENSIONS *supra* note 4; see also A STATISTICAL ANALYSIS OF CHILD MARRIAGE IN INDIA: BASED ON CENSUS 2011, *supra* note 11; UNICEF, The State of the World's Children 2016 Statistical Tables (2016) available at <https://data.unicef.org/resources/state-worlds-children-2016-statistical-tables/>.
- ¹³⁴ WHAT WE DO, WHY 'NOT' CHILD MARRIAGE, *supra* note 16.
- ¹³⁵ CEDAW, *General Recommendation No. 21*, *supra* note 60.
- ¹³⁶ See Special Rapporteur on contemporary forms of slavery, including its causes and consequences, *Rep. of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences*, Gulnara Shahinian, *Thematic report on servile marriage*, para. 14, U.N. Doc. A/HRC/21/41 (July 10, 2012).
- ¹³⁷ *Id.*
- ¹³⁸ Association for Social Justice & Research v. Union of India & Ors., W.P.(CRL) 535 of 2010, H.C. Del., 13 May 2010; T. Sivakumar v. The Inspector of Police, H.C.P. 907 of 2011, H.C. Mad., 3 Oct. 2011.
- ¹³⁹ THE CONSTITUTION OF INDIA, 1950, art. 24.
- ¹⁴⁰ S.3, Child Labor Prohibition and Regulation Act, 1986.
- ¹⁴¹ *Id.*, S.2.
- ¹⁴² LAWS AND SON PREFERENCE IN INDIA: A REALITY CHECK *supra* note 108 at 131.
- ¹⁴³ Kirti Singh, *Separated and divorced women in India: economic rights and entitlements 2* (2013) [hereinafter *Separated and divorced women in India: economic rights and entitlements*].
- ¹⁴⁴ S.25, The Hindu Marriage Act, No. 25 of 1955; S. 23 Hindu Adoption and Maintenance Act, 1956; S.4, Prohibition of Child Marriage Act, 2006. S.30-S.32; S.40, The Parsi Marriage and Divorce Amendment Act, No. 5, 1938; S. 37, Special Marriage Act, 1954 (in determining the amount, the Court will consider the husband's salary and assets, though the burden rests on the wife to prove spousal income).
- ¹⁴⁵ *Separated and divorced women in India: economic rights and entitlements, supra* note 143 at 33 ("those with no income received merely 13 per cent of the salary... women who earned less than `1,000 but whose spouses earned between `5,000 and `56,000 were awarded an average of 11 per cent of their male spouse's salary. Surveyees who earned more than `10,000 per month but whose spouses earned between `100,000 and `250,000 per month, received an average maintenance of 4.5 per cent of the man's income.").
- ¹⁴⁶ *Id.* (only 47.4% of women surveyed report not asking for maintenance, for varying reasons: not knowing they were entitled to maintenance, not having the money to go through the legal proceedings, and not wishing to depend on the husband).
- ¹⁴⁷ *Id.*
- ¹⁴⁸ LAWS AND SON PREFERENCE IN INDIA: A REALITY CHECK *supra* note 108 at 33.
- ¹⁴⁹ *Id.*, at 34-42.
- ¹⁵⁰ Hindu Succession Act, 1956.
- ¹⁵¹ LAWS AND SON PREFERENCE IN INDIA: A REALITY CHECK *supra* note 108 at 38.
- ¹⁵² *Id.*, at 44.
- ¹⁵³ Registration of Births and Deaths Act, No. 18, 1969.
- ¹⁵⁴ UNICEF, INDIA STATISTICS (2013), available at http://www.unicef.org/infobycountry/india_statistics.html.
- ¹⁵⁵ DNA INDIA, *Justice JS Verma Committee's Recommendations: Complete List* (2013), available at: <http://www.dnaindia.com/india/report-justice-js-verma-committees-recommendations-complete-list-1792005>.
