



CHILD MARRIAGE: THE WORST FORM OF SLAVERY

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The PCMA, 2006 defines a child to mean a male below 21 years and female below 18 years. This 'marriageable age' is derived from traditions where women were married off to older men. Despite existing laws, child marriage continues to be practiced openly across India and the world to date, with thousands of young girls and boys getting married with complete support of the family and society.

'Child marriage is a truly global problem that cuts across countries, cultures, religions and ethnicities. Child brides can be found in every region in the world, from the Middle East to Latin America, South Asia to Europe.'

The 2011 Census of India estimates that 33% of women are married before their 18th birthday, despite the existence of the PMCA. There are higher percentages of child marriages within rural areas than in urban areas. This indicates isolation, lack of education, and economic instability as contributing factors to the prevalence of child marriage. The causes of child marriage become an interrelated web of societal issues, including economic struggles, traditional and gender norms, and ineffective enforcement of legislation. It is an ingrained expectation in many rural communities that children, especially girls, should be married young. 'Child marriage remains a widely ignored violation of the health and development rights of girls and young women.'

**This publication is the third volume in the series 'Claiming Dignity', through which Human Rights Law Network addresses a spectrum of violations and violent acts that have been taking place within the issue of reproductive health and rights.**

All photographs have been taken with consent from the participants.



Human Rights Law Network  
2017



CHILD MARRIAGE:  
THE WORST FORM OF SLAVERY



# CHILD MARRIAGE: THE WORST FORM OF SLAVERY



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- To protect fundamental human rights, increase access to basic resources for marginalized communities, and eliminate discrimination.
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- Raise the level of pro-bono legal experience for the poor to make the work uniformly competent as well as compassionate.
- Professionally train a new generation of public interest lawyers and paralegals who are comfortable in the world of law as well as in social movements and who learn from such movements to refine legal concepts and strategies.

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## ABBREVIATIONS

ABAD	Apni Beti Apna Dhan
ARSH	Adolescent, Reproductive and Sexual Health
AHS	Annual Health Survey
CAT	Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CMPO	Child Marriage Prevention Officer
CMRA	Child Marriage Restraint Act
DLHS	District Level Household Survey
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ICPD	International Conference on Population and Development
ICPS	Integrated Child Protection Scheme
IPHS	Indian Public Health Standards
MoHFW	Ministry of Health and Family Welfare
NFHS	National Family Health Survey
NHM	National Health Mission
NRHM	National Rural Health Mission
PCMA	Prohibition of Child Marriage Act
PHC	Primary Health Centre
PSK	Poorna Shakti Kendra
PRIA	Participatory Research in Asia
RKSK	Rashtriya Kishor Swasthya Karyakram
RTI	Right to Information
TCIDT	Torture and Other Cruel, Inhuman or Degrading Treatment
UNCRC	United Nations Convention on the Rights of the Child
WCD	Women and Child Development

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## CHAPTER I

# CHILD MARRIAGE IN INDIA – AN INTRODUCTION



*The inescapable presence of child marriage that has persisted through the ages depicts the human rights crisis within India. The custom of marrying young children, particularly young girls, is found in various traditions and religions and is sustained by poverty, myths and misunderstanding. The current National and State Government programmes are ineffective in addressing this issue, and the policy and monetary return packages have not successfully targeted the key factors that promote child marriage.*



Due to the social effects of child marriage on young children, especially girls, child marriage was formally abolished in 1929, with the enactment of the Child Marriage Restraint Act (CMRA). However, as a result of the CMRA's ineffectiveness, new legislation was enacted 77 years later, in the form of the Prohibition of Child Marriage Act, 2006 (PCMA, 2006).

The PCMA, 2006 defines a child to mean a male below 21 years and female below 18 years. This 'marriageable age' is derived from traditions where women were married off to older men. Despite existing laws, child marriage continues to be practiced openly across India and the world to date, with thousands of young girls and boys getting married with complete support of the family and society.

*'Child marriage is a truly global problem that cuts across countries, cultures, religions and ethnicities. Child brides can be found in every region in the world, from the Middle East to Latin America, South Asia to Europe.'*<sup>1</sup>

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<sup>1</sup> *Child Marriage Around the World: Girls Not Brides*, 2016.  
Available at <http://www.girlsnotbrides.org/child-marriage/india/>

The 2011 Census of India estimates that 33% of women are married before their 18th birthday, despite the existence of the PMCA. There are higher percentages of child marriages within rural areas than in urban areas. This indicates isolation, lack of education, and economic instability as contributing factors to the prevalence of child marriage. The causes of child marriage become an interrelated web of societal issues, including economic struggles, traditional and gender norms, and ineffective enforcement of legislation. It is an ingrained expectation in many rural communities that children, especially girls, should be married young. 'Child marriage remains a widely ignored violation of the health and development rights of girls and young women.'<sup>2</sup>

## HISTORICAL OVERVIEW OF CHILD MARRIAGE

Ancient Indian literature does not indicate a prevalence of child marriage. 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* are found in our national epics, the *Ramayana* and *Mahabharata*. Various types of marriages were then prevalent in ancient India: such as *Gandharva Vivaha* (love marriage), and *Asura Vivaha* (marriage by abduction) but, among these, *Bal-Vivaha* (child marriage) is conspicuous by its absence, which refutes the argument that the custom of child marriage stemmed from tradition and religious practices. The *Vedic Mantras*, such as the *Rigveda*, mention that a girl could be married only when she was fully developed – both physically and mentally – and that she should also be fully developed physically before leaving her father's home. Men were advised to marry a girl with a fully developed body – indicating a rejection of child marriage. One hymn mentions that a female should be married only “when she is not a child”. Invasions, wars and expansion of territory changed the trends of the times and, as a result, new traditions were established.

The new Mughal rulers of India subsequently brought in their own ideas and laws. Law and order was not yet a universal phenomenon, and arbitrary powers were therefore concentrated in the hands of a few. The status of women

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<sup>2</sup> *Child Marriage in India: A Study of Situation, Causes and Enforcement of Prohibition of Child Marriage Act*. Padma Prakash, Pt. G. B. Pant Institute of Studies in Rural Development, Lucknow, June 2015, <http://www.esocialsciences.org>

deteriorated from bad to worse, as they were being exchanged as gifts, concubines and slaves. This slowly led to a downfall in the status of women, resulting in practices like covering the face with a veil, isolating women from the rest of society, not educating the girl child, and child marriages. The general insecurity that prevailed, especially with regard to women, made the presence of young, unmarried girls a potential disaster for the family. The practice of child marriage became rampant because guardians wanted to get rid of this insecurity as soon as possible. Hence, they sought to dispense with the responsibilities of their daughters by getting them married before they reached marriageable age. The custom of child marriage, 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 of a growing girl losing her virginity.



Until the 1860s, girls below the ages of eight or nine were getting married. Socio-reform 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 evil practice of child marriage cannot be ignored. Mohan Roy was the first person to voice his disapproval of the sati system, child marriage, and widow remarriage, amongst other things.

In the later years of the 1860s, some success was achieved when the Indian Penal Code made provisions against child marriage. However, the need for an amendment of the age of consent can be assessed from the tragic death of a Bengali minor girl Phulmonee Dasee in 1891, who was found on her husband Hurree Mohun's bed covered in blood. Hurree Mohun, her husband, who was allegedly 29 years her senior, was charged under Sections 304, 304A, 325 and 338 of IPC. The medical evidence revealed that the cause of the girl's death was a ruptured vagina. But Hurree Mohun was acquitted on charges of rape, because the law of rape was not applicable to the case in hand as Phulmonee had attained the age of 10 years. This case served as a catalyst for bringing forth the Age of Consent Act in 1891 by which the age of consent was increased to 12

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<sup>3</sup> *Child Marriages and the Law in India*, Aparna Bhatt, Aatreyee Sen, Uma Pradhan; Human Rights Law Network: 2005

years. It was further increased to 13 in 1925 and to 15 in 1949.<sup>3</sup>

## HIGH PREVALENCE OF CHILD MARRIAGES

Child marriage continues to be a widespread practice across India, with nearly half of brides married as young girls. While there has been a decline in incidences of child marriage nationally (from 54 per cent in 1992-93 to 33 per cent as per the 2011 census), the pace of change remains slow, especially for girls in the age group 15-18 years. Child marriage is more prevalent in rural areas (48 per cent) than in urban areas (29 per cent). There are also variations across different groups, particularly excluded communities, castes and tribes – although some ethnic groups, such as tribal groups, have lower rates of child marriage compared with the majority population. In general, rates of child marriage are higher in the central and western parts of India and lower in the eastern and southern parts of the country. In certain states, such as in Bihar and Rajasthan, approximately 60 per cent of females whose age is now between 20-24 years were married before the age of 18. Other states that have incidences of child marriage higher than the national average are: Uttar Pradesh, Madhya Pradesh, Andhra Pradesh, Karnataka, Jharkhand, Chhattisgarh, West Bengal and Tripura. However, even in states with overall lower prevalence of child marriage, there are often pockets of high prevalence that are present.

