

PARLIAMENT OF INDIA
RAJYA SABHA

**DEPARTMENT RELATED PARLIAMENTARY STANDING
COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES,
LAW AND JUSTICE**

**THIRTEENTH REPORT
ON
THE PREVENTION OF CHILD MARRIAGE BILL, 2004
(PRESENTED TO THE RAJYA SABHA ON 29th NOVEMBER, 2005)
(LAID ON THE TABLE OF THE LOK SABHA ON 29th NOVEMBER, 2005)**

**RAJYA SABHA SECRETARIAT
NEW DELHI
NOVEMBER, 2005/ AGRAHAYANA, 1927 (SAKA)**

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COMPOSITION OF THE COMMITTEE (2005-06)

1. Shri E.M. Sudarsana Natchiappan — *Chairman*

RAJYA SABHA

2. Dr. Radhakant Nayak
3. Shri Raashid Alvi
4. Shri Balavantalias Bal Apte
5. Shri Ram Nath Kovind
6. Shri Tariq Anwar
7. Shri Ram Jethmalani
8. Dr. P.C. Alexander
9. Vacant
10. Vacant

LOK SABHA

11. Dr. Shafiqur Rahman Barq
12. Kumari Mamata Banerjee
13. Shri Chhattar Singh Darbar
14. Shri N.Y. Hanumanthappa
15. Shri S.K. Kharventhan
16. Shri Shailendra Kumar
17. Prof. Vijay Kumar Malhotra
18. Shri A.K. Moorthy
19. Shri Ram Chandra Paswan
20. Shri Dahyabhai Vallabhbhai Patel
21. Shri Brajesh Pathak
22. Shri Shrinivas Patil
23. Shri Harin Pathak
24. Shri Varkala Radhakrishnan
25. Smt. M.S.K. Bhavani Rajenthiran
26. Shri Vishvendra Singh
27. Shri Bhupendrasinh Solanki
28. Vacant
29. Vacant
30. Vacant
31. Vacant

SECRETARIAT

Shri Tapan Chatterjee, Joint Secretary
Shri Surinder Kumar Watts, Deputy Secretary
Smt. Sunita Sekaran, Under Secretary
Shri Vinoy Kumar Pathak, Committee Officer

INTRODUCTION

1. I, The Chairman of the Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, having been authorised by the Committee, present this Thirteenth Report of the Committee relating to the Prevention of Child Marriage Bill, 2004* (Annexure A).

2. In pursuance of the rules relating to the Department-related Parliamentary Standing Committee, the Hon'ble Chairman, Rajya Sabha referred^{**} the Bill, as introduced in the Rajya Sabha, on the 24th December, 2004.

3. The Committee decided to issue Press Release in print, audio, visual and electronic media to solicit views/suggestions from interested individuals/organisations/institutions on the various provisions of the Bill.

4. In response thereto numerous memoranda containing the suggestions were received by the Committee which were subsequently forwarded to the Legislative Department, Ministry of Law and Justice for their comments thereon.

5. The Committee considered the Bill and heard the presentation of the Secretary, Legislative Department, Ministry of Law and Justice in its meeting held on the 14th July, 2005.

6. The Committee heard oral evidence of witnesses (list at Annexure 'B') to have better appreciation of the subject and also sought response of Department of Women and Child Development (Ministry of Human Resource Development) in its meetings held on 12th September, 2005 and 27th September, and 28th September, 2005. The Committee discussed the Bill on 17th October and held clause-by-clause consideration on 18th October.

7. While considering the Bill, the Committee took note of the following documents/information placed before it:—

- (i) Background note on the Bill;
- (ii) The Child Marriage Restraint Act, 1929;
- (iii) The Annual Report of National Commission for Women for 1995-96;
- (iv) The Annual Report of National Human Rights Commission for 2001-02.
- (v) Suggestions/views of the witnesses and comments received thereon from the Legislative Department Ministry of Law and Justice.

10. The Committee held 7 meetings in all to dispose of the Bill.

11. The Committee adopted the Report in its meeting held on the 27th October, 2005.

12. For the facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

New Delhi
October 27, 2005

E. M. SUDARSANA NATCHIAPPAN
Chairman
Department Related Parliamentary Standing
Committee on Personnel, Public Grievances,
Law and Justice

REPORT
PRACTICE OF CHILD MARRIAGES : A SOCIAL EVIL

- "Child marriage is a practice which continues to be a major stumbling block to the achievement of human rights".

This quotation of Innocent Digest No. – 7, a publication of UNICEF amply depicts the gravity of the problem afflicting modern society.

1.1. General meaning of child marriage is a marriage of individuals before they attain the age of adulthood. The Child Marriage Restraint Act, 1929 defines "Child Marriage" as a marriage to

which either of the contracting parties is a child. Child marriage is wide spread in some parts of India and systematically engraves the exploitation and subjugation in society. There could not be any better example of showing perilous effects of child marriage than the extract from a letter written by Smt. Rukhmabai, a victim of child marriage, to the Times of India on June 26, 1885 which has been reproduced in the book titled “Child Marriages in India” by Jaya Sagade (Oxford University Press, 2005). The narration of Smt. Rukhmabai on evil effects of child marriage goes us under:—

“I am one of those unfortunate Hindu women whose hard lot is to suffer the unnameable miseries entailed by the custom of early marriage. This wicked practice of child marriage has destroyed the happiness of my life. It comes between me and the things which I prize above all others—study and mental cultivation. Without the least fault of mine I am doomed to seclusion; every aspiration of mine to rise above my ignorant sisters is looked down upon with suspicion and is interpreted in the most uncharitable manner.”

1.2. There has not been any sign of curtailment of this feudal practice in certain areas even one hundred and twenty years later. This is evident from the recent attack on a supervisor of Integrated Child Development Services Scheme (ICDS), Madhya Pradesh who tried to prevent young girls from being married off in a mass ceremony. On the Committee’s invitation, Shakuntala Verma, appeared before it and gave an account of the shocking incident renewing the debate on child marriage, which, though outlawed, is continuing unabated. The committee finds it pertinent to describe what shocked the entire nation and shattered the belief of living in an era of information and technology.

1.3. Shakuntala Verma went to Bhangarh Village in Dhar District of Madhya Pradesh on may 11, 2005 after a tip off that local families there were planning to marry off their young daughters. As instructed by the Sub-Divisional Magistrate, she asked for proof of the girls’ ages, but was forced to leave after members of the family threatened her. Later, that evening a person, armed with a sword, came to her house and began slashing at her. As she tried to protect herself, one hand was severed and the other cut besides receiving serious injuries on head She was rushed to an Indore hospital where she battled for her life. After a sixteen hours operation her severed hand was reattached by rejoining arteries, bones, veins and nerves. She had spent ten days explaining to the locals why child marriage being planned could prove harmful to their children but to no avail.

1.4. The above two examples amply confirm that the practice of child marriage is inextricably connected with the customs and traditions in a very exploitive form so much so that India’s waging a campaign against this evil has been a failed attempt in certain areas due to half hearted efforts of those specific areas/regions. Many communities in Rajasthan and Madhya Pradesh have their deep rooted faith in perpetuation of this practice and there is considerable evidence that they are not ready to eradicate this practice. Various researches and studies conducted to assess devastating effects of child marriage have thrown sufficient light on how child marriages contribute to virtually every social problem that affects women. Early marriage also has implications for the well being of families and for society as a whole where girls are uneducated and unprepared for their roles as mothers and contributors to society, there are costs to be borne at every level from the individual household to the nation as a whole.

1.5. Unfortunate aspect of child marriage is that some are forced into marriage at a very early age. Others are simply too young to make an informed decision about their marriage partner or about the implications of marriage itself. Once married, a girl or boy is expected to meet different obligations arising out of such marriage, including responsibilities towards the spouse, the family and society. In a child marriage, the individuals involved are not yet-physically, mentally and emotionally ready to perform the obligations. In child marriage, not only the rights of the individuals involved get violated but their unpreparedness to protect against any violation makes them more vulnerable to further exploitation. So, child marriage is a clear violation of human rights. The right to free and full consent to marriage is recognized in the 1948 Universal Declaration of Human Rights (UDHR) and in many subsequent Human Rights Instruments which recognize that consent can not be free and full' when one of the parties involved is not sufficiently mature to make an informed decision about a life partner.

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A BRIEF HISTORY OF PRACTICE OF CHILD MARRIAGE IN INDIA.

2. Human Rights Law Network publication 2005 titled "Child Marriages And The Law in India" (Pages 11 to 13) has given historical overview of how the practice of child marriage in India has developed as under :-

"The ancient Indian literature indicates no prevalence of child marriage at that time. The most popular form of marriage was the Swayamvara where grooms assembled at the bride's house and the bride selected her spouse. Swayamvara can be translated as self-selection of one's husband (swayam = self, Vara = husband.) Instances of the Swayamvara ceremony are found in our national epics, the Ramayana and Mahabharata. Various types of marriages were then prevalent in ancient India : Gandharva Vivaha (love marriage), Asura Vivaha (marriage by abduction) etc. but, among these Bal-Vivaha is conspicuous by its absence, which refutes the argument that the custom of child marriage stemmed from tradition and religious practices.