- ¹⁵⁶ NATIONAL COMMISSION FOR WOMEN, DRAFT ON THE COMPULSORY REGISTRATION OF MARRIAGES BILL (2005) [hereinafter DRAFT ON THE COMPULSORY REGISTRATION OF MARRIAGES BILL].
- ¹⁵⁷ Smt. Seema v. Ashwani Kumar (2006), 2 S.C.C. 578.
- ¹⁵⁸ PAIRVI AND MADHYA PRADESH HUMAN RIGHTS COMMISSION, CHILD MARRIAGES IN MADHYA PRADESH, AN INCESSANT INFRINGEMENT OF RIGHTS, A RAPID ASSESSMENT OF CHILD MARRIAGES IN BHIND, MORENA, AND GWALIOR DISTRICTS OF MADHYA PRADESH 47 (2009).
- ¹⁵⁹ S.1(2), Hindu Minority and Guardianship Act, 1956. See also G. Saravanan v. The Commissioner Of Police, H.C.P. 190 of 2011, H.C. Mad., 6 Apr. 2011; Sh. Jitender Kumar Sharma v. State and Anr., W.P.(CRL) 1003 of 2010, H.C. Del., 11 Aug. 2010.
- ¹⁶⁰ *Id.*, S.6; S.19(a), Guardians and Wards Act, 1890.
- ¹⁶¹ *Id.*, S.1(2). See also G. Saravanan v. The Commissioner Of Police, H.C.P. 190 of 2011, H.C. Mad., 6 Apr. 2011; Sh. Jitender Kumar Sharma v. State and Anr., W.P.(CRL) 1003 of 2010, H.C. Del., 11 Aug. 2010.
- ¹⁶² *Id.*, S.19(a); S.6, Hindu Minority and Guardianship Act, 1956 "Nothing in this Chapter shall authorize the Court to appoint or declare a guardian of the property of a minor whose property is under the superintendence of a Court of Wards or to appoint or declare a guardian of the person, (a) of a minor who is married female and whose husband is not, in the opinion of Court, unfit to be guardian of her person.").
- ¹⁶³ *Id.*, S.6.
- ¹⁶⁴ S.9, Prohibition of Child Marriage Act, 2006.
- ¹⁶⁵ G. Saravanan v. The Commissioner Of Police, H.C.P. 190 of 2011, H.C. Mad., 6 Apr. 2011; Sh. Jitender Kumar Sharma v. State and Anr., W.P.(CRL) 1003 of 2010, H.C. Del., 11 Aug. 2010.

- ¹⁶⁶ HAQ: Centre for Child Rights & Campaign Against Child Trafficking (CACT), *Child Trafficking in India*, 18-25 (2016).
- ¹⁶⁷ S. 12, Prohibition of Child Marriages Act, 2006.
- ¹⁶⁸ *Independent Thought v. Union of India & Anr.*, W.P. (C) 382 of 2013, S.C.C., para. 22 (Justice Madan Lokur), 11 Oct. 2017.
- ¹⁶⁹ Siddhartha Sarkar, *Child Marriage Trafficking in India: Victims of Sexual and Gender-Based Violence*, 8 ANTHROPOLOGY NOW 3, 63 (2016).
- ¹⁷⁰ S.366(A), Indian Penal Code, 1860 (penalizes procurement of minor girl under 18 years of age, with the knowledge that she will be or is likely to be forced to illicit intercourse); S. 373, Indian Penal Code, 1860 (penalizes buying, hiring, or otherwise obtaining possession of a minor for the purpose of prostitution or illicit intercourse).
- ¹⁷¹ *Id.*, S.370.
- ¹⁷² *Id.*
- ¹⁷³ S. 11(1), Prohibition of Child Marriages Act, 2006.