According to the National Crime Records Bureau, 2015, Tamil Nadu reported 47 incidences of child marriage while Karnataka reported 44. Together, the five states from South India – Andhra Pradesh, Telangana, Karnataka, Tamil Nadu and Kerala – reported 139 cases of child marriage during 2014. These five states account for almost half of the total number of cases reported in the country (280 instances).

The 2011 census report reveals that child marriage is still rampant, with almost one in every three women having been married off while she was still under the age of 18 years. The key findings of the census report were:

- About 78.5 lakh girls were married before the age of 10.
- 33% of all married women (or 10.3 crore) were married before they had turned 18.
- Though the trend of child marriage seems to be on the decline (in 2001 it was 43.5%), the latest figure of 30.2% is alarmingly high.
- About 38.1% of illiterate women and 23.3% of literate women got married

when they were below the age of 18, indicating a clear link between lack of education and rates of child marriage.

- Rajasthan leads the country in child marriages with 10.29 lakh (or 2.88%) of 3.57 crore children married before the age of 10. This is followed by Andhra Pradesh (2.70%), Karnataka (2.70%), Maharashtra (2.57%), Uttar Pradesh (2.10%) and Gujarat (2.09%).

According to UNICEF<sup>4</sup>, variations in the prevalence of child marriage also exist between districts within a given State. For example, Tamil Nadu has a low state prevalence rate for child marriage, but the districts Cuddalore, Krishnagiri, and Perambalur have prevalence rates close to the national average. In Rajasthan, the prevalence of child marriage in the western districts is between 20 and 50 per cent, while in the eastern districts it is higher at between 50 and 75 per cent. Only 5 out of 32 districts in Rajasthan have a prevalence of more than 75 per cent. In West Bengal, only 1 out of 12 districts has more than 70 per cent prevalence, while in the other districts, the prevalence is between 50 and 75 per cent. Gujarat does not have a very high prevalence of child marriage in any of its districts – the prevalence in a majority of the districts ranges between 25 and 50 per cent.

The consequences of child marriages on children are devastating. They include higher risks of adolescent pregnancy, physical and emotional abuse, and reduced discretionary and educational opportunities. The lack of education is particularly pertinent to the issue of child marriage as it serves as both a cause and consequence of child marriage. Future generations are pulled out of school early, with few skills to access job opportunities, thus perpetuating the cycle of poverty and in turn fuelling the vicious cycle of continuing child marriages throughout generations.

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<sup>4</sup> *Reducing Child Marriage in India: A model to scale up results*, Jha, Jyostna et al., Centre for Budget and Policy Studies and United Nations Children's Fund, New Delhi, 2016.

## CHAPTER II

# A GLOBAL SITUATIONAL ANALYSIS OF CHILD MARRIAGE



*Worldwide, more than 700 million women alive today were married before their 18th birthday. More than one in three (about 250 million) entered into union before age 15. Although boys are also married as children, girls are disproportionately affected. Forced and child marriage among girls is most common in South Asia and sub-Saharan Africa, and the 10 countries with the highest rates are found in these two regions. South Asia is home to almost half (42 per cent) of all child brides worldwide; India alone accounts for one third of the global total.<sup>5</sup>*



Child marriage is outlined by UNICEF as 'a violation of child rights. Whether it happens to a boy or a girl, child marriage challenges the right to health, education, protection and development'. The international community has confirmed on multiple occasions the illegality of child marriage, due to the widespread detriment to the rights to education, life, and equality.

The United Nations Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) substantiates child marriage as a violation of human rights and as 'both a symptom of and a contributor to gender inequality'. However, the practice of child marriage continues to occur

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<sup>5</sup> *Ending Child Marriage, Progress and Prospects*, UNICEF, New York, 2014.

### Child Marriage: Top 10 Countries

Country	% of Girls Married Before 18
Niger (2006)	74.5
Chad (2004)	71.5
Mali (2006)	70.6
Bangladesh (2007)	66.2
Guinea (2005)	63.1
Central African Republic (2006)	60.6
Mozambique (2008)	52.0
Nepal (2006)	51.4
Malawi (2006)	50.2
Ethiopia (2005)	49.2

Source: ICF Macro, Demographic and Health Surveys, 2000-2010; and UNICEF Multiple Indicator Cluster Surveys, 2000-2010.

in developing countries predominantly situated in Africa and South East Asia. The custom of marrying young children remains an unavoidable issue for developing nations, and without a solution it continues to be a barrier to equality and the progression of these nations themselves.<sup>6</sup>

Globally, more than 60 million women aged 20-24 were married before they reached the age of 18 years. As seen in the table above, around the world huge percentages of child marriage are still occurring, and as per the UNFPA if the current trends continue, the number of girls who marry as children will reach nearly one billion by 2030. Girls who marry as children are less likely to achieve their full potential. They are more likely to leave education early, suffer domestic violence, contract HIV/AIDS, and die due to complications during pregnancy and childbirth – their bodies simply are not ready. Child marriage also impacts negatively on nations' economies. It damages social and economic development, and leads to a cycle of poverty between generations. And yet, at least 117 countries around the world allow it to happen, according to the Pew Research Centre.<sup>7</sup>

The Pew Research Centre looked at 198 countries and found that almost all (192) of them have laws that specify when people can legally marry. Only six countries – Equatorial Guinea, Gambia, Saudi Arabia, Somalia, South Sudan

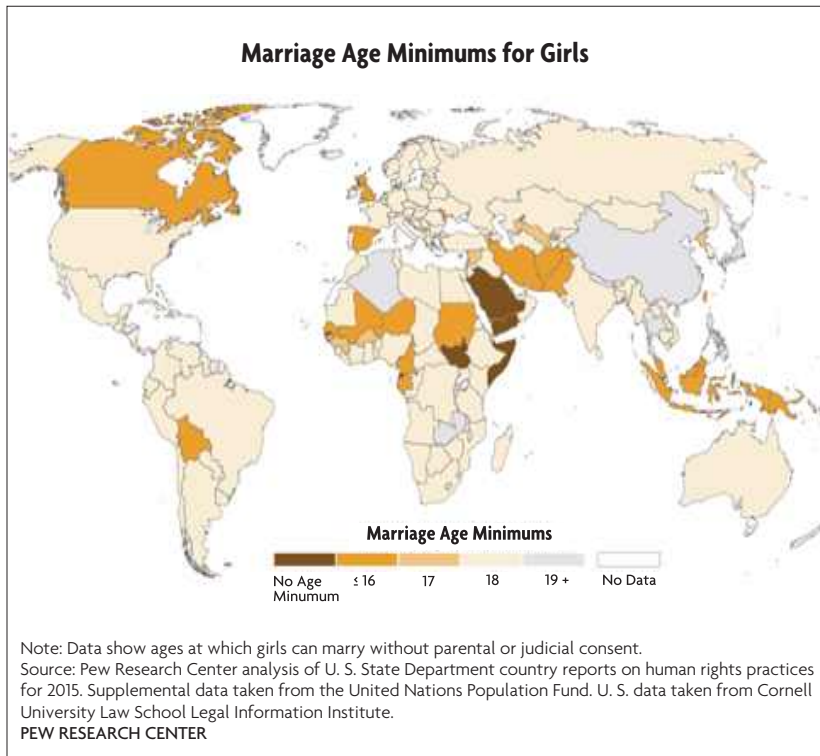
<sup>6</sup> *World Report*, Human Rights Watch, New York, 2016.