2.1. The Vedic Mantras, such as the Rig-veda, mentioned that a girl could be married only when she was fully developed, both physically and mentally and that she should be fully developed physically, before leaving her father's home. Men were advised to marry a girl with a fully developed body. One hymn mentions that a female should be married only when she is not a child.

2.2. One of the schools of thought argues, that the practice of child marriage originated and strengthened its roots during the medieval ages. The invasions, war and expansion of territory trailed the trends of the times. The established structures and practices were being disturbed by the new rulers who brought in their own ideas and rules. Law and order was not yet a universal phenomenon and arbitrary powers were concentrated in the hands of a few. The status of women deteriorated from bad to worse, as they were being exchanged as gifts, concubines and slaves. This slowly led to a downfall in the practices like wearing of the veil and isolating women from the rest of society. During this time, customs like Sati, denigrating the birth of a female baby and female infanticide, were spawned.

2.3. The general insecurity that prevailed, especially with regard to women, made the presence of young, unmarried girls a potential disaster. The practice of child marriage reached its height, so that guardians could get rid of this insecurity as soon as possible. Hence parents sought to dispense with the responsibilities of their daughters by getting them married before they reached marriageable age.

2.4. The custom of child marriages, with the 'bride' and 'groom' still in their cradles, was a culmination of this intention. In addition, it was also felt, that this would reduce the danger to a growing girl's virginity.

2.5. Till the 1860, girls were getting married below the ages of eight or nine years. Social reforms and religious movements, such as the Brahmo Samaj and the Arya Samaj, pioneered work against child marriage. The contribution of Raja Ram Mohan Roy in curbing the ill practices of marriage cannot go unnoticed. He was anxious to put a curb on child marriages and considered an early marriage to be a curse on society and stigma on women. He, emphatically fought for eradication of this ill practice throughout his life. Late in the 1860, some success was achieved when the Indian Penal Code made provision against child marriage.

2.6. The debate on the Age of consent Bill, during the 1880's, brought this problem into the public arena. It stirred up the case of an eleven-year-old girl Phulmani, who died when her husband raped her. More than 500 women doctors sent a memorandum to the viceroy requesting him to stop the marriage of girls below 14 years of age. The resulting Bill compromised at 12 years. This was later revised to 15 years (Section 375 of IPC), before which the consummation of marriage was considered rape and, therefore, a criminal offence.

MAGNITUDE OF PROBLEM : SOME TRENDS

3. According to census 1991, the percentage of married females in the total number of females in the age group 10 to 14 was 13.2 in Rajasthan, the highest in the country. In second place was Madhya Pradesh at 8.5 percent; followed by Uttar Pradesh at 7.1 for the country, the percentage of married women under the age of 18 stood at 53.3. The situation did not change substantially in the following decade. Census 2001 has revealed that there are nearly three lakh girls under 15 who have given birth to at least one child. The census further reports that 6.4 Indians under the age of 18 are already married and that taking into account the legal marriageable age 11.8 million (4.9 million females and 6.9 million males) are married underage.

3.1. Figures showing high prevalence of child marriages in Rajasthan and Uttar Pradesh are corroborated further by the two surveys, one, conducted by the Government – in Rajasthan in 1993 where a sample of more than 5000 women was taken. It was revealed that 56 percent had married before age of 15 and, of these, 17 percent were married before they were 10. Second survey was conducted in 1998 in Madhya Pradesh which found that nearly 14 percent of girls were married between the ages of 10 and 14.

3.2. According to Jaya Sagade who has done extensive research on child marriages in India, the Country has one of the lowest median ages for marriage in the world. The Second National Family Health Survey (NFHS) which was conducted in 1990-99, confirmed that 50 percent of

women currently aged 20-24 years were married before the age of eighteen years. The percentage is much higher in rural (58.6 percent) than in urban areas (27.9 percent).

3.3. As revealed by the research of Jaya Sagade on child marriages in India, another significant fact is that performance of child marriage is not uniform in all the States. There are stark variations in marriage pattern across the country from state to state. About half of the women aged 25-49 married before the age of fifteen in Madhya Pradesh (52.6 percent), Bihar (51.0 percent), Uttar Pradesh (49.7 percent), Andhra Pradesh (48.9 percent) and Rajasthan (47.8 percent). And about four fifths of the women of these states – Madhya Pradesh (78.5 percent), Bihar (83.9 percent), Uttar Pradesh (79.6 percent), Andhra Pradesh (79.8 percent) and Rajasthan (81.5 percent) were married before reaching the legal minimum age of eighteen years.

3.4. In four states, where more than 50 percent of women are married before they turn eighteen years of age, religious and cultural hold is very strong. In northern states like Bihar, Madhya Pradesh and Uttar Pradesh, the status of women generally is much lower in comparison with the southern states like, Goa, Kerala and Tamil Nadu. In this connection, contribution of Periyar E.V. Ramaswamy cannot be forgotten. He championed the cause of social reforms and revolutionized the ideas to ban orthodox traditions and customs including early marriage. In the southern states women are more educated and are economically more independent. Rajasthan, a northern state is one of the most educationally backward, industrially underdeveloped and economically poor states of the Country. The percentage of marriages of girls at ages below thirteen and fifteen years in Rajasthan are the highest in the country. 13 and 21 percent of girls are married before age thirteen and fifteen respectively. The percentage of women currently aged 20-24 years and married before the age of eighteen years stands at 70.

3.5. The above figures show that the practice of child marriage is highly prevalent in different parts of the Country. Backed by the traditions and customs, child marriages in many parts of the country are performed in large number. It is sad to note that being a social evil, such marriages are neither reported nor recorded due to social pressures, absence of sensitization and commitment for social cause in officials and absence of a standard data collection system. So, the figure of such marriages may be in several thousands. The statistics whichever available, are not sufficient to bring out the magnitude of the Problem or factual position correctly. In fact, such marriages are celebrated with the active as well as passive support of people. The auspicious occasion of Akha Teej, also known as Akshay Tritiya or Akhi Teej, is associated with the custom of child marriage. This occasion is also known as child marriage day in Rajasthan, Haryana, Himachal Pradesh, Uttar Pradesh and surrounding areas when little boys and girls are literally carried in their arms by their parents or guardians to the venue of marriage, usually in utter ignorance of changing social conditions and disregard of legal norms.

3.6. It is not that India is the only country where practice of marrying at an early age persists. The Practice is also common in Sub-Saharan Africa, Middle East, North Africa and other parts of Asia. There are also specific parts of West and East Africa and of South Asia where marriage much earlier than puberty is not unusual. According to one research of UNICEF, over 40 percent of young women have entered marriage or quasi-married union by the time they reach the age of 18. Early marriage is generally more prevalent in central and West-Africa affecting 40 per cent and 49 percent respectively of girls under 19 compared to 27 percent in East Africa and 70

percent in North and Southern Africa. In Afganistan and Bangladesh, 54 percent and 51 percent of girls respectively are married by age 18. In Nepal, where the average age at first marriage is 19 years, 7 percent of girls are married before they are 10 year old and 40 percent by the time they are 15. Among women aged 15-24, 29 percent were married in Latin America and the Caribbean.

CAMPAIGN TO PREVENT EARLY MARRIAGE

4. There has been global concern for prevention of child marriage. Recognizing evils of early marriage, the right to free and full, consent to a marriage has been given due importance in the Universal Declaration of Human Rights. The Convention on the Elimination of All Forms of Discrimination Against Women mentions the right to protection from child marriage in article 16 which states:-

“The betrothal and the marriage of a child shall have no legal effect and all necessary action, including legislation, shall be taken to specify a minimum age for marriage”.

4.1. While marriage is not considered directly in the Convention on the Right of the Child, child marriage is linked to other rights such as the right to express their views freely, the right to protection from all forms of abuse, and the right to be protected from harmful traditional practices and is frequently addressed by the Committee on the Rights of the Child. Child marriage was also identified by the Part African Forum against the sexual exploitation of children as a type of commercial sexual exploitation of children.

4.2. In Indian context, socio-reform religions movements such as the Brahmo Samaj and the Arya Samaj pioneered work against child marriage. As stated earlier, it was not until 1880 that child marriage as a problem became a public issue in India during the debate on the age of Consent Bill. Towards the end of the debate a child wife of eleven years old, named phulmani died when her husband raped her. On August 15, 1884 a Parsee reformist, Behramji Malabari, circulated two notes which highlighted the evils of child marriage and enforced widow childhood. Shortly, thereafter, in 1886 the first petition against Hindu marriage was proposed to the Government by the natives of Meerut. It was finally passed in 1927. Indian political class woke up to the reality when census 1921 reported that there were 600 brides between the ages of one and 12 months. Shocked by the report, Mahatma Gandhi reportedly urged a member of the Central Legislative Council, Harbilas Sarada to introduce a Bill restraining child marriage. Thus, was born the Child Marriage Restraint Act of 1929.