- ¹⁷⁴ WORLD HEALTH ORGANIZATION, UNDERSTANDING AND ADDRESSING VIOLENCE AGAINST WOMEN: SEXUAL VIOLENCE 6 (2012), available at http://apps.who.int/iris/bitstream/10665/77434/1/WHO_RHR_12.37_eng.pdf
- ¹⁷⁵ Human Rights Council, *Report of the Working Group on the Issue of discrimination against women in law and in practice*, para. 70, U.N. Doc A/HRC/29/40 (April 2, 2015); see also UNDERSTANDINGS FROM LIVED EXPERIENCES OF YOUNG PEOPLE *supra* note 125.
- ¹⁷⁶ See e.g., *Suchita Srivastava & Anr. v. Chandigarh Administration*, S.L.P. 5845 of 2009, S.C.C., 28 Aug. 2009; *Laxmi Mandal v. Deen Dayal Harinagar Hospital & Others*, W.P.(C) 8853 of 2008, H.C. Del., 6 Apr. 2010; *Sandesh Bansal v. Union of India*, W.P. 9061 of 2008, H.C. M. & P., 9 Aug. 2011; *High Court on Its Own Motion v. State of Maharashtra*, C.S. 1 of 2016, H.C. Bom., 19 Sept. 2016.
- ¹⁷⁷ *Suchita Srivastava & Anr. v. Chandigarh Administration*, S.L.P. 5845 of 2009, S.C.C., 28 Aug. 2009.
- ¹⁷⁸ *Independent Thought v. Union of India & Anr.*, W.P. (C) 382 of 2013, S.C.C., para. 89 (Justice Madan Lokur), 11 Oct. 2017.
- ¹⁷⁹ *Id.*, at 64.
- ¹⁸⁰ S.3(4), Medical Termination of Pregnancy Act, 1971.
- ¹⁸¹ *Anil Kumar Malhotra v. Dr. Mangla Dogra*, C.A. 004705 of 2013, S.C.C., 10 May 2013; *Anil Kumar Malhotra v. Ajay Pasricha*, C.A. 0047004 of 2013, S.C.C. 5 May 2013.
- ¹⁸² *Id.*, at 77 (Justice Madan Lokur).
- ¹⁸³ *Id.*, at 29 (Justice Deepak Gupta).
- ¹⁸⁴ *Id.* at 59-64, 87-89.
- ¹⁸⁵ THE CONSTITUTION OF INDIA, 1950, art. 21.
- ¹⁸⁶ *Independent Thought v. Union of India & Anr.*, W.P. (C) 382 of 2013, S.C.C., para. 88 (Justice Madan Lokur), 11 Oct. 2017.
- ¹⁸⁷ *Id.*, at para. 87 (Justice Madan Lokur).
- ¹⁸⁸ *Id.*, at para. 64 (Justice Madan Lokur).
- ¹⁸⁹ *Id.*, at para. 88 (Justice Madan Lokur).
- ¹⁹⁰ *Id.*
- ¹⁹¹ *Id.*, at para. 88 (Justice Madan Lokur); THE CONSTITUTION OF INDIA, 1950, art. 21.
- ¹⁹² *Independent Thought v. Union of India & Anr.*, W.P. (C) 382 of 2013, S.C.C., concurring judgment of Gupta J., para. 27 (Justice Madan Lokur), 11 Oct. 2017.
- ¹⁹³ *Id.*, at para. 19 (Justice Deepak Gupta).
- ¹⁹⁴ *Id.*, at para. 93 (Justice Madan Lokur).
- ¹⁹⁵ *Id.*, at para. 95 (Justice Madan Lokur).
- ¹⁹⁶ *Independent Thought v. Union of India & Anr.*, W.P. (C) 382 of 2013, S.C.C., 11 Oct. 2017.
- ¹⁹⁷ S.3, Prohibition of Child Marriage Act, 2006.
- ¹⁹⁸ *Independent Thought v. Union of India & Anr.*, W.P. (C) 382 of 2013, S.C.C., para. 46 (Justice Deepak Gupta), 11 Oct. 2017.