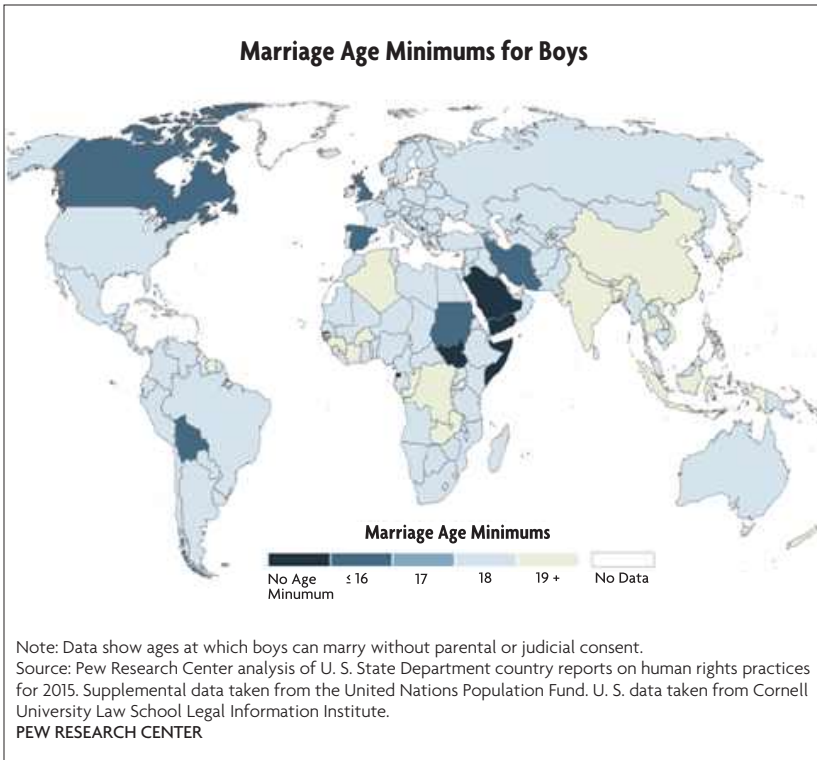
<sup>7</sup> These are the Countries where Child Marriage is Legal, Alex Gray, 2016, World Economic Forum.



and Yemen – do not specify a minimum age for marriage. An 18-year-old in Australia, for instance, can marry a 16-year-old as long as they have judicial approval. In Iraq, Jamaica and Uruguay, children can marry with parental permission. In about one fifth of countries (38), there are different minimum ages for men and women, and in almost every case the girl is younger. In Sudan, girls can marry at 10 and boys can marry at 15, or at puberty. Sometimes, the marriage age depends on religious affiliation. In the Philippines, Muslim boys can marry at 15 and Muslim girls can marry at puberty – though the usage of the term 'puberty' is problematic as it is not explicitly determinable when 'puberty' has been attained. In Tanzania, Muslim and Hindu girls can marry at 12, as long as the marriage is not consummated until the girl reaches the age of 15.

In South Asia, child marriage is regulated by general laws in most countries in the region through specific legislation aimed at prohibiting or preventing the practice. They also do specify minimum ages of marriage and in these laws there are sections which penalize the promotion of and involvement in



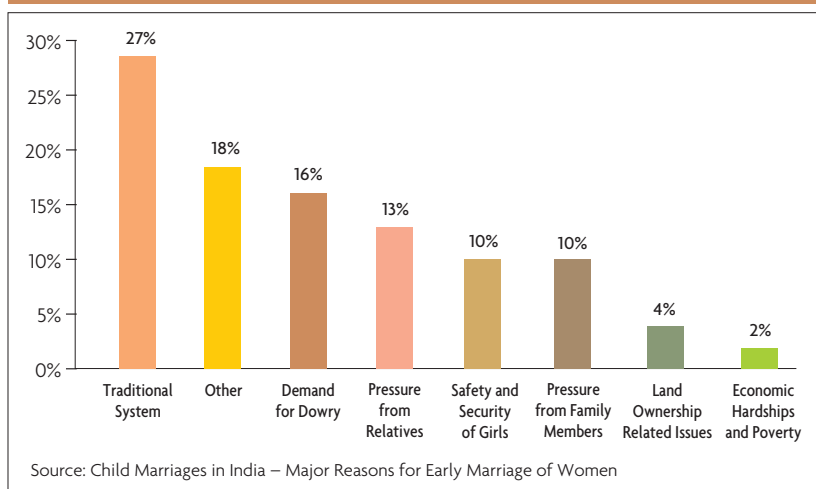


marriages below these ages. While the marriage of boys less than 18 years of age is penalized under general laws throughout South Asia, several laws allow for the legal marriage of girls less than 18 years. In Afghanistan, girls can be legally married at as young as 15 years with parental consent and at 16 without parental consent. In Pakistan, marriage of girls is permitted at 16 years under legislation prohibiting child marriage, and at as young as 14 years with parental consent under the Special Marriage Act, 1872, which governs nonreligious marriages. In Bangladesh, the Special Marriage Act, 1872 also permits girls as young as 14 to be married with consent by from girl's father or guardian. In Nepal, the age of marriage for boys and girls is 18 years with parental consent, and 20 years without parental consent. In Sri Lanka, marriage of girls and boys below 18 is prohibited under a national marriage law applicable to the general population except for Muslims, who have a differing, religious laws regarding marriage. The child marriage laws in both Bangladesh and India establish a minimum age of marriage of 18 for girls, but recognize a higher minimum age of marriage of 21 years for boys.

## Causes of Child Marriage in India

Child marriage as a prevalent issue is dependent on multiple interrelated factors. As mentioned above, there is a higher prevalence of child marriage in rural areas, substantiating the impact that factors such as poverty, traditional systems and lack of education can have on society. A key part of this is the continued presence of a dowry system, even though it was officially outlawed by the Dowry Prohibition Act, 1961. The cost of marrying off a girl child, and the comparative cost of sustaining a girl within the family, promotes early marriage in 'backward' and impoverished communities and families. 'Cultural traditions, practices, customs, community, caste and ethnic pressures, educational and economic backwardness, poverty and ineffective enforcement of legislation and laws are the main reasons for prevailing high rate of early marriage in India'.<sup>8</sup> Ultimately, these elements diminish and undermine the independence and empowerment of women, and serve to perpetuate the cycle of poverty and in turn the cycle of child marriage.

### Major Reasons for Early Marriage of Women



### a. Traditional Systems

The societal expectations of child marriage extends within cultural tradition, with the Planning Commission reporting that more than one quarter of respondents cited tradition as the the most important factor perpetuating

<sup>8</sup> Ibid

child marriage. This is evident in the custom of many child marriages in Northern India being solemnized on an auspicious day – *Akha Teej (Akshaya Trithiya)*.

In 2015, the Women and Child Development (WCD) Department prevented such a marriage in Chhattisgarh<sup>9</sup>. The girl, who was just 13 years old, was saved after officials convinced the family not to get her married. Though such incidents are a regular feature in tribal areas, this case demonstrates the protection that authorities and organizations can provide when implemented and actively pursued.

Cultural tradition is the single most important factor for early marriage; more than 1/4th respondents who were interviewed for this publication reported this. This was found to be more pronounced in the states of Bihar, Odisha, Uttar Pradesh and Maharashtra.

In Assam, residents of the tea gardens stated that it is the general cultural practice to marry girls off around the age of 14 to 15 years, and if a family waits too long to marry a girl off, there are fears that no one may want to marry her. The ingrained traditional expectation of child marriage makes it a very difficult issue to deal with. Any argument against child marriage is consistently ignored, as it is the 'done thing' to marry children young; and there is a high fear of the consequences to the girl and to the family.

### ***b. Pressure from Relatives***

Essential to the propagation of the traditional views of marriage is the pressure and influence of the family involved in child marriage. Part of this is on account of the lack of alternative, constructive opportunities available to girls in the form of education and employment, but also because from '*childhood, girls are conditioned to believe that marriage is a centrally important life goal for them and that their interests are subordinate to those of their family*'<sup>10</sup>. This pressure stems from beliefs about the security of girls and the outside economic pressures in sustaining the girl child and navigating the cost of dowry.