INADEQUACIES OF THE EXISTING LAW

5. The 1929 Act was a queer piece of legislation rendering all child marriages illegal but not void as a result of which child marriage remained valid in the eyes of the law. This also explains the reason why child marriages still remain unabated. The Act popularly known as Sarada Act, was enacted with a view to restraining solemnisation of child marriages it has undergone various changes largely in the form of increasing the age of marriage. In 1929, the minimum age of marriage for a male was eighteen years and that of a female fourteen years. The age limit was subsequently raised in the case of female from fourteen to fifteen years by the child marriage restraint (Amendment) Act, 1949 (41 of 1949). Again, by the Child Marriage restraint (Amendment) Act 1978 (2 of 1978), the Act was amended so as to redefine the word ‘Child’ to mean 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. The said amendment Act of 1978 also incorporated a new section 7 in the Principal Act to make the offences under the Act to be cognizable for certain purposes. Under the Act a police officer has no power to arrest without a warrant or an order of a magistrate. In the absence of stringent penal provisions, the act has virtually become redundant. The Act also does not affect the validity of the marriage even though solemnisation of such marriages may be in contravention of the provisions of the Act. Ineffectiveness of the Act can be gauged by the fact reported by a study made by UNICEF which found that the number of prosecutions under the Act did not exceed 89 in any year. How many of these ended in convictions and what was the sentence imposed is not known.

5.1. Even the Government in its Background Note submitted to the committee has accepted the fact that the Act of 1929 has failed in achieving the desired results. Position in this respect is stated as under :—

“There has been a wide range criticism in and out of Parliament that even though nearly 75 years have passed since the enactment of the Child Marriage Restraint Act, 1929, yet it could not eradicate or effectively prevent the evil practice of solemnisation of child marriages in the country. The Act aims at only restraining solemnisation of child marriages and not complete prevention. Further, the procedures under the Act to prevent the solemnisation of child marriages are very cumbersome and time consuming. Illiteracy and orthodoxy of the people have proved to be the other stumbling blocks. There seems to be no fear of law due to lack of education and deep-rooted social beliefs especially among the rural folk. Because of social pressures, no one reports cases of child marriages or comes forward to give evidence. Child marriages considerably affect the health of the girl child undergoing such marriage and also the children born of such marriages. In view of the ineffectiveness of the provisions of the Act, considerable number of child marriages are taking place in the country, especially on the occasion of Akshaya Tritiya, popularly known as Akha Teej. Only a limited number of such cases are coming to the official notice of the State governments and only a very small percentage of them end in prosecution. Hence, the statistics would not bring out the magnitude of the problem or the factual position correctly.

NEED FOR AN IMPROVED LEGISLATION

GOVERNMENT’S VIEWS

6. Taking into account the glaring shortcomings/inadequacies of the existing Act and the experience gained in its enforcement, the Government gave a serious thought to the idea of bringing about an improved legislation. The Government observed that :—

“In the above circumstances, there has been a growing demand for making the provisions of the Act more effective and the punishment thereunder more stringent. The custom of solemnising child marriage is a deep rooted social evil in the Indian society and the Central Government has been consistently of the view that eradication of this social evil could be done, by improving the status of women by educating them and also by creating awareness among them. Since the Act being mainly a penal piece of legislation, there is no separate administrative machinery envisaged under it. The State governments have to

take action to create necessary social awareness by educating the people and also by gearing up the administrative machinery. However, the progress in this direction has been far from satisfactory”.

RECOMMENDATIONS OF THE NATIONAL COMMISSION FOR WOMEN (NCW)

7. Perturbed by the number of reports published in newspapers regarding child marriages, the NCW took up the issue with the Government at length and gave the following recommendations:—

- (i) Child Marriage Prevention officers should be appointed immediately by the Government.
- (ii) The punishment provided under section 23 of the Child Marriage Restraint Act should be amended and made more stringent.
- (iii) Marriages performed in contravention of the Act should be made void.
- (iv) It should be a penal obligation for every person attending a child marriage, to prevent it or report it to the concerned authorities.
- (v) Awareness should be generated among masses about the evils of child marriage.
- (vi) An offence under the Child Marriage Restraint Act should be made cognizable.

RECOMMENDATIONS OF THE NATIONAL HUMAN RIGHTS COMMISSION (NHRC)

8. The National Human Rights Commission has, *inter alia*, in its Annual Report 2001-2002, observed as under :—

“The widespread persistence of child marriage in certain parts of the country, especially in Rajashtan, has continued to be of great concern to the Commission. The efforts of the Commission to deal with the problem have been dealt with in detail in earlier annual reports.

In order to curb the practice of Child marriage in the country, the commission had taken the view that the Child marriage Restraint Act, 1929 should be recast so as to provide for higher penalty for the violations of the provisions of this Act and also to make the offence cognizable and non-bailable. Further, it was of the view that a provision should be made in the amended Act to take action against organizers/associations who organize child marriages on a mass-scale”.

8.1. The National Human rights Commission (NHRC) has, after detailed study, recommended comprehensive amendments to the Child Marriage Restraint Act, 1929 and, accordingly, made its recommendation by way of suggesting an amendment Bill called the “Child Marriage Restraint Bill”, 2002.

8.2. As per the information furnished by the Government, the subject matter of the legislation is relatable to certain entries in the Concurrent List (Entries 5, 1 and 2) in the Seventh Schedule

to the Constitution of India, the Central Government circulated the proposed amendments suggested by both the National Commission for Women and the National Human rights Commission received by it from time to time to the State Governments and the Union Territory Administrations seeking their views/comments thereon. The Government of the States of Andhra Pradesh, Assam, Bihar, Gujarat, Manipur, Meghalaya, Mizoram, Nagaland, Punjab and Jharkhand and the Governments of the National Capital Territory of Delhi and Pondicherry and the Union territory administrations of Dadra and Nagar Haveli, Daman and Diu, Lakshadweep and the Andaman and Nicobar Islands agreed to the recommendations. No comments/replies have been received from the State Governments of Arunachal Pradesh, Goa, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Rajasthan, Sikkim, Tamil Nadu, Tripura and West Bengal in spite of repeated reminders. The rest of the State Governments have furnished their detailed comments. Government of Orissa, while accepting the recommendations has suggested to bring a new legislation by repealing the Child Marriage Restraint Act, 1929.

8.3. The Child Marriage Restraint Act, 1929 contains only 11 sections. While the Act seeks to restrain solemnisation of child marriages, the proposed legislation aims at preventing solemnisation of child marriages. The numbers of amendments suggested are considerable and require re-arrangement of the sections. Having regard to these aspects, it has been proposed to enact a new legislation titled as “the Prevention of child Marriage Bill, 2004” by repealing the child marriage restraint Act 1929.

8.4. The Prevention of Child Marriage Bill, 2004 introduced in the Rajya Sabha on 20th December, 2004 aims at :—

- (i) Making a provision to declare child marriage as voidable at the option of the contracting party to the marriage, who was a child.
- (ii) Providing a provision requiring the husband or, if he is a minor at the material time, his guardian to pay maintenance to the minor girl until her remarriage.
- (iii) Making a provision for the custody and maintenance of children born of child marriages.
- (iv) Providing that notwithstanding a child marriage has been annulled by a decree of nullity under the proposed section 3, every child born of such marriage, whether before or after the commencement of the proposed legislation, shall be legitimate for all purposes.
- (v) Empowering the district court to add to, modify or revoke any order relating to maintenance of the female petitioner and her residence and custody or maintenance of children, etc.
- (vi) Making a provision for declaring the child marriage as void in certain circumstances.
- (vii) Empowering the courts to issue injunctions prohibiting solemnisation of marriages in contravention of the provisions of the proposed legislation.
- (viii) Making the offences under the proposed legislation to be cognizable for the purposes of investigation and for other purposes.

- (ix) Providing for appointment of Child Marriage Prevention Officers by the State Governments.
- (x) Empowering the State Governments to make rules for effective administration of the legislation.