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- ²⁰⁰ *Amnider Kaur v. State of Punjab*, C.R.M. 29790 of 2009, H.C. P. & H., 27 Nov. 2009.
- ²⁰¹ *Court on Its Own Motion (Lajja Devi) v. State*, W.P. (CRL) 338 of 2008, H.C. Del., 27 July 2012; *Mohd. Nihal v. State*, W.P.(CRL) 591 of 2008, H.C. Del., 8 July 2008, *T. Sivakumar v. The Inspector of Police*, H.C.P. 907 of 2011, H.C. Mad., 3 Oct. 2011.
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- ²⁰³ *Independent Thought v. Union of India & Anr.*, W.P. (C) 382 of 2013, S.C.C., paras. 77-78 (Justice Madan Lokur), 11 Oct. 2017.
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- ²⁰⁹ *T. Sivakumar v. The Inspector of Police*, H.C.P. 907 of 2011, H.C. Mad., 3 Oct. 2011.
- ²¹⁰ *Court on Its Own Motion (Lajja Devi) v. State*, W.P. (CRL) 338 of 2008, H.C. Del., 27 July 2012.
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- ²¹² S.17 & S.19, Guardianship and Wards Act, 1890.
- ²¹³ *T. Sivakumar v. The Inspector of Police*, H.C.P. 907 of 2011, H.C. Mad., 3 Oct. 2011.
- ²¹⁴ *Pratapa Ram v. State*, C.M. 1154 of 2012, H.C. Raj., 24 July 2012.
- ²¹⁵ *Id.*
- ²¹⁶ *Independent Thought v. Union of India & Anr.*, W.P. (C) 382 of 2013, S.C.C., para. 14 (Justice Deepak Gupta), 11 Oct. 2017.
- ²¹⁷ *Id.*, at para. 14 (Justice Deepak Gupta).
- ²¹⁸ *Ms. Muthamma Devaya v. Union of India*, W.P.(C) 11154 of 2006, H.C. Kar., 10 Nov. 2010.
- ²¹⁹ *Id.*
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- ²²¹ *Ms. Muthamma Devaya v. Union of India*, W.P.(C) 11154 of 2006, H.C. Kar., 10 Nov. 2010.

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- ²⁴⁹ Centre for Law and Policy Research and Center for Reproductive Rights, Child Marriage and the Law: A State Consultation (2017), available at <http://clpr.org.in/consultation-child-marriage/> [hereinafter Child Marriage and the Law: A State Consultation].
- ²⁵⁰ BETI BACHAO BETI PADHAO SCHEME, *supra* note 239 (Incentives include high interest rates for the savings accounts opened under the scheme and provides favorable tax benefits on the deposits. The money may be used for education or marriage only after the girl turns 18 years of age. It is a small savings account scheme under the aegis of *Beti Bachao Beti Padhao* initiative of the Government).
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- ²⁵⁶ *Independent Thought v. Union of India & Anr.*, W.P. (C) 382 of 2013, S.C.C., paras. 11-17 (Justice Madan Lokur), Oct. 2017,
- ²⁵⁷ Human Rights Committee, *Universal Periodic Review Report on the outcome of India*, (27th Sess., 2017), U.N. Doc. A/HRC/WG.6/27/IND/1 (2017).
- ²⁵⁸ *Id.* (the recommendation relating to child marriage that was noted rather than accepted came from Canada, and was more broadly worded to address multiple forms of violence against women and girls, including marital rape).
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- ²⁶⁶ CENTER FOR REPRODUCTIVE RIGHTS, ACCOUNTABILITY FOR CHILD MARRIAGE: KEY U.N. RECOMMENDATIONS TO GOVERNMENTS IN SOUTH ASIA ON REPRODUCTIVE RIGHTS AND SEXUAL VIOLENCE (2013) [hereinafter ACCOUNTABILITY FOR CHILD MARRIAGE].