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<sup>9</sup> Child Development Department, *Police Prevent Child Marriage on Akha Teej*, News 18, Archives, 2015

<sup>10</sup> *Delaying Marriage for Girls in India: A formative research to design intervention for changing norms*: International Centre for Research on Women Report to UNICEF: 2011

### ***c. Safety and Security Concerns***

There is a presumption among parents that unmarried girls, past puberty, are at risk to sexual advances by men in the community. Such an occurrence would shame the family and 'steal' the virginity of the girl. *'In a society which puts a high premium on the patriarchal values of virginity and chastity of girls, girls are married off as soon as possible.'*<sup>11</sup> Early marriage ensures that there is no suspicion regarding the virginity of a young girl. This, of course, is problematic in that it sexualizes young girls, making them accountable for sexual abuse rather than sexual abusers themselves. It also only places shame on women in pre-marital sexual encounters – rendering women's sexuality as something considered dirty or shameful.

Families also choose to marry their daughters young to ensure they do not elope or run away. This perception of women is maintained by the inequalities in society and the intense desire to continue this patriarchal control of women and the policing of their sexual and romantic choices. It has been stated that *'A girl should marry young, before she has the chance to develop independent ideas'*. By marrying women young, the male-based hierarchy is best preserved, and women's autonomy and free will is crushed.<sup>12</sup>

### ***d. Demand for Dowry***

Although dowry is outlawed by the Dowry Prohibition Act 1961 and Sections 304 B of the Indian Penal Code, it continues to be practiced in certain areas. Often, the dowry increases as the child gets older; as a result it is cheaper for the parents to marry off their child at a younger age – reinforcing the notion of poverty fuelling the practice of child carriage. There is also the issue that if she is older, and remains in school, she is educated and may demand an educated husband. As a result, the higher the education, the more dowry is required; this is an established trend and serves to ensure women remain uneducated and dependent, thus continuing cycles of patriarchy and poverty.

Within Assam, although dowry is not traditionally practiced, it has become common for a groom's family to demand dowry after marriage. Often, men from states that practice dowry like Punjab and Haryana (where the sex ratio of

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<sup>11</sup> *Proposal to Amend the Prohibition of Child Marriage Act 2006 and other Allied Laws: Report No. 205, Feb 2006*: Law Commission of India, 2006.

<sup>12</sup> Seymour (1999). *A Study on Married Girl Students in Salem, Tamil Nadu*. International Journal of Research in Humanities, Arts and Literature.

women to men is significantly lower), propose to girls from Assam (where the sex ratio of women is more favourable). In some cases, the groom's family may approach the girl's family with a marriage proposal sans dowry or may even agree to pay the girl's family Rs 5,000-10,000. However, after the marriage, the groom's family may start demanding dowry. If the girl's family does not pay, the girl may be subjected to physically and/or mentally abusive treatment by the groom's family (with whom she traditionally resides). Dowry has become more common in minority and migrant-populated areas in Assam.

With regard to dowry and child marriage, poorer families from tea gardens report that the dowry price of an older girl is higher than that of a younger because a younger girl has more strength and life left to work for her husband's family. Therefore, some families fear that they will not be able to afford the dowry for their daughters if she is too old. This shows the significant role that dowry can play in child marriage and the challenges the government faces in implementing laws that impede on traditional systems.

#### ***e. Economic Hardship and Poverty***

Underlying these issues is the core concern of the cycle of poverty. Child marriage is more prevalent in lower economic classes and social castes of society. More than half of girls from the economically backward section of the society are married as children. Where poverty is acute, families, and sometimes the girls themselves, believe that marriage is the only solution to secure their future. Giving a daughter in marriage allows parents to reduce family expenses; they have one less person to feed, clothe and educate. Families may also see investing in their son's education as a more worthwhile investment. In some cases marriage of a daughter is a means to repay debts, manage disputes, or create social, economic and political alliances. In communities where 'bride price' is paid, it is often welcome income for poor families; in those where the bride's family pays the groom a dowry, they often have to pay less money if the bride is young and uneducated.<sup>13</sup> Thus although many argue that child marriage is simply steeped in tradition, one cannot escape the notion that poverty and money fervently promotes the practice.

There is also the issue that when subjugated, women can serve little purpose in the community. If there was greater access to employment and education, women could assist in supporting their family, lifting them out of poverty and

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<sup>13</sup> *Why does Child Marriage Happen* 2015. Available at [www.girlsnotbrides.org](http://www.girlsnotbrides.org)

therefore not being a burden. The role of daughters within their own family is different to that of sons; once married, daughters cease to be members of their natal family. Because of this they have no responsibility in supporting their parents, so *'there is limited incentive for daughters to remain unmarried for long'*.

In many of these cases, there would have been an escape or alternative available if the family and community were not poor. This can be seen in the inability to support the girl child, or the challenges to continue their education. Girls and young women must either work or get married.

### **f. Education**

Child marriage is found to be concentrated among educationally backward families. The solution is in having access to quality information and education. Not only would this provide knowledge of the consequences of child marriage, it would allow for the development of self-sufficient skills and the confidence and strength to break the cycle of poverty by granting access to more lucrative employment opportunities, as well as independent thought.

Due to a lack of proper education, girls are unable to acquire skills that can empower them. Instead, they are burdened with the impossible task of trying to break the cycle of inequality, abuse, and lost opportunities, without the knowledge of how to approach them, or the autonomy to do so. The consequences of this are significant, spanning the life of the girl, as it affects reproductive behaviour, contraceptive use, the health of the new born child and proper care and hygienic practices.

### **g. Gender Disparity**

*'In the absence of alternatives to the role of wife and mother, from which woman's social identity and economic status are derived, older women have no choice but to continue the custom of child marriage'*<sup>14</sup>

It is apparent that within Indian society, particularly in rural areas, the disparity between men and women is consistently maintained. This is seen throughout the levels of the community and throughout the life of the women. They have little decision making power with regard to their marriage, education or

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<sup>14</sup> *Delaying Marriage for Girls in India: A formative research to design intervention for changing norms*: International Centre for Research on Women Report to UNICEF:2011

reproduction. They are pigeonholed into the roles of mothers and unrecognized domestic workers. Because of this, women are seen as assets to be utilized by their family as and how they deem fit, and the most effective way of doing this is to marry them off young. This demonstrates a clear objectification of women, where women are seen as commodities or assets to be 'traded' or 'disposed of' – products, rather than humans, traded through the contract of marriage. Without a change in the perception of the role of women within the community, there can be little hope for the eradication of child marriage.

#### ***h. Inadequate Implementation of PCMA, 2006***

While the legal instruments in use today clearly declare child marriage to be unacceptable and illegal, the reality on the ground bears a stark difference to the normative legislation. The institution of child marriage is riddled with contradictions – when consensual sex with girls below a minimum age constitutes statutory rape, the same act with a similarly aged girl goes unsanctioned under the protective mantle of 'marriage'. Child marriage is clearly a violation of the rights of the girl child, who, by law, is entitled to be free from all forms of discrimination, degrading treatment, slavery and exploitation. The substantial web of legal provisions that emanate from international human rights law, constitutional guarantees of gender equality, and gender friendly law offer these rights, but evidently, implementation is lacking.<sup>15</sup>

First, this is due to a lack of awareness regarding the PCMA and the rights and responsibilities of individuals and officials. According to the Planning Commission report: *Child Marriage in India: A Study of Situation, Causes & Enforcement of Prohibition of Child Marriage Act*, less than 1/4th of respondents reported that they were aware of the PCMA. And only about 27 per cent respondents accepted that child marriage violates human rights of children.<sup>16</sup> Similarly, the lack of awareness about the programmes and schemes for the empowerment of adolescent girls has been reported in Chapter V. It is extremely difficult for the government to tackle the practice of child marriage, when there is no awareness of procedures and laws are not being implemented. As seen in the graph above, the percentage of parents who are not

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<sup>15</sup> *Child Marriages in India: An Insight into Laws and Policy*, December, 2013, Final Report of the Red Elephant Foundation on Submission to OHCHR.

<sup>16</sup> *Child Marriage in India: A Study of Situation, Causes & Enforcement of Prohibition of Child Marriage Act*: Planning Commission.



aware of the PCMA is very high. This has significant consequences for the ability of the act to be imposed, understood and become effective.

Secondly, the control and implementation of the PCMA is minimal. Society and government officials do not control this practice; in fact they are *'an enthusiastic participant in a deliberate perpetuation of entrenched interests, including property and social considerations, all of which make child marriage so common'*. The individuals expected to be implementing the laws are also influenced by their own cultural background, creating an *'official tolerance of cultural, societal and customary norms that shape and govern the institution of marriage and family life'*. Thus government officials avoid their mandated duties and turn a blind eye to the issue of child marriage in the name of tradition and culture.