ORAL EVIDENCE OF WITNESSES

8.5. The Committee heard views of several experts/civil society groups for the purpose of having better and effective appraisal of the proposed legislation. The following representatives of the various NGOS appeared before it :-

- (i) Dr. Ajay Kumar Mishra, Sankalp;
- (ii) Dr. (Smt) Sarala Gopalan, Sankalp;
- (iii) Smt. Padma Seth, Sankalp;
- (iv) Mr. Joseph Gathia, Centre of Concern for Child Labour;
- (v) Dr. (Prof.) Pawan Surana, Chairperson, State Commission for Women, Jaipur (Rajasthan);
- (vi) Mr. Colin Gonsalves, Human Rights Law Network;
- (vii) Ms. Aparna Bhatt, Human Rights Law Network;
- (viii) Ms. Atreyee Sen, Human Rights Law Network;
- (ix) Ms. Sehba Hussain, Beti Foundation;
- (x) Smt. Jyotsna Chatterjee, Joint Women's Programme;
- (xi) Smt. Razia Ismail, Joint Women's Programme;
- (xii) Smt. Asha Chandra, Hony. Secretary, All India Women's Education Fund; and
- (xiii) Smt. Bulbul Das, All India Women's Conference.

8.6. The Committee also received several written suggestions from individuals/organizations engaged in the field and had benefit of their experience in making proper scrutiny of different provisions of the Bill. Views expressed by the witnesses and suggestions on the Bill have been considered by the Committee to be very useful in arriving at a logical conclusion. In the succeeding paras of the report, the Committee has incorporated these views/suggestions suitably, wherever found necessary.

CLAUSE-BY-CLAUSE CONSIDERATION

CLAUSE – 2

9. The clause defines the various terms used in the Bill.

9.1. Sub-clause (a) of the clause defines the term "Child" as under :-

“Child means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age.”

9.2. The Committee heard views of representatives of some reputed Civil Society Groups/NGOs, who referred to the 1989 International Convention on the Rights of the Child which has examined early marriage from the human rights perspective in order to offer guidelines for much needed analysis and action and defined a child as “every human being below the age of eighteen years, unless the law applicable to the child, majority is attained earlier” (Article 1). It was argued further that the age prescribed for exercising the right of voting is also eighteen years and even the National Plan of Action for Children 2005, has also defined a child as a person upto 18 years of age. Not only this, some labour legislations too define “child” differently from what is being defined in the Bill. Some witnesses pointed out that the proposed definition of child would create further complications in proper interpretations of *sub-clause (3) which provides that the petition under this section may be filed at anytime but before the child filing the petition completes two years of attaining majority*. This means as per this provision, female may file a petition for annulment of marriage before the age of twenty years and before twenty three by a male. Further it was also contended that *in clause 9 of the Bill, punishment has been provided for a male adult above eighteen years marrying a child*. This provision itself contradicts what has been prescribed in definition of a child. The witnesses also referred to the Juvenile Justice Act which has amended the definition of a child as below 18 for both male and female.

9.3. Government’s comments on suggestions for a common definition for both the male child and female child are as follows:-

“The child has been defined in the Bill for the purposes of marriage. Further, for the purpose of marriage, two different ages have been accepted socially as well as culturally in the country.”

9.4. The Committee feels that intention behind the proposed legislation is to develop and implement suitable system to prevent the evil of child marriage afflicting Indian society since long. To achieve this laudable objective, doubtlessly, its foundation is laid on the issue of determination of age of a child. The sub-clause (a) of the clause under consideration, therefore, assumes paramount importance and to do justice in dealing with such a provision, the committee can not put aside the views and suggestions of Civil Society Groups, whose contribution in addressing the issues pertaining to child marriage can not be regarded less than the efforts of Government. India is a vast country with diversity of castes, creeds, religions and communities and more than seventy percent population belongs to the rural areas nurturing and preserving their deep rooted customs, beliefs and traditions. The legislation should look at this aspect and for this, it has to be as simple as possible. Any anomaly, confusion or difficulty in comprehending its provisions would render the whole exercise futile. As pointed out by the witnesses, definition of ‘Child’ should be such as not to escalate any sort of confusion and contradiction in the provisions of the Bill itself.

9.5. In this context, the Committee finds it pertinent to mention the sixth description of Section 375 of the Indian Penal Code which says a man is said to commit “rape” who has sexual

intercourse with a woman with or without her consent when she is under sixteen years of age. Further, there is an exception to the section which says sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape. Thus, consent of a girl is the material factor in deciding the cases of rape. Courts have set presumption of consent of girl in these cases. In other words, a girl is considered mature enough at the age of sixteen to give consent for the purpose. Similarly as per the exception to the section, a married girl of 15 years is considered mature enough to give her consent. This though not related directly to the issue under examination at the moment, yet evokes a contradictory response. The contradiction arises because of the above provision of the IPC. The Committee is of the view that these conflicting definitions of the IPC and the present Bill cause confusion, ambiguity and doubt. While the IPC holds a girl of sixteen years and a married girl of fifteen years quite mature to give her consent, the proposed legislation considers her yet a child at this stage. It leaves scope for a wide debate as to what should be considered to be genuine age for the purpose of childhood. Moreover, there would not be any parity with the two legislations in this respect. As observed already, definition of child is different in different legislations and particular instance of IPC in this context makes the whole proposition incongruous. The Committee, therefore, recommends that to remove anomaly or ambiguity caused by different interpretations in the Indian Penal Code and the present Bill and also having regard to the International Convention on the Rights of the Child (CRC) which says “a child means every human being below the age of eighteen years unless under the law applicable to the child, Majority is attained earlier”, Government should consider to amend/ delete the said provisions in section 375 of the I.P.C. to bring it in conformity with this legislation and the International convention.

9.6. Some Members of the Committee were of the view that age of marriage for both the male and female should be eighteen years instead of the proposed different, ages i.e. eighteen years for female and twenty one years for male. Members favouring this formulation argued that by reaching the age of eighteen both male and female attain social biological and psychological maturity. Further, the Indian majority Act the Indian Penal Code, Labor laws, International conventions, the Indian Contract Act and the Representative of the People Act also consider this age proper for performing legal obligations enjoined on by these laws. Moreover, in the changed circumstances and with the kind of advancement the society has undergone, it is imperative to consider lower age for marriage for both, male and female.

9.7. Other members, however, opposed the idea of having a common age of marriage for both the sexes as in their view, age differentiation is a necessity taking into account the physical, intellectual, psychological and emotional aspects. These considerations have been genuinely recognized by social thinkers from the time immemorial for maintaining a reasonable age gap between male and female. Secondly, an age of eighteen years is also considered insufficient for a boy to attain the desired level of education and economic independence. Moreover, an early age of eighteen years for both the sexes would make it difficult to implement family planning programmes and policies effectively as several studies and surveys have revealed that high fertility rate is attributed to an early marriage. So, the earlier the marriage, higher the rate of reproduction. Consensus emerged on retaining the age differentiation as provided in the definition clause. It was, however, suggested that after the definitions of terms “child”, and “child marriage”, a new definition of the term “early marriage” be inserted to define solemnisation of marriage by a male above eighteen years and below twenty one years. This is

necessary to make distinction between definition of “child marriage” as applicable to a male and a marriage which is performed by a male after attaining majority but before twenty one years and to clear doubt in this regard. The Committee also suggests that like child marriage, an early marriage should also be *void ab initio* and punishable in the same manner as has been prescribed in clauses 3,9,10 and 12 of the Bill.

9.8. The Committee feels that though it has largely favoured the contention to maintain age differentiation in the Bill, yet views/ideas expressed by the members for a common age of eighteen years for both the male and female should also be considered by the Government carefully as the issue of determination of marriage age is inextricably related to other social aspects, which if ignored may entail serious consequences on an individual and society as a whole. The Committee hopes that the Government having regard to the observations made by the members would take an appropriate view.

9.9. The Committee also endorses the views expressed by some witnesses that the definition of the word ‘minor’ provided in sub-clause (f) adds to confusion only as the legislation provides a specific definition of a child and all the subsequent provisions of the Bill are in relation to this definition. The definition of ‘minor’ therefore, appears to be of no relevance in the Bill. The Committee, therefore, recommends that the definition of ‘minor’ should be deleted and in view of this amendment, the word ‘minor’ be substituted by the word ‘child’ in all the subsequent provisions of the Bill, wherever it occurs.

9.10. Subject to the above, the clause is adopted.

CLAUSE - 3

10. The clause contains a provision to the effect that if at the time of the marriage, one party or both the parties to marriage are minors the marriage should be voidable at the option of the party who was a minor at the time of the marriage.

10.1. Witnesses in their deposition drew attention of the committee to a significant departure from the Child Marriage Restraint Act: 1929 in the form of the provision contained in clause 3 (1) which renders every child marriage, whether solemnised before or after the commencement of this Act, voidable at the option of the contracting party. They, however raised apprehension that if the marriage is annulled what would be its consequences on women since studies indicate that there are more women abandoned than men after being married as children, Secondly, witnesses were of the view that the term ‘voidable’ is confusing and this needs to be classified. A clear distinction should be made between ‘voidable’ and void marriages. Witnesses desired that the issue of ‘void marriage’ should be discussed and examined carefully and it should be seen in the context of International Conventions, like Convention on the Elimination of All Forms of Discrimination Against Women (CEDAM) which lays down that “the marriage of a child shall have no legal effect” similarly, Convention on the Rights of the Child (CRC) requires the child to be protected from all forms of physical mental violence and all forms of sexual exploitation and abuse. Doubt was expressed that though the provision seems laudable yet given the social pressures surrounding such marriages, it is unlikely that any such case will be filed in court. It

was emphatically proposed that the marriage solemnised in childhood should also be declared invalid besides being illegal.