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- ²⁶⁸ S.19, Prohibition of Child Marriage Act, 2006.
- ²⁶⁹ *Id.*, S.16.
- ²⁷⁰ GOVERNMENT OF INDIA, PRESS INFORMATION BUREAU, CHILD MARRIAGES IN INDIA (2013), available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=100741>.
- ²⁷¹ NATIONAL POLICY FOR EMPOWERMENT OF WOMEN, *supra* note 234 at 22.
- ²⁷² *Id.* (In Madhya Pradesh, the District Magistrates have been designated as CMPOs due to monetary constraints).
- ²⁷³ As per data received from Child Marriage Monitoring Cell, DWCD, Karnataka, trainings of CMPOs at block, taluk, municipality, and district levels were conducted in the period 2012-13 to 2015-16. 1500 district level Judges were sensitized about the law in 2015-16. In 2016-17, awareness programmes were conducted for Anganwadi workers, ICDS Supervisors, District Child Protection Officers, and CMPOs, in collaboration with the Administrative Training Institute, Mysore and district level Training Institutes; See also GOVERNMENT OF INDIA, DEPARTMENT OF WOMEN AND CHILD DEVELOPMENT, CHILD MARRIAGE MONITORING CELL, VIDE GOVT. ORDER No.MaMAE/501/SJD/2011 (2011) available at http://dwcdkar.gov.in/index.php?option=com_content&id=109&Itemid=114&lang=en [hereinafter CHILD MARRIAGE MONITORING CELL]; Child Marriage and the Law: A State Consultation, *supra* note 249.
- ²⁷⁴ UNDERSTANDINGS FROM LIVED EXPERIENCES OF YOUNG PEOPLE *supra* note 125 at 25-30.
- ²⁷⁵ *Id.* (Often, law enforcement officers have also been married as children or have married their children).
- ²⁷⁶ Vishaka & Ors. v. State of Rajasthan (1997) A.I.R. 3011; PBS NOW, *Child Brides*, available at <http://www.pbs.org/now/shows/341/transcript.html>.
- ²⁷⁷ GOVERNMENT OF INDIA, MINISTRY OF WOMEN & CHILD DEVELOPMENT, NATIONAL POLICY FOR EMPOWERMENT OF WOMEN, REPORT ON STATUS OF IMPLEMENTATION OF PROHIBITION OF CHILD MARRIAGE ACT COLLECTED FROM THE STATES 22 (2014) available at <http://nmew.gov.in/WriteReadData/1892s/PCMA%20FINAL-19112720.pdf>.

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- ²⁷⁹ *Id.*
- ²⁸⁰ Arumugam Servai v. State of Tamil Nadu (2011) S.C.R. 958, arising out of S.L.P.(CRL) 8084 of 2016.
- ²⁸¹ UNDERSTANDINGS FROM LIVED EXPERIENCES OF YOUNG PEOPLE *supra* note 125 at 25-30 (disobedience of marriage rules of caste endogamy in particular can lead to severe consequences, ranging from excommunication to even killing of the couple).
- ²⁸² Press Trust of India, *Haryana Khap panchayats says marry them young to avoid rape cases* (2012), available at <http://www.ndtv.com/india-news/haryana-khap-panchayats-says-marry-them-young-to-avoid-rape-cases-501147>.
- ²⁸³ Independent Thought v. Union of India & Anr., W.P. (C) 382 of 2013, S.C.C., paras. 75-76 (Justice Madan Lokur) and para. 28 (Justice Deepak Gupta) 11 Oct. 2017.
- ²⁸⁴ CRIME IN INDIA, 2013, *supra* note 126; See also GOVERNMENT OF INDIA, MINISTRY OF HEALTH AND FAMILY WELFARE, DISTRICT LEVEL HOUSEHOLD AND FACILITY SURVEY 2007-2008 FACTSHEET, available at <http://www.rchiips.org/pdf/rch3/state/Jharkhand.pdf> [hereinafter DISTRICT LEVEL HOUSEHOLD AND FACILITY SURVEY] (an example is Jharkhand, which did not have a single incidence of prosecution of child marriage in 2012, although 55.7% of marriages in Jharkhand were child marriages).