Prior to the fact-finding that SLIC undertook in an effort to compile this publication, SLIC activists filed Right to Information (RTI) applications to every State in India requesting information on the number of child marriage cases filed and/or voided in their State. Follow-up RTI applications have now been sent and are pending. RTI replies from states with high rates of child marriage show that cases are not registered, police do not take action, and marriages are never voided, indicating poor implementation of the PCMA across the country. Only a handful of states reported any child marriage cases, hardly 40 total, nationwide. This raises questions regarding whether reported cases are being ignored or if cases are just going unreported. The total of 40 is also at odds with the figure of 280 child marriages that was reported.

## **Consequences of Child Marriage**

Child marriage has both sociological and psychological effects on boys and girls, hindering their physical and mental development. It places adult concepts and experiences onto children who have no physical or mental expertise in dealing with them. The effect on girls is more prominent due to the repressive, subservient role that is imposed on them, and the subsequent reduced life choices they are left with, including education and sexual discretion. Importantly, the propagation of this cycle of marrying children not only has a significant effect on the life of the children involved, it adversely affects future generations by impeding the progress of rural India, and in turn India as a whole.

What is clearly evident as previously mentioned is that the consequences of child marriage are more significant for a girl child. They are generally younger than their husbands, indicated by the differences in the legal age of marriage, and face the challenges of psychological abuse within the 'new' family, having been annexed from their own, and the physical incapability of early childbirth. Young married girls are '*required to perform heavy amounts of domestic work, under pressure to demonstrate fertility, and responsible for raising children, constrained in decision-making and reduced life choices.*'<sup>17</sup> Child marriage continues to be immersed in a vicious cycle of poverty, low educational attainment, high incidences of disease, poor sex ratios, the subordination of women, and most significantly, the inter-generational cycles of all of these. The psychological consequences are particularly pronounced on the young girl. She is taken from her family, and placed within a hierarchy where she has no power.<sup>18</sup> Married girls are generally separated from their immediate families, taken out of school to be 'transferred' to her new husband's home, where they are used as free labour, sex objects and reproductive machines.

The woman's self-respect in the traditional system is protected not through her father or husband, but through her son. Part of this is the undervalued nature of their duties; their 'work, despite being highly laborious and time consuming, is not highly valued, often giving men greater access to productive resources and social status.' This perception of women is maintained by the inequalities in society and the desire to continue this patriarchal control.<sup>19</sup>

From a rights-based perspective, child marriage raises three major concerns:<sup>20</sup>

- 1) The denial of childhood and adolescence;
- 2) The curtailment of personal freedom and potential physical and psychological harm; and
- 3) The potential threat of poor reproductive health and increased morbidity and mortality rates.

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<sup>17</sup> *Proposal to Amend the Prohibition of Child Marriage Act 2006 and other Allied Laws: Report No. 205, 2006.*

<sup>18</sup> D. R. Manda, *Study of Life Satisfaction of Married Women in Relation to Female Foeticide and Girl Child in Uttarakhand, India*, Research Journal of Social Science and Management, 2013.

<sup>19</sup> Divya Raina Mandal, *Study of Life Satisfaction of Married Women in Relation to Female Foeticide and Girl Child in Uttarakhand, India* (2013) 3(2). Research Journal of Social Science & Management, 2003.

<sup>20</sup> Child Marriage in India: A Study of Situation, Causes & Enforcement of Prohibition of Child Marriage Act: Planning Commission.

The most vulnerable party to a child marriage is the girl child who is unable to protect herself against these risks.

Intertwined with perceived status and role within the new family and community is the pressure for early pregnancy combined with the desire for a son. Thus not only are child brides more susceptible to sexually transmitted diseases and more vulnerable to physical abuse, child marriage provides a legal sanction for child sexual abuse and rape. Their bodies are not equipped to handle childbirth. According to the World Health Organization, 'complications during pregnancy and childbirth are the second cause of death for 15-19 year old girls globally'. In addition to this, 'babies born to adolescent mothers face a substantially higher risk of dying than those born to women aged 20 to 24'.<sup>21</sup>

*As a result, pregnancy 'leads to more extreme peril, including death during delivery and jeopardizing the health of these young mothers as well as their babies.'*

According to the Planning Commission report, approximately 2% of respondents were between the ages of 13 to 18 at the time of their pregnancy. This reveals that young married women are taking a high risk during child bearing as they are physically and psychologically immature.

The consequences of child marriage affect the development of a country locally and nationally. One key factor for this is the limitations on education and development that are effectuated by taking children out of school. In general, when children are married and move to their in-laws' home, their education ends. This serves to perpetuate cycles of low literacy and limited employment opportunities.

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<sup>21</sup> Adolescent Pregnancy, World Health Organization 2014

## CHAPTER III

# LAWS AND POLICIES TO PREVENT CHILD MARRIAGE



*The failure to enact and enforce laws on child marriage implicates governments and service providers who are complicit in the violation of human and constitutional rights. These governments are responsible for perpetuating legal and practical barriers that make girls vulnerable to child marriage and deny effective legal remedies to those trapped in such marriages.<sup>22</sup>*



### **Global Intervention**

Child marriage refers to the marriage of a child younger than 18 years<sup>23</sup> in accordance with Article 1 of the United Nations Convention on the Rights of the Child (UNCRC). In simple terms, child marriage is the marriage of a person before the age of maturity. As per the interpretation of several international documents, it is a violation of human rights. While child marriage affects both sexes, girls are disproportionately affected. Child marriage and child betrothal are practices that are often related to customary and religious beliefs, besides the correlated economic considerations.

Child marriage violates various fundamental constitutional, statutory and international rights. These include the basic rights of the child, as outlined in the UNCRC (1989), the right to informed consent and the right to education. In September 2013, the UN Human Rights Council passed its first resolution on *child, early and forced marriage*, where 107 countries affirmed that the choice to marry is an adult decision that should be informed and made freely without fear, coercion or undue pressure.

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<sup>22</sup> Briefing Paper, Child Marriage in South Asia, International and Constitutional Legal Standards and Jurisprudence for Promoting Accountability and Change, 2013.

<sup>23</sup> Article 1, Convention on the Rights of the Child.

Additionally, CEDAW, 1979 recognized child marriage as discrimination against women and girls. At the International Conference on Population and Development (ICPD, 1994), 197 countries, including India, adopted the ICPD Programme of Action, which called on countries to eliminate child marriage and to enforce laws that ensure free and full consent.

## ***International Laws***

Article 51(c) of the Constitution of India mandates the State to 'foster respect for international law and treaty obligations in the dealings of organised peoples with one another'. The Supreme Court regularly confirms India's international human rights obligations. In *Apparel Export Promotion Council v. Chopra* (1999), the Supreme Court found that the judiciary 'is under an obligation to give due regard to international Conventions and Norms for construing domestic laws, more so when there is no inconsistency between them and there is a void in domestic law.'

### **1. Rights of the Child**

Under international human rights law, children are recognized as requiring special care and enjoying the right to special measures of protection. This protection is enshrined in the Convention on the Rights of the Child (CRC), as well as in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). India has acceded to all three Conventions. Article 19 of the CRC states parties should 'protect the child from all forms of physical or mental violence, injury, or abuse', and as per Article 34, they must 'protect the child from all forms of sexual exploitation and sexual abuse'. The Committee on the Rights of the Child (CRC Committee) has specifically recognised child marriage as a violation of children's rights that endangers the lives and health of girls and exposes them to violence.

### **2. Rights to Equality and Non-discrimination**

International human rights law guarantees women the rights to equality and non-discrimination. Such guarantees are enshrined in CEDAW – which India signed on 30 July 1980 and ratified on 9 July 1993 – as well as in the ICCPR and the ICESCR. Because child marriage impacts girls far more than boys, it violates women's rights to equality and non-discrimination. Indeed, Article 16 of CEDAW, concerning protection of women's equal rights in marriage, specifically prohibits child marriage.

### **3. Right to Health**

The ICESCR recognizes ‘the right to everyone to the enjoyment of the highest attainable standard of physical and mental health’. The CEDAW Committee has recognized the long-term negative effect of child marriage on women’s enjoyment of their right to health.