10.2. The Government has, however, not agreed to the observations of the witnesses. According to the Government these findings of the witnesses are not correct. Proposed clause 12 specifies the circumstances in which marriage of minor child will be void. And the said provision does not require children to file petition for a decree of nullity.

10.3. The Committee appreciates insertion of the provision rendering a child marriage, whether solemnised before or after the commencement of this Act, voidable at the option of the contracting party. In view of the Committee this provision has been an outcome of the ineffectiveness of the Child Marriage Restraint Act, 1929, which validates a child marriage despite its being illegal. The Committee notes that according to one study made by UNICEF there has not been more than 89 cases of prosecutions in any year under the Act which in itself shows deplorable state of implementation of the Act, besides, its other glaring inadequacies. The entire society had to bear brunt of half-hearted follow up of the present Act and gravity of the problem of child marriage can be measured by the fact presented by the representatives of the Department of Women and child Development Ministry of Human Resource Development (HRD) according to which, child marriages constitute nearly sixty percent of the total marriages performed in the country. As per one witness, some three thousand child marriages take place every year in states like Jharkhand and Rajasthan. In the face of these alarming facts, the Committee finds that the proposed provision can be a positive step towards checking this social evil.

10.4. The Committee, however, feels that rendering a child marriage 'voidable' before and after the commencement of the Act at the option of any of the contracting parties would cause further complication considering the social pressures and mind set of the people belonging to lower strata of society who may have inhibitions to be subjected to courts' proceedings. Moreover, a girl child, as shown by some studies or researches, has to suffer irreparable losses due to biological factors and inability to sustain pressure of marriage at an early age. The Committee, therefore, recommends to render a child marriage or early marriage solemnized after commencement of the Act void *ab initio* and amend the clause accordingly.

10.5. In view of the above recommendation, the Committee feels that proviso to sub-clause (1), and sub-clauses (2) to (4) of the clause 3 have no relevance to the context and should, therefore, be deleted.

10.6. The Committee finds it pertinent to note that Section 11 of the Hindu Marriage Act, 1955 renders any marriage solemnized after the commencement of the Act null and void if either party has a spouse living at the time of marriage or the parties are within the degrees of prohibited relationship or the parties are sapindas of each other. Curiously enough, the section has not included a marriage solemnized in contravention of sub-clause (iv) of section 5 of the Act making it mandatory for bridegroom and bride to complete twenty one years and eighteen years respectively as one of the grounds for declaring a marriage null and void. Similarly, section 12 of the Act, renders a marriage solemnized in contravention of certain specified conditions, voidable but it also does not include contravention of sub-clause (iv) of section 5 as one of the grounds

for declaring a marriage voidable, on the other hand, the proposed legislation makes provisions for rendering a child marriage voidable on void ab-initio as suggested by the Committee. The Committee is of the view that the Hindu Marriage Act, 1955 is a very significant legislation governing conditions of Hindu marriage system and laying norms for solemnization of such marriages in the society. The proposed legislation too has social reform on its agenda by curbing the practice of child marriages in the country. However, it is contradictory to observe that while one law of the land of social relevance does not consider a child marriage one of the grounds for nullity of marriage by declaring its null and void the other law of equal social significance, wholly based on prevention of child marriage, renders it voidable as provided by the proposed Bill or void as being proposed by the Committee. The Committee, therefore, impresses upon the Government to examine this issue and bring necessary amendment to the Hindu Marriage Act, 1955 to bring the provisions of that act in parity with the proposed legislation.

10.7. The Committee wishes to observe that child marriages are performed to avoid dowry as general feeling prevails that daughters if married at an early age would not cause burden of dowry for their parents. Nevertheless, in some northern states the customary practice forces parties or their parents/guardians to exchange money, valuables, ornament and other gifts including property on the occasion of marriage. While the present legislation is being seen as a social piece of law intending to bring revolutionary change in the society, practice of exchanging valuables between the parties sends a wrong message. So, it is necessary to change attitude or outlook of people towards child marriages and stimulate the desired prohibitory social response against perpetuation of the practice of child marriage in the country. The Committee is of the view that Government should initiate measures to confiscate all the valuables, money, gifts or property exchanged between the parties on the occasion of marriage which, in turn, would act as a deterrent against continuation of this social evil.

10.8. Subject to the above the clause is adopted.

CLAUSES - 4 & 5

11. Clause 4 seeks to provide maintenance to a girl who is a victim of child marriage until her remarriage. The clause also proposes to make adequate provision for her residence till her remarriage. These provisions are proposed to safeguard the victim girl from deprivation.

11.1. Clause 5 relates to a provision for custody and maintenance of children born of child marriages and also for their welfare and best interest to be served.

11.2. All the witnesses who appeared before the committee vehemently emphasized on initiating measures to protect interests of a girl child who has been a victim of child marriage and whose marriage has been annulled by a decree of nullity. Concerns were raised that women might suffer a lot and she may also be subjected to further exploitation and also that the provisions for children born of the child marriage are not adequate. It was also apprehended that children born of child marriage may not be adopted by the contracting parties or their parents and, therefore, the responsibility of their custody and maintenance should be on State Governments.

11.3. The committee observes that the above two provisions for maintenance to a girl, victim of child marriage and custody for the children born of child marriages have emanated from a situation where a child marriage is declared void under the provision of clause 3 of the Bill. These provisions may undoubtedly help pave the way for change and, therefore, these legislative measures may be seen in the social context. This calls for need to look at this legislation not as a tool merely to prevent child marriages but also to bring about radical social changes. In fact reality of a child marriage gives rise to more complex social issues which need to be addressed so as to enable both women and children to cope up with the extreme stressful and miserable situations that follow and lead their lives with dignity with the support of social and Governmental Institutions.

11.4. Therefore, the Committee strongly feels that the proposed legislation should be considered as a strong piece of social security and welfare legislation with more focus on the issues relating to the evil of child marriage rather than a weak law containing prevention measures prescribing certain penal provisions. Unless approach is not changed in this direction, this law may also remain on papers, ineffective and dormant. Child marriage is a major problem before the nation and it should be tackled by creating a “social will” through effective implementation of the Act. Related to child marriage are the problems of poverty, dowry, patriarchy, social myths, caste hierarchy, illiteracy and insecurity which should be dealt side by side. Government should ensure by all means that this legislation evokes a positive social response to eradicate this evil.

11.5. In view of the above observations, the Committee feels that since separation of a girl child, particularly those of rural belts, after declaration of her marriage void may push her at the crossroad to bear the trauma of poverty as shown by many studies, an immediate rehabilitation package should come forward to take her and the children disowned by their parents out of the mess. For this, a child marriage rehabilitation fund should be created by all the State Governments to cater to the emergency requirements of maintenance, home and food. The fund should generously be utilized for providing children homes, imparting skills, developing learning programmes and chalking out a massive education programme through setting up schools and other similar institutions. The Committee would like to mention Kallar Reformation Schools in Tamil Nadu where children are provided boarding and leading facilities till they get employment. Researches have revealed that women victim of child marriage and children born out of such marriage are most prone to further exploitation. Government should, therefore, through a sustained campaign inform them the various social security and welfare programmes or schemes in existence or being formulated for empowerment of women and weaker child. Other preventive measures should go hand-in-hand with these social measures. It should be strictly ensured that maximum social security should be provided to the victims of child marriage, be it a girl or a male by linking them to the popular schemes like midday meal scheme, Sarva Shiksha Abhiyan and various health schemes with particular focus on women and children etc.,. The Committee is of the view that the proposed provisions for maintenance and custody should be a part of social action instead of a judicial pronouncement. To achieve the objects, NGO’s, officers at the Panchayat, Tehsil, District and State levels may play more constructive role being their proximity with rural masses and their problems and, therefore, they should be involved actively in devising policy and programme for building confidence of victims of child marriage.

11.6. Several Members pointed out that children homes set up for upkeep and custody of children have generally become centres of physical harassment and sexual exploitation. In this connection they referred to the cases reported quite often describing the tale of untold miseries these children have to suffer while staying in these homes. Members raised their concern that children born out of child marriages may also have to bear the same conditions if kept under custody of these homes and this would render the purpose of this legislation redundant. The Committee, therefore, urges the Government to take adequate measures to ensure that children kept in children homes are not subjected to any kind of harassment.