- ²⁸⁵ GOVERNMENT OF INDIA, MINISTRY OF HOME AFFAIRS, NATIONAL CRIME RECORDS BUREAU, CRIME IN INDIA, 2012: COMPENDIUM 150 (2012), available at <http://ncrb.nic.in/CD-CII2012/Compendium2012.pdf> (90.6 percent, or 1,669 out of 1,843 cases).
- ²⁸⁶ *Id.* (45 of 162 trials).
- ²⁸⁷ Rashida Manjoo – Statement – Commission on the Status of Women, 59th Session, *supra* note 267.
- ²⁸⁸ UNDERSTANDINGS FROM LIVED EXPERIENCES OF YOUNG PEOPLE *supra* note 125 at 38.
- ²⁸⁹ S.12, Legal Services Act, 1987.
- ²⁹⁰ S.4, Prohibition of Child Marriage Act, 2006.
- ²⁹¹ *Separated and divorced women in India: economic rights and entitlements*, *supra* note 143 at 22.
- ²⁹² *Id.*
- ²⁹³ S.4, Prohibition of Child Marriage Act, 2006.
- ²⁹⁴ *Id.*
- ²⁹⁵ REPORT 205: PROPOSAL TO AMEND THE PROHIBITION OF CHILD MARRIAGE ACT, *supra* note 16 at 43.
- ²⁹⁶ S.4, Prohibition of Child Marriage Act, 2006.
- ²⁹⁷ Pratapa Ram v. State, C.M. 1154 of 2012, H.C. Raj., 24 July 2012.
- ²⁹⁸ T. Sivakumar v. The Inspector of Police, H.C.P. 907 of 2011, H.C. Mad., 3 Oct. 2011.
- ²⁹⁹ Meena and Another v. State of Delhi, W.P.(CRL) 1231/2012, H.C. Del., 17 Oct. 2012.
- ³⁰⁰ CHILD SEXUAL ASSAULT IN JUVENILE JUSTICE HOMES *supra* note 118.
- ³⁰¹ Court on Its Own Motion (Lajja Devi) v. State, W.P. 338 of 2008, H.C. Del., 27 July 2012.
- ³⁰² G. Saravanan v. The Commissioner of Police, H.C.P. 190 of 2011, H.C. Mad., 6 April 2011.
- ³⁰³ KARNATAKA STATE GOVERNMENT, DRAFT KARNATAKA STATE GIRL CHILD POLICY (2015) available at http://webcache.googleusercontent.com/search?q=cache:aNJgtMrtbfoJ:dwcdkar.gov.in/index.php%3Foption%3Dcom_docman%26task%3Ddoc_view%26gid%3D439%26tmpl%3Dcomponent%26format%3Draw%26Itemid%3D124%26lang%3Den+%&cd=1&hl=en&ct=clnk&gl=us.
- ³⁰⁴ *Id.*
- ³⁰⁵ GOVERNMENT OF INDIA, MINISTRY OF HEALTH AND FAMILY WELFARE, NATIONAL FAMILY HEALTH SURVEY (2005-2006), available at <https://dhsprogram.com/pubs/pdf/frind3/frind3-vol1andvol2.pdf> [hereinafter NATIONAL FAMILY HEALTH SURVEY (2005-2006)]; NATIONAL FAMILY HEALTH SURVEY 4-5, *supra* note 8.
- ³⁰⁶ Interview with key stakeholder and expert on child marriage in Karnataka, India, 13 Apr. 2017, on file with CLPR (“From my experience of many years in the field, I can say that child marriages are as prevalent in North as in South Karnataka; southern districts of Chamrajnagar and Ramanagara are examples where there is significant prevalence of child marriage.”).