### **4. Right to Freedom from Torture and other Cruel Inhuman Degrading Treatment**

Under the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) – which India signed on 14 October 1997 – states have a duty to eliminate torture and other forms of cruel, inhuman, or degrading treatment (TCIDT). The CAT Committee has recognized that child marriage violates the right to be free from TCIDT.

### **5. Right to Life, Privacy and Freedom from Slavery**

Under the CRC, states must ensure children’s right to life, and ‘ensure to the maximum extent possible the survival and development of the child’. Moreover, the CRC Committee specifically emphasises that states must take effective measures to eliminate all acts and activities that threaten the right to life of adolescents, including child marriage. Child marriage also violates women’s right to privacy under Article 17 of the ICCPR. The Human Rights Committee has specifically stated that states are obligated under Article 17 to eradicate all forms of marriage that allow the sexual exploitation of children.

Finally, the Special Rapporteur on Contemporary Forms of Slavery has affirmed that since children cannot provide informed consent to marriage, all child marriages are considered to be forced and to fall within the slavery-like practices, condemned in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. India signed this Convention on 7th September, 1956 and ratified it on 23rd July, 1960.

### **6. Rights to Education, Work and Economic Autonomy**

India is bound by international conventions – namely the CRC and the ICESCR – that guarantee the interrelated rights to education, employment, and economic freedom. Moreover, India is required under CEDAW to ensure that women are able to enjoy these rights on an equal basis with men. The CEDAW Committee has emphasized that the impact of child marriage on women’s health and ability to pursue education restricts their economic autonomy.

## **Indian Legal Context**

Child marriage was outlawed in 1929 through the introduction of CMRA, 1929, passed on 28 September, 1929. This Act fixed the age of marriage for girls at 14 years and boys at 18 years which was later amended to 18 for girls and 21 for boys. The CMRA, 1929 was overhauled and the PCMA, 2006 was enacted; however, child marriage continues to be practiced across India.

The PCMA, 2006 was created to eliminate child marriage from India and presents key responsibilities and reprimands against those who promote and forcibly enforce child marriage.

### *Definition of Child Within Laws*

#### **The Child Marriage Restraint Act, 1929**

*'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.'*

#### **The Special Marriage Act, 1955**

*'A child, means a person who, if a male has completed the age of twenty-one years and the female the age of eighteen years.'*

#### **The Hindu Marriage Act, 1955**

*'The bridegroom has completed the age of twenty one years and the bride the age of eighteen years at the time of marriage.'*

#### **Muslim Law**

*'One of the important elements of Muslim marriage is Puberty. Puberty is a biological phenomenon.'*

#### **The Indian Christian Marriage Act, 1872**

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

#### **Prohibition of Child Marriage Act, 2006**

*"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.'*

Recently, a debate arose regarding the marriageable age of girls within Muslim communities. According to Muslim law, the marriageable age of a girl child depends on her puberty. However, in a recent judgement by the Gujarat High Court in September 2015, the Court ruled that in cases of minor Muslim girls, the PCMA, 2006, would prevail over the provisions of personal laws. The Court, while quashing an FIR of rape and abduction of a minor girl by the petitioner who married her, ordered the police to probe the case under the provisions of the Child Marriage Act. The single-bench of justice J. B. Pardiwala held that Child Marriage Act was a 'Special Act' and it will override the provisions of Muslim Personal Law, the Hindu Marriage Act, or any personal law. This demonstrates the power that the PCMA can have when it is properly implemented. If this was utilised to enforce an equality of ages within child marriage, it is possible that this 'Special Act' could have a positive influence over areas of law and personal law.

## **The Prohibition of Child Marriage Act, 2006**

In response to the plea (Writ Petition © 212/2003) of the Forum for Fact-finding Documentation and Advocacy (FFDA) in the Supreme Court – a public interest litigation filed by the FFDA seeking a ban on child marriage – the Government of India introduced the PCMA in 2006, coming into effect on 1 November 2007 to address and fix the shortcomings of the CMRA. The change in name was intended to reflect the absolute prevention and prohibition of child marriage, rather than merely restraining it.

The PCMA, 2006 defines 'child marriage' as a marriage in which either of the contracting parties is a child.

If a court is satisfied that a child marriage has been arranged or is about to be solemnized, it can issue an injunction against any person, thus prohibiting the marriage. However, once a child marriage has been solemnized, in most cases it is legally binding, and in order to void it the contracting party, who was a female child at the time of the marriage, must file a petition in the district court before reaching the age of 20. However, there are certain circumstances in which a child marriage is automatically void, namely where the marriage was solemnized in contravention of an injunction order, or where the child was married after he or she was 'taken or enticed out of the keeping of the lawful guardian' or 'by force compelled, or by any deceitful means induced to go from any place' or 'sold for the purpose of marriage'.



Under the PCMA, a male over the age of 18 who contracts a child marriage is punishable with imprisonment of up to two years and/or a fine of up to one lakh rupees. The same punishment applies to anyone who solemnizes a child marriage, or permits a child marriage to be solemnized, or negligently fails to prevent it from being solemnized. Where a minor child contracts a marriage, there is a rebuttable presumption that the child's parent or guardian has negligently failed to prevent the marriage from being solemnized.

Under the PCMA, each state must appoint at least one Child Marriage Prevention Officer (CMPO), and it is the duty of the CMPO to:

- a. Prevent solemnization of child marriages by taking such action as he/she may deem fit;
- b. Collect evidence for the effective prosecution of persons contravening the provisions of the PCMA;
- c. Advise either individual cases or counsel the residents of the locality not to indulge in promoting, aiding, or permitting the solemnization of child marriages;
- d. Create awareness of the evil which results from child marriages;
- e. Sensitize the community on the issue of child marriages;
- f. Furnish such periodical returns and statistics as the State Government may direct; and
- g. Discharge such other functions and duties as may be assigned to him/her by the State Government.

### **Shortfalls of PCMA and other Laws**

The PCMA lays emphasis on the prohibition of child marriages by providing for the appointment of CMPOs by the State Governments, and gives powers to these officers to prevent and prosecute solemnization of child marriages and to create awareness on the issue. The Act gives the District Magistrate powers to stop and prevent the solemnization of mass child marriages by employing appropriate measures and providing a small police force, in addition to giving

him/her all the powers of CMPOs. However, without the required financial allocation, these officers may never be appointed in the first place. It is hard to hold CMPOs and the provisions of the PCMA accountable when many states are not forthcoming at all regarding the budget and expenditure for preventing child marriage, as demonstrated by the 2014 Report on the Status of Implementation of Prohibition of Child Marriage Act Collected from States<sup>24</sup>.

As much as the legislation is centric to the interests of the minor, there are very few instances where the minors themselves, in their capacity as the victims of child marriage, have successfully approached the court and filed for a declaration testifying to the effect that their marriage is void under the Act. The few cases that have been reported have been criminal prosecutions – most of which involve the adult spouse and/or the family of the minor involved. In many instances where such cases are brought to fore, judges have ordered the minor or both spouses, as the case may require, to seek counselling while they deliberate on the custody rights based on the best interests of the minor. The law also does not make a marriage invalid whether it is performed when the child is an infant or later at puberty or adolescence. Many feminist and human rights groups criticize the present Act.