11.7. For this the Committee suggests that the children homes should be equipped with all the necessary amenities/facilities such as, improved nutrition, cleanliness, general hygiene and periodic health check up etc. These centres should not act or be seen as confinement centres but provide ample opportunities for fuller growth and development of a child in all respects. Consideration should also be given to constant monitoring of these centres and conditions of children staying therein. The Committee feels that to achieve these objectives, Government should consider building hostels or resident schools close to communities with emphasis on providing quality education and imparting non-formal education programmes to equip children with life skills. These hostels or schools should have in school child care facilities and provide free of cost education till a child attains the age of eighteen years. In this connection, the Committee draws attention of Government to Jawahar Navodaya Vidyalayas, which have been set up all over the country with a view to imparting quality education to the meritorious poor children with boarding facilities. The Committee takes the view that education and learning programmes may have significant impact on attitude towards Prevention of Child Marriage and, therefore, it would be imperative if these elements of Navodaya Vidyalayas are also introduced in the proposed hostels/resident schools.

11.8. The Committee observes that the Bill has not made any specific provision for the contracting parties to a marriage and thus it leaves a major gap in this regard. Though clause 5 provides some financial relief in terms of maintenance and residence for a girl child till her remarriage the same can not be measured to be adequate in addressing the after effects of a child marriage faced by the contracting parties. Moreover by experience, it has been seen that many problems have to be faced by parties to claim maintenance even after order of court. Child marriage affects both the boy and the girl. After a child marriage a girl child loses her adolescence, and is deprived of freedom and personal development besides having profound psychological and emotional consequences; a boy on the other hand loses opportunities and his choices for betterment are reduced considerably. The Committee feels that these aspects need to be taken into account so that the contracting parties to a child marriage, may be exposed to such actions as may fulfill or restore their deprived rights. Further, children married at early age should be linked compulsorily with free education and learning programmes. Parents or guardians should be made aware of the various programmes or schemes launched for welfare and overall development of these children and to secure access of these children to such programmes, participation of NGOs, social groups, public representatives and bureaucrats both at the national and states level should be encouraged. The Committee, therefore, impresses upon the Government to look into these aspects carefully as these suggestions may go a long way in providing protection and the desired social and economic support to the children affected by child marriages.

11.9. Subject to the above, the clause is adopted.

CLAUSE — 9

12. The clause prescribes punishment for male adult marrying a child.

12.1. The Committee notes that as regards punishment for male adult marrying a child, the proposed legislation has shown an improvement over the existing Child Marriage Restraint Act, 1929 which provides simple imprisonment which may extend to three months and fine for committing the offence. The proposed legislation, on the other hand, makes the offence under the clause punishable with simple imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both. Some witnesses expressed their dissatisfaction over provision for simple imprisonment. They contended that unless offenders are subjected to rigorous punishment, the situation is unlikely to change substantially.

12.2. The Committee is of the view that the observations made by some of the witnesses during the course of their deposition, are quite justified. By experience, it has been seen that if a law is not equipped with adequate penal provisions it fails to create the desired impact. The proposed legislation is a pioneering step towards eradication of a major social problem of child marriage crippling social-fabric of the nation and leaving devastating effects on lakhs of children. Moreover, internationally agreed child welfare standards particularly relating to child marriages create an obligation on the Government to frame an effective law. The Committee, therefore, recommends that the punishment prescribed under the clause should be rigorous enough to ensure efficacious enforcement of preventing measures of the law.

12.3. Subject to the above, the clause is adopted.

CLAUSE – 10

13. The Clause provides punishment for solemnising a child marriage.

13.1. Subject to the observations of the Committee in the foregoing para (12.2) it suggests that the clause be amended suitably in such manner as may provide rigorous imprisonment for the offence of solemnizing a child marriage.

13.2. Subject to the above, the clause is adopted.

13.3. In para 9.5 of the report, the Committee dealt with the definition of the term “child” and found that the different legislations have defined the term differently causing a lot of confusion and ambiguity. The committee noted that the Indian Penal Code, has left a wide scope for conflicting views and contradictions as regards the definition of child. In this backdrop, the Committee finds it relevant to mention that yet another provision of the Hindu Marriage Act, 1955 creates the same sort of anomaly though in different context. As per section 5 of the Hindu

Marriage Act; 1955, a marriage may be solemnized between any two Hindus, subject to fulfillment of certain specified conditions. One of the conditions as laid down in clause (iii) of the section makes it mandatory for the bridegroom and the bride to complete the age of twenty one years and eighteen years respectively for entering into marital relations. Then section 18 (a) of the Act renders contravention of the condition specified in clause (iii) of section 5 punishable with simple imprisonment which may extend to fifteen days, or with fine which may extend to one thousand rupees or with both. The committee feels that it is absurd to provide two different punishments under the two different laws for by and large the same kind of offence. As in the case of the proposed legislation, punishment for solemnizing a child marriage is far larger than the Hindu Marriage Act, laws are made to regulate living conditions of human beings and define their relations with deterrence to ensure compliance with the norms of civil society. Any sort of confusion, conflict or contradiction in legislative provisions for dealing with the similar situations, should, therefore, be avoided. The Committee, therefore, urges the Government to consider this issue carefully and if need be, bring necessary amendment in the Hindu Marriage Act, 1955.

CLAUSE – 11

14. The Clause provides punishment for promoting or permitting solemnisation of child marriage. It, however, exempts women from the punishment of imprisonment.

14.1. The Committee finds the provision exempting a woman from punishment of imprisonment also exists in the Child Marriage Restraint Act, 1929. The proposed legislation has retained this provision without any change. Several NGOs have favoured insertion of this provision in the Bill. while on the other hand, some other NGOs and representatives of the Department of Women and Child Welfare have vehemently opposed the provision exempting women. Some members of the committee put forth their arguments in favour of retention of the provision to sub-clause (1) of the clause on the ground that in a male dominating society like ours, little scope is left for a woman to exercise her choice. Generally, decision regarding education, marriage etc. are taken either by grandparents or by a male in a family set up. There are many tribal communities or villages where such decisions are taken by the heads or priests of these communities and women of these families, generally being illiterate, subdued and suppressed do not have any say in these matters. They were, therefore, of the view that women should not be held liable for punishment and the provision should be retained in the Bill. On the other hand, arguments were advanced for deleting the proviso for the reasons that role and status of women has undergone a sea-change in the changed socio-economic conditions. Women today is more educated, enlightened and aware of the environment and may, therefore, take independent decision. It was also contended that women now-a days act as perpetrators of committing offence of child marriages and if they are exempted from being liable for punishment, they may be exploited as a tool to solemnise child marriages.

14.2. Having regard to the above views expressed by some members of the Committee, NGOs and representatives of the Ministry of Human Resource and Development both against and in favour of the provision regarding exemption for women, the Committee agrees with the views that if a woman is exempted from being held liable for punishment there is a greater risk of her being used as an instrument to solemnise child marriage and this, in turn, would render the whole

exercise fructuous. The Committee also endorses the view that while formulating a law, no differentiation should be made between man and woman. It would be appropriate if decision in the matter is left on court which may, while deciding any such issue, take into account, facts and circumstances of each case and based on those facts, it may reach at logical conclusion whether a women is offender for the purpose of this legislation or liable to be exempted from being punished. The Committee, therefore, recommends deletion of the proviso to sub-clause (1) of clause 11.

14.3. Apprehension has also been expressed that under the provision even invitees, participants or persons who attend a child marriage without any knowledge of the fact of solemnisation of a child marriage, are to be held liable alongwith those actively or passively involved in such marriage. The Committee feels that keeping in view the objectives of the legislation and also the international obligations arising out of Convention on the Rights of the Child, it becomes imperative to give effect to this provision as it may act as a deterrent measure for those having knowledge of the fact that a child marriage is being solemnised, attend such marriage. However, it should also not be ignored that punishing poor parents may make their children's life more vulnerable. Punishing the whole community entails its own dangers as it would give the police a reason to exploit the community. The Committee opines that while genuine efforts should be made to ensure that innocent persons should not be subjected to any harassment, at the same time it should be made mandatory for the parents or for those who are actively or passively involved in promoting or permitting solemnisation of child marriage to mention the age of the marrying couple on the invitation cards so that onus of proof of age of the parties to marriage be shifted to on the parents or those promoting it. Besides, public representatives, government servants or those holding public offices and having knowledge of the fact of solemnisation of a child marriages should be discouraged to be part of such ceremonies by bringing them within the ambit of this provision.