- ³⁰⁷ For example, there are also entrenched norms of child marriage in some communities like the Golla community, a pastoral caste, and the Lambani tribe in the Bellary region of Karnataka.
- ³⁰⁸ Ms. Muthamma Devaya v. Union of India, W.P.(C) 11154 of 2006, H.C. Kar., 10 Nov. 2010.
- ³⁰⁹ *Id.*; see also CORE COMMITTEE, REPORT ON PREVENTION OF CHILD MARRIAGES IN THE STATE OF KARNATAKA, HEADED BY JUSTICE SHIRAJI V. PATIL 308-331 (2011), available at <http://www.concernedforworkingchildren.org/wp-content/uploads/Report-on-prevention-of-child-marrriages-in-Karnataka-Vol-1.pdf>.
- ³¹⁰ *Id.*
- ³¹¹ Schedule I read with Sub-rule (1) of rule 4, Karnataka State Rules, 2014.
- ³¹² *Id.*, Schedule III read with Sub-rule (2) of rule 6.
- ³¹³ *Id.*, Schedule III read with Sub-rule (2) of rule 6.
- ³¹⁴ CHILD MARRIAGE MONITORING CELL, *supra* note 275 (“For the effective implementation of committee recommendation Child Marriage Prohibition monitoring cell has been created at Directorate of women & Child development vide Govt. order No.MaMaE/501/SJD/2011 dated 16/11/2011, consists of 1 Deputy Director, 1 Assistant Director and 2 First division assistants 2 computer operators and 1 group ‘D’ from outsource.”).
- ³¹⁵ *Id.*
- ³¹⁶ Prohibition of Child Marriage (Karnataka Amendment) Bill, 2016, I.A. Bill No. 01 of 2016 as passed by Karnataka Legislative Assembly.
- ³¹⁷ *Id.*, S.3.
- ³¹⁸ *Id.*, S.15 & S.9.
- ³¹⁹ *Id.*, S. 26; Karnataka Gazette Extraordinary, Part IV-A, No. 46, 2017.
- ³²⁰ *Rep. of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo – Addendum – Mission to India*, *supra* note 264.
- ³²¹ Accountability for Child Marriage, *supra* note 266.
- ³²² Independent Thought v. Union of India & Anr., W.P. (C) 382 of 2013, S.C.C., para. 104 (Justice Madan Lokur), 11 Oct. 2017
- ³²³ Rashida Manjoo – Statement – Commission on the Status of Women, 59th Session, *supra* note 267.
- ³²⁴ POPULATION ENUMERATION DATA, *supra* note 7.
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- ³⁴⁸ Petition Filed in Supreme Court Case Against the Delhi High Court Judgment in Shikha Sharmas Case, available at <http://ncw.nic.in/PDFFiles/shikha%20sharma%20case.pdf> (“The petition seeks to highlight the disparities in various legislations, particularly the Child Marriage (Restraint) Act 1929, The Hindu Marriage Act 1955, and the explanation to Section 375 of the Indian Penal Code, 1890 as the well as the Shariat law, the Indian Divorce Act, 1869 and the Juvenile Justice (care and protection of children) Act 2000. “The petition raises the following questions of law of general public importance which needs to be adjudicated: A) Whether the provisions of Section 375 and 376 of the Indian Penal Code are in conformity with the Child Marriage (restraint) Act? B) Whether the Hindu Marriage Act is in conformity with the Child Marriage (restraint) Act? C) Whether allowing sexual intercourse by a man with a girl as young as 15 years contravene the principles of the Juvenile Justice (care and protection of children) Act, 2000 as well as the Child Marriage (restraint) Act, 1929?”).
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- v. JAYA SAGADE, CHILD MARRIAGE IN INDIA: SOCIO-LEGAL AND HUMAN RIGHTS DIMENSIONS 81 (2005).
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Notes

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