Core criticisms include:

Under Section 3(1) of PCMA:

***‘Child marriage is voidable and can be annulled. But the annulment of child marriage can be sought within a period of 2 years after the child who was a party to the marriage has attained majority (Section 3(3), PCMA 2006).’***

One of the main criticisms of the new Act has been that it does not invalidate a marriage even below a certain age. Thus a child of 10, 11, 12 or 13 years of age can be married and subjected to sexual and other forms of abuse which normally have lasting and irreversible mental and physical consequences. Merely giving a girl child an option to end the marriage after the age of 15 years may not be sufficient. Additionally, though under criminal law sexual intercourse with a

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<sup>24</sup> Report on Status of Implementation of Prohibition of Child Marriage Act Collected from States, Gender Rights, Gender Based Violence, Law Enforcement, National Resource Centre for Women, National Mission for Empowerment of Women, Ministry of Women and Child Development, Government of India, 2014.

wife under 15 years is punishable, the marriage is still held to be valid under the new Act. The implications of this are essentially that the institution of 'marriage' is seen as more important than issues surrounding statutory rape and child sexual abuse.

a. It has been proposed by some that the age of consent under the rape laws should be the same as the minimum age of marriage, and all marriages below this age should be held void. After all, if a marriage is naturally assumed to be consummated soon after it takes place, surely all marriages consummated below the legal age of marriage constitute statutory rape? Others have proposed that in special circumstances, a marriage may be allowed between a boy and a girl over 16 years (hereinafter referred to as 'the relaxed age of marriage'), and the age for consent to sexual intercourse and the relaxed age of marriage should be the same, therefore marriages below the age of 16 should be void.

b. Another criticism that has been raised vis-à-vis the new Act is the fact that though a boy can opt out of the marriage till the age of 23 years, a girl can only do so till the age of 20 years (2 years after reaching the age of maturity).<sup>25</sup> This flies in the face of equality between the sexes, and again reinforces an

## **Constitution of India**

### **1. Protection of Life (Article 21)**

I. Child marriage violates the fundamental right to life under Article 21 by exposing girls to reproductive health risks, including early pregnancy. In *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*, A. I. R. 1996 S. C. 2426, para.16 (1996), the court recognized that right to life includes the duty to preserve life.

II. In *Consumer Education and Research Centre v. Union of India*, 1 S. C. R. 626, para. 26 (1995) the Supreme Court has recognized that 'the right to health and medical care is a fundamental right under the right to life.' Besides, high courts in India have specifically recognized reproductive rights as protected under the right to life.

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<sup>25</sup> *Child Marriage and Law in India*: Aparna Bhat, Aatreyee Sen, Uma Pradhan: Human Right Law Network: 2005

III. In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi & Others, 1981 SCR (2) 516 (1981)*, the Supreme Court has held that Article 21 includes the right 'to protection against torture, or cruel, inhuman or degrading treatment'.

## **2. Protection of Personal Liberty (Article 21)**

Child marriage violates the right to personal liberty under Article 21 by interfering with the ability of girls to make autonomous decisions regarding their private lives. In *Gobind v. State of Madhya Pradesh, 3 S. C. R. 949, para. 24 (1975)*; the Supreme Court recognised the right to privacy in relation to family life and reproduction, stating that 'any right to privacy must encompass and protect the personal intimacies of the home, the family, marriage, motherhood, procreation and child rearing'.

More recently, in *Rajgopal v. State of Tamil Nadu, S. C. C. (6) 632, para. 26(1) (1994)*; the Supreme Court reaffirmed that 'the right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21', and that every citizen 'has a right to safeguard... [the] privacy of his own, his family, marriage, procreation, motherhood, child bearing and education'.

## **3. Prohibition of Traffic in Human Beings and Forced Labour (Article 23)**

'Child marriage reflects the commodification of women and girls, without regard to their rights as individuals, best interests, and legal capacity to provide consent to marriage'.<sup>26</sup> Indeed, the Supplementary Convention on the Abolition of Slavery, 1956, which India has ratified, defines child marriage as 'similar to slavery... any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.'

Thus, child marriage violates the fundamental rights of girls under Article 23 of the Constitution of India.

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<sup>26</sup> Center for Reproductive Rights, *Child Marriage in South Asia: International and Constitutional Legal Standards and Jurisprudence for Promoting Accountability and Change*, 2013

#### **4. Equality before Law (Article 14) and Prohibition of Discrimination on Grounds of Sex (Article 15)**

Although child marriage affects both sexes, girls are disproportionately affected. One reason for this is that child brides are invariably younger than their husbands – which is formally entrenched in the legal age of marriage – and in some cases this age gap extends to many years. Another reason is that many of the harms that girls suffer as a result of child marriage – such as early pregnancy, domestic and/or sexual violence, and restricted educational opportunities – do not apply to boys. Thus, child marriage violates the fundamental right to equality before the law under Article 14, as well as the constitutional prohibition of discrimination on grounds of sex under Article 15. Indeed, Article 15(3) of the Constitution allows the State to make ‘special provision for women and children’ (*Apparel Export Promotion Council v. Chopra*, AIR 1999 SC 625).

Moreover, the Supreme Court has held that ‘gender equality is one of the most precious Fundamental Rights guaranteed by the Constitution of India.’

#### **5. Right to Education (Article 21A)**

Child brides are almost always forced to leave school, either at the direct insistence of their immediate family, in-laws, or as a result of early pregnancy. Thus, child marriage violates the fundamental right to education under Article 21A.

#### **6. Directive Principles of State Policy (Article 39)**

Article 39 (e) of the Constitution mandates that ‘the State shall, in particular, direct its policy towards securing, inter alia, that the health and strength of workers, men and women, and the tender age of children are not abused’, and ‘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’ [Article 39 (f)].

These Directive Principles of State Policy clearly require the State to direct its policy towards eradicating child marriage, which not only robs children of their youth by imposing a fundamentally adult institution on them, but which

also leads to the abuse – physical, sexual and psychological – as well as the exploitation of young girls.

## **National Policies Against Child Marriage**

Several national-level policies have been formulated since 2000. These policies have advocated delaying the age at marriage and age of conceiving the first child.

**National Policy for Children, 2013:** Replacing the outdated National Policy for Children 1974, the Government of India adopted a new policy in April 2013. The Ministry of Women and Child Development (MWCD) is the nodal ministry for overseeing and coordinating the implementation of this policy. Within its objective to strengthen the overall child protection framework, the policy provides for the tracking, rescuing and rehabilitating of school children – including married children – and ensuring them access to their right to education. Several National level policies formulated since 2000, including the National Population Policy 2000, the National Youth Policy 2003 and the National Adolescent Reproductive and Sexual Health Strategy have advocated delaying the age of marriage and the age of conceiving the first child. Platforms such as National Girl Child Day celebrated on 24th January and the Rajiv Gandhi Scheme for Empowerment of Adolescent Girls (SABLA) are used to raise awareness on the issue at various levels.

**National Strategy on Child Marriage:** The MWCD introduced a National Strategy on Child Marriage on 14 February 2013 that reflects the commitment of the Government of India to curb child marriage. It suggested ensuring linkages with the Integrated Child Protection Scheme (ICPS) structures and statutory bodies to ensure detection and the prompt referral of cases that require care and protection. One of the strategic directions is ‘in cases in which children have already been married, they should not be discriminated when accessing services such as health, nutrition, education and employment programmes’.

**National Plan of Action on Prevention of Child Marriage:** According to the MWCD’s Press Note on Child Marriages in India dated 20 November 2013, a draft Plan of Action was discussed in a Regional Consultation at Lucknow on 8 July, 2013, and in a National Consultation at New Delhi on 18 July, 2013. It is being finalised based on the deliberations at these consultations. However, in

its last draft, it did not have a timeline or any clarity on the allocation of funds to implement the Plan.

## **Programmes and Schemes**

**The Rajiv Gandhi Scheme for Empowerment of Adolescent Girls:** A comprehensive scheme for the holistic development of adolescent girls aged 11-18 years, called the 'Rajiv Gandhi Scheme for Empowerment of Adolescent Girls – SABLA' was introduced in the year 2010. SABLA is being implemented in 205 selected districts across the country.

SABLA includes nutrition provision at Rs. 5 per day for 300 days in a year; iron and folic acid supplementation (52 tablets annually), health check-ups and referral services, nutrition & health education, counselling/guidance on family welfare, child care practices and home management, life skills education and accessing public services, and vocational training for girls aged 16 and above under the National Skill Development Programme.

**Kishori Shakti Yojana (Adolescent Girls Scheme):** This scheme was initiated in 2001, with a focus on improving the nutritional and health status of adolescent girls between 11-18 years of age and promoting school attendance. The scheme now stands merged with SABLA, and applies in districts which do not have SABLA.

**Nutrition Programme for Adolescent Girls (NPAG):** The NPAG has also been merged with SABLA.

**Dhanalakshmi:** In 2009, the MWCD introduced a pilot scheme (Dhanalakshmi) in selected backward districts of the country, as a conditional cash transfer scheme providing cash to the family of the girl child (preferably the mother) on fulfilling certain conditions for the girl child; such as birth registration, immunization, enrolment retention in school, and delaying the marriage age beyond 18 years. The scheme also included a sub-component for providing insurance coverage to the girl child.