14.4. Subject to the above, the clause is adopted.

CLAUSE-12

15. The clause seeks to render marriage of a minor child to be void in certain circumstances.

15.1. The Committee notes that the provision has been inserted in the Bill with a view to tackling cases where a child may be taken or enticed out of the keeping of the lawful guardian or forcibly compelled or induced deceitfully to go from any place and is sold for the purpose of marriage or sold, trafficked or used for immoral purposes. As per this provision, such marriage shall be null and void. The Bill intends to address one of the most apparent consequences a girl has to bear after her marriage, that is child trafficking. As per the information supplied to the Committee, child marriage is used as a legal instrument for achieving illegal trafficking of children, particularly, girls are married in a day or two and then trafficked and sold for various purposes, including sexual exploitation and prostitution. This establishes an inextricable link between child trafficking and child marriage. Girls from various states are married and then trafficked for marrying with older men or forcing them into prostitution. Child marriages result in their trafficking and they are sold for money to act as bonded labour.

15.2. In this backdrop, the Committee feels that undoubtedly the provision is a welcome step but in the absence of any punishment provided thereunder there is every possibility of its being impactless having no deterrent effect on any person. The intention of the legislation can be translated into action effectively, if the provisions are strengthened by a proportionate penal clause. The Committee notes that to deal with similar or identical situations, Section 366 of the Indian Penal Code has prescribed punishment with imprisonment of either description for a term which may extend to ten years and also fixed liability to pay fine for kidnapping abducting or inducing woman to compel her marriage etc. Similarly, Section 372 of the Indian Penal Code has prescribed the same punishment for an offence of selling minor for purposes of prostitution etc. These offences under the Code are cognizable, non-bailable and non-compoundable. In the view of the Committee, the offences described under this clause are by and large of the same gravity and therefore, attract the same punishment as has been prescribed in the Indian Penal Code under the above referred sections. Moreover, elimination of trafficking and sexual exploitation of children is one of the Millennium Development Goals of the United Nations which are to be achieved by 2015. The Committee, therefore, recommends that the clause be amended suitably to give effect to the above observations.

15.3. Subject to the above, the clause is adopted.

CLAUSE - 13

16. The Clause empowers court to issue injunction for prohibiting child marriages.

16.1. The Committee considered sub-clause (10) and its proviso exempting a woman from punishment of imprisonment in case she disobeys the injunction issued under sub-clause (1) of the clause knowing that such injunction has been issued. The Committee dealt with this issue in detail and made its observations while considering provisions contained in the proviso to sub-clause (1) of clause 11. Subject to the observations of the Committee in regard to clause 11(1) it recommends that the proviso be deleted.

16.2. Subject to the above, the clause is adopted.

CLAUSE – 16

17. The Clause provides for the appointment of Child Marriage Prevention Officers and specifies their duties.

17.1. The Committee notes that the responsibility of enforcing preventive measures has largely been entrusted to the Child Marriage Prevention Officers who are to be appointed by the respective State Governments. The clause in a way is the spirit of the whole legislation as its effective implementation will pave the way for achieving the laudable objective set by the legislation, Sensing this essence, all the witnesses/NGOs laid emphasis on making these provisions more effective. The example of Smt. Shakuntala Verma was stated to be an eye opener for the entire nation, who had to bear brutality of distorted norms of society for want of

adequate safeguards. So, the moot question in this connection arises as to who would come forward to prevent solemnisation of a child marriage. Fear psychosis in such cases stumbles zeal to take action. The same may be true in a situation being envisaged by the proposed legislation. Another objection has been about absence of mention of any accountability of the functionaries. It was pointed out that accountability has not been specified in the Bill failing which implementation would be a difficult task. The witnesses have also indicated that the Bill does not clearly mention about the infrastructural facilities which may be required by the CMPOs while executing their duties.

17.2. The Committee feels that the Child Marriage Prevention officers (CMPOs) and other functionaries under the Bill should be provided with adequate security measures to ensure their fearless functioning which is the most important aspect related to prevention of child marriage. Officials can perform their statutory obligations effectively and in a better way if enough infrastructural support is extended to them. Glaring gap in the legislation is, however, absence of mention of any accountability failing which implementation of the Act, in letter and spirit, would be a daunting task. Besides, the Bill is also silent on certain issues like what would be the rank and status of CMPOS, in what kind of hierarchy they will have to function etc.

17.3. The Committee is of the view that since early marriage represents a major threat to a child's well being, it needs to be seen in the context of the social causes leading to child marriages and effects on both an individual and society. The problem can be addressed effectively by perfect coordination, massive interaction and wider consultation among different social as well as government agencies, civil society experts, NGOs, academicians, researchers, lawyers and jurists, law enforcing functionaries such as women officers of Indian Police Service, representatives of people, religious leaders, parents and other such organizations which have enough exposure in the field and attitude towards tackling this evil. The Committee, therefore, recommends that the Government should provide to evolve a suitable mechanism on these lines with a view to introducing and promoting concrete initiatives to curb this social evil. In view of the observation of the Committee in para 20, it also recommends to change the nomenclature of the functionaries as child marriage prohibition officers in place of the existing one.

17.4. Subject to the above, the clause is adopted.

INSERTION OF NEW CLAUSE

18. The Committee notes that the Bill in certain aspects, though a welcome piece of legislation, yet has left a major gap by not inserting a provision about registration of marriages. There has been a wide-ranging discussion on the issue and almost all the experts/NGOS and the representatives of the Ministry of Human Resource Development agreed that the Bill should make registration of adult marriages and recording of child marriages a compulsory mandatory provision. The Committee's attention was drawn to the consequences that may follow after an unregistered marriage and to the concern expressed by Art 3 of the International Human Rights Instrument and Early Marriage which says that – "all marriages shall be registered ----- by the competent authority". Attention was also drawn to the UNICEF Digest's observation according to which one problem in assessing the prevalence of early marriages is that so many are unregistered and unofficial and are not therefore, counted as part of any standard data

collection system. The Committee has also been informed that after making registration compulsory, there has been marked improvement in bringing down the rate of occurrence of child marriages in Sri Lanka. The Committee also notes that various states such as Karnataka, Maharashtra, Rajasthan, Tripura and Goa have already enacted laws making registration compulsory.

18.1. Having regard to the above observations and considering that there was almost unanimity that compulsory registration of adult marriages and recording of child marriage should be provided in the Bill, the Committee recommends that Government should insert a new provision in the Bill at an appropriate place to give effect to the above observations. While inserting such a provision, the following issues should *inter-alia* be taken care of :—

Registration process must involve a careful scrutiny of the age of the parties to the marriage and should not be done casually or mechanically as the prevention of child marriage can be possible only when there lies an effective system for verification of age of the marrying parties at an early stage.

- (i) A minimum period from the date of solemnisation of marriage should be specified within which, the parties should be required to get their marriage registered.
- (ii) Responsibility of registration of marriages or recording of child marriages should be entrusted to the functionaries at the level of Panchayat, Tehsil and District and clear provision should be made for fixing accountability of such functionaries in case of failure in their duties.
- (iii) To encourage masses to participate in the process, NGOs should be involved to coordinate with the state functionaries/officials. This is all the more necessary to sort out administrative problems which may come on the way of tribal communities settled in far flung areas.

CLAUSE - 1

ENACTING FORMULA AND TITLE

19. Clause 1 and Enacting Formula were adopted with some changes which were of consequential or drafting nature, namely, the figure, 2004 and the words and “Fifty-fifth” to be substituted by the figure “2005” and the words “fifty-sixth,” respectively.

20. As regards the title of the Bill, the Committee feels that the existing title “The Prevention of Child Marriage Bill, 2004” gives an impression that the Bill proposes to prevent long standing practice of child marriage and not to eliminate it from the root. The proposed law should be seen with this optimism, that this legislative measure aims at eradicating this social evil forever. The Committee, therefore, recommends that the title of the Bill should be substituted by “The Prohibition of Child Marriage and Early Marriage Bill, 2004” and consequential amendments be carried in the provisions of the Bill wherever the word ‘prevention’ occurs.

GENERAL RECOMMENDATIONS/OBSERVATIONS

21. The Committee feels that the long title of the Bill does not explain adequately the objectives which the Bill seeks to enforce. It appears to be grossly lacking so far as it fails to reflect an appropriate message consistent with (i) the Millennium Development Goals set for children by the United Nations pledging to provide quality education, protection against abuse, exploitation and violence, elimination of trafficking and sexual exploitation of children. (ii) Norms laid down by International Human Rights instruments and (iii) Ideals set by the Convention on the Rights of the Child (CRC). The Committee, therefore, recommends that a preamble be inserted in the Bill on the lines of the above observations.

22. The Committee wholeheartedly stands in acclamation of heroic deed executed by Smt. Shakuntala Verma, a Supervisor of the Integrated Child Development Scheme of Madhya Pradesh, who has set an example for the entire society how this evil can be fought. Her case is an eye opener to exhibit the sheer zeal, dedication and commitment in the direction of discouraging evil of child marriage. It is also an occasion to address the issues she raised while appearing before the Committee on its invitation. While such examples would remain ideal to follow, the Committee feels a national level survey needs to be carried out promptly by the Government to collect data, as in the absence of a standard data collection system, there is too little concrete information on prevalence of child marriage and its impact. Government may seek involvement of research institutions of repute and research fellows in coordination with the prominent NGOs to accomplish the task. Use of information and technology tools may yield significant results in such research and these inputs may eventually assist in formulating useful programmes and policy. Secondly, it is essential to ensure strict enforcement of the legislative measures as Committee is aware of the fate of the Dowry Prohibition Act, which has been virtually dead so far in achieving its objects. Though in tackling such kind of issue, it may have only limited impact as by experience it is observed that harmful traditional practice continue unabated in spite of the laws that forbid such practice. So, the Committee reiterates that social programmes concerning child welfare with focus on changing attitude of those responsible for promoting such practice should go hand in hand with implementation of legislative measures. The Committee agrees with the views expressed by some witnesses that to assess effectiveness of enforcement of legislative measures, Government should conduct social audit and based on the report, initiate corrective measures. In this connection, the Committee impresses upon the Government to constitute a statutory body for collecting, analysing and dissemination of information, counselling victims of child marriage and launching persuasive campaign to discourage people to perform child marriage. Such body should consist of officials at all levels and social activists to converge developmental projects related to child and channelise them to chronically child marriage prone areas. The Committee is optimistic that this legislation would set a milestone in bringing social reforms.

23. In view of the observation of the Committee regarding enhancing infrastructural facilities for the child marriage prevention officers and creating rehabilitation fund to promote welfare of children victims of child marriage, the Committee recommends the Government to provide adequate financial support and reflect it in the financial memorandum appended to the Bill.

**DEPARTMENT RELATED PARLIAMENTARY STANDING COMMITTEE ON
PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE**

THIRTEENTH REPORT ON THE PREVENTION OF CHILD MARRIAGE BILL, 2004

The Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, headed by SHRI E.M. SUDARSANA NATCHIAPPAN, M.P., Rajya Sabha has presented its Thirteenth Report on the Prevention of Child Marriage Bill, 2004 on 29th November, 2005. The Report has also been tabled in the Lok Sabha on the same day.

2. The Bill, introduced in the Rajya Sabha on the 24th December 2004 was referred to the Committee for examination and report. The Bill inter-alia seeks to: -

- (i) make a provision to declare child marriage as voidable at the option of the contracting party to the marriage, who was a child and declare the child marriage as void in certain circumstances;
- (ii) provide maintenance to the minor girl until her remarriage;
- (iii) make provision for the custody and maintenance of children born of child marriage;
- (iv) make the offences under the proposed legislation to be cognizable; and
- (v) empower the State Government to make rules for effective administration of the legislation.

3. While tracing history of the practice of child marriages in India, the Committee has observed that despite many social reform measures such as Arya Samaj and Brahmo Samaj, untiring efforts of many other socialists and the existing law restraining child marriages, the practice has not been curbed and consequently, even in an era of information and technology, it is widely prevalent in many parts of northern Indian states like Rajasthan, Madhya Pradesh, Uttar Pradesh, Bihar to count a few where religious and cultural hold is very strong. While campaign for preventing child marriages has not met the desired success, the Government has, taking into consideration the inadequacies of the existing Act and the laudable suggestions put forth by the National Commission for Women (NCW) and the National Human Rights Commission (NHRC), come forward with the proposed legislation.

4. The Committee considered suggestions of cross sections of people and heard views of eminent NGOs engaged in the field besides representatives of the Department of Women and Child Welfare, Ministry of Human Resource Development and Ministry of Law and Justice to arrive at logical conclusion. In the process of examination of the Bill, the Committee invited Smt. Shakuntala Verma, a supervisor of the Integrated Child Development Services Scheme of Madhya Pradesh who was subjected to the maximum brutality mankind can even think, while attempting to discourage villagers in Dhar District of Madhya Pradesh to perform child marriages. The Committee has admired the courage, zeal and commitment exhibited by Smt. Verma in fighting this social evil.

5. The main recommendations/observations of the Committee are summarized below:-

- (i) The Committee has observed that there are different definitions of "Child" in different statutes which may, in comparison with the definition of children in the proposed legislation, cause anomaly and confusion as to which definition is more appropriate. Citing an example of the Indian Penal Code which renders a married

girl child of 15 years mature enough to give her consent for sexual intercourse, the Committee has found it absurd and contradictory that while a married girl child as per the Indian Penal Code is quite mature while on the other hand, a girl married at an age of 15 years will still be a child as per the proposed legislation. The Committee has, therefore, recommended for amending the Indian Penal Code to remove any anomaly and bring the two legislations in parity with each other.

- (ii) The Committee has endorsed age differentiation for male and female, yet it has asked the Government to consider the views proposing a common age of 18 years for both the sexes as the issue of determination of marriage age is inextricably related to other social aspects which if ignored may entail serious consequences on an individual and society as a whole.
- (iii) The Committee has found that rendering a child marriage voidable at the option of any contracting party would cause further complications considering the social pressures and mindset of the people belonging to lower strata of society who may have inhibitions to be subjected to court's proceedings. The Committee has, therefore, recommended that a child marriage should be rendered void ab initio.
- (iv) The Committee has noted that the Hindu Marriage Act, 1955 provides grounds for rendering a marriage null and void and voidable under Sections 11 and 12 respectively. But these provisions do not include therein sub-clause (iv) of Section 5 setting completion of 21 years for bridegroom and 18 years for bride as one of the conditions for rendering a marriage null and void and voidable mandatory for solemnization of marriage. The Committee has observed that both the proposed legislation and the Hindu Marriage Act 1955 have social relevance and therefore there should not be any incongruity in the provisions of these legislations. The Committee has therefore recommended for amendment of the Hindu Marriage Act, 1955.
- (v) The Committee has strongly condemned the practice of exchange of valuable at the time of solemnization of child marriage as in its view; such orthodox practice sends a wrong message to the whole society. The Committee has therefore, opined that the Government should initiate measures to confiscate valuables exchanged between the parties, as it would act as a prohibitory social response against perpetuation of such practice.
- (vi) The Committee has recommended emphatically for initiating social measures, such as, creation of rehabilitation fund for providing shelter, food, education, health and security for the victims of child marriages so as to bring them in the mainstream of Government's welfare programmes and policies like midday meal scheme, Sarva Shiksha Abhiyan and health for all etc. The Committee has observed that merely by enacting legislative measures, the evil of child marriage cannot be curbed. For this, social measures should go hand in hand with the preventive steps, with an active support and coordination of officials of Panchayat, Tehsil, District and State levels, NGOs and social groups and agencies.
- (vii) The Committee has suggested some radical measures for the contracting parties i.e. a girl or boy married at an early age with a view to making them

accessible to the various programmes or schemes launched for welfare and overall development of the children married early with participation of NGOs, social groups, public representatives and bureaucrats both at national and states level.

- (viii) Keeping in view internationally agreed child welfare standards set by the convention on the Rights of the Child (CRC) and the International Human Rights Commission, the Committee has recommended for stringent and rigorous penal provisions as curbing child marriage creates an obligation on the Government to frame an effective law. The Committee has, in this context observed that the punishment for the same kind of offence is starkly less in the Hindu Marriage Act, 1955. The Committee has, therefore, urged the Government to amend the said Act to bring it in parity with the proposed legislation in respect of punishment.
- (ix) The Committee has not favoured the provision exempting a woman from punishment for promoting or permitting solemnization of child marriage as in view of the Committee; there is a greater risk of her being used as an instrument to solemnize child marriage. The Committee has advocated for leaving the matter of exemption on court which may decide the issue taking into account of facts and circumstances of each case.
- (x) The Committee has felt that the whole community and all persons attending a child marriage cannot be held guilty of committing an offence, but at the same time it should be ensured that the parents, public representatives, or government functionaries who are actively or passively involved in promoting child marriage do not escape their responsibility.
- (xi) The committee has recommended for the punishment of a term of ten years for enticing or taking a child out of the keeping of the lawful guardian or forcibly compelling or inducing him/her deceitfully to go from any place or for selling, trafficking or using a child for immoral purposes.
- (xii) The committee has suggested for evolving a mechanism for perfect coordination, massive interaction and wider consultation among different social as well as government agencies, Civil Society experts, NGOs, academicians, researchers, lawyers, jurists and officers such as, women IPS officers, religious leaders, and public representatives with a view to promoting concrete initiatives to curb a child marriage.
- (xiii) The committee has strongly recommended for compulsory registration of marriages so that a proper system could be set in for keeping an eye on the preventive measures and their effect on curbing child marriages in the country.
- (xiv) The Committee has regretted that here has not been any standard data collection system and, therefore, it has asked the Government to encourage researches on prevalence of child marriages by reputed research organizations, NGOs etc so that based on the research inputs, a social campaign may be launched for eradication of practice of child marriage.

NEW DELHI:
November 29, 2005

* To be appended at printing stage.

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