**Conditional Cash Transfer Schemes in the States:** State governments have also launched conditional cash transfer schemes. Rajasthan launched the *Raj Lakshmi* scheme in 1992, Haryana initiated the *Apni Beti, Apna Dhan* (ABAD) scheme (My Daughter, My Pride) in 1994, and Karnataka launched the

*Bhagyalaxmi* scheme in 2004. In 2005 and 2006, Delhi and Madhya Pradesh launched the *Ladli Yojana* and the *Ladli Laxmi Yojana* schemes, respectively.

**Poorna Shakti Kendras (PSKs):** Launched as a pilot project by the National Mission for Empowerment of Women Scheme in September 2011 in the Pali district of Rajasthan, the scheme set up 150 village level PSKs to demonstrate the convergence of programmes and schemes for the purpose of empowering women. Since then, PSKs have also been set up in district Kamrup Metropolitan, Assam, and Jaintia Hills, Meghalaya. While bringing women together and strengthening their participation in local self governance, women's sabhas (meetings) are mobilised under this project, which take up issues relating to women and girls, including child marriage. The PSKs are reported to have prevented more than 200 child marriages<sup>27</sup>.

**Integrated Child Protection Scheme (ICPS):** The scheme was launched during the Eleventh Five Year Plan (2007-2012) to strengthen families of children at risk, as a measure to prevent children from falling out of the social security and protective net, and to also strengthen structures and institutional and non-institutional mechanisms to protect children who come in contact with the law as victims of crimes or as perpetrators of crime. In principle, it lays down a strong preventive, protective and rehabilitative framework on child protection. It is a scheme sponsored by the Central Government, where the maximum share of the budget (75%) comes from the centre with the states providing the additional 25%.

**The National Bravery Award:** The National Bravery Award was established by the Central Government in 1957 for the public recognition of positive role models. These awards go to children who perform outstanding deeds of bravery and selfless sacrifice. In 2003, HAQ Centre for Child Rights had written to the Indian Council for Child Welfare regarding 5 girls from Karnal district in Haryana who had stopped two child marriages, despite staunch opposition from their community leaders, and sought a broadening of the definition of 'bravery' to include such courageous acts. Since then, several children have received the award for stopping child marriage in their local areas.

**Rashtriya Kishor Swasthya Karyakram (RKSK):** a more recent initiative, RKSK – or the National Adolescent Health Strategy – was launched by the Ministry

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<sup>27</sup> Ministry of Women and Child Development, Annual Report 2012-13



of Health and Family Welfare (MoHFW) in January 2014. This scheme targets adolescent health, targeting 10-19 year olds to facilitate nutrition and reproductive health, and to counter substance abuse.

## **Shortfalls of Programmes and Schemes**

Despite the presence of a variety of programmes and schemes that directly or indirectly serve to counter child marriage practices being encouraging, the government's policy perspective on addressing the issue of child marriage does not recognize factors such as the multiple, inter-linked deprivations and challenges including poverty, lack of education, economic and personal security, exploitative environment at home, and most importantly, the lack of information, counselling and rehabilitation programmes. The majority of the schemes and programmes that have been rolled out by the Union Government and the State Governments are still being done on a pilot basis in a fragmented way with no monitoring mechanism or budgetary support, leading to ineffective and inefficient implementation.

## CHAPTER IV JURISPRUDENCE



*Since 1978, the Supreme Court of India has been guarding both political liberties as well as socio-economic rights of citizens, particularly of the unprivileged and downtrodden people. It has developed a new strategy of 'public interest litigation' for upholding and enforcing the rights of the unprivileged. It has devised new methods, forged new tools, and innovated new strategies. Credit for this new development goes primarily to activist Judges like P. N. Bhagwati, Krishna Iyer, D. A. Desai and Chinnappa Reddy, JJ. Their attitude was influenced by radicalism and insurgency. Madon, J. of the Supreme Court of India, justifies the role of judges as activists. He says, "[A] Judge who denies to himself judicial activism, denies to himself the role of a judge. Nature abhors a vacuum. Take away judicial activism and tyranny will step in to fill the vacant sphere".<sup>28</sup>*



Over the years, the Government of India was held accountable for the failure to prevent child marriages in the country. Petitions have been filed in the Supreme Court and in High Courts, in this regard. The Supreme Court of India and several High Courts have expressed concern regarding child marriage, and issued directions to the respondent parties in different cases for their prevention. A few cases are discussed below:

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<sup>28</sup> JURISPRUDENCE, Supreme Court of India and Social Jurisprudence, T. K. Tope, Cite as: (1988) 1 SCC (Jur) 8

## **A. IN THE HIGH COURT OF GUJARAT**

### ***1. Yunusbhai Usmanbhai Shaikh v. State of Gujarat, Criminal Misc. Application No. 8290 of 2015***

Decided on 23.09.2015

The High Court held that provisions of the Prohibition of Child Marriage Act, 2006 are secular in nature, that they apply to all communities including Muslim, and that these provisions override the Muslim personal laws.

### ***2. Gajara Naran Bhura Vs. Kanbi Kunverbai Parbat***

Decided on 19.06.1997

Appellant in this case is the defendant and husband of the respondent. Respondent plaintiff filed a suit for maintenance at the rate of Rs. 100 per month and the maintenance charges Rs. 200. The suit was dismissed by the learned civil judge (Junior Division). The learned assistant judge of Kutch set aside the judgment and decree of the trial court and decreed the plaintiff's suit to recover sum of Rs. 100 per month for maintenance from the defendant appellant. Costs of the suit and appeal were also awarded. The plaintiff's case was that her marriage with the defendant took place in the Samvat year 2025 according to rights and ceremony of Leuva Kanbi caste and she resided with her husband after marriage. She gave birth to one child whose name is Ramji and who is about one and a half years old. The defendant deserted the plaintiff without any reasonable cause by sending her to her parent's place and not allowing her to return to her husband's house, though she is ready and willing to reside with her husband. The defendant is not paying maintenance to her. The custody of her child is with the husband. She however claims maintenance with effect from 11.11.1974 while residing separately. The defendant did not deny the factum of marriage was less than 15 years. Plea of divorce was also taken.

1. The only question that needs to be considered in this appeal is whether marriage solemnized in violation of CMRA is void. The plaintiff at the time of her marriage was aged about 10-12 years as per her own admission. It is also not in dispute that the husband at the time of marriage was of

marriageable age. That the marriage was duly consummated and the relationship of husband and wife subsisted even after attaining the eligible age by the wife, which resulted in birth of child as well.

2. The CMRA does not deal with the validity of child marriage. It defines what 'child' means. The Section makes a male above 18 years but below 21 years contracting child marriage punishable with simple imprisonment that may extend to 3 months and fine. Section 7 to 10 deal with procedural part of taking cognizance of offences and jurisdiction of the court and preliminary enquiries. Section 12 which is of significance for the present purposes, empowers the court, if it is satisfied on information led before it through a complaint or otherwise that a child marriage in contravention of the Act has been arranged or is about to be solemnized, to issue an injunction against any of the persons mentioned in Sections 3, 4, 5 and 6 of the Act prohibiting such marriage.

3. Section 12 envisages on satisfaction by the court to issue an injunction against arranging or solemnizing a marriage in contravention of the Act. The provisions of the Hindu Marriage Act puts it beyond the pale of doubt that a marriage solemnized between persons who are not of eligible age and are not in accordance with the provisions of CMRA is not void *ab initio* but can only be avoided in certain circumstances. Section 5 lays down the conditions for a Hindu marriage. Sub clause (iii) of Section 5 *provides* that one of the conditions for solemnizing marriage between two Hindus is that the bridegroom has completed the age of 21 years and the bride the age of 18 years at the time of marriage.

4. Section 12 of the Hindu Marriage Act is a complete answer to the contention of the appellant that a marriage contracted in contravention of the provisions of the CMRA is void and cannot be considered as valid on any ground. Mere breach of condition (iii) about the age for solemnization of marriage between two Hindus by itself does not affect the validity of the marriage, and no consequence thereto has been provided either under Section 11 or under Section 12 of the Hindu Marriage Act. It is not the appellant's case that his consent for marriage was obtained by force or, by practicing fraud. He was admittedly an adult at the time. Nor was his consent obtained by keeping back any information about the age of his wife.

In the present case, marriage if at all it can be avoided by a decree of nullity, it could have been done so by the plaintiff respondent in as much as it was she who was a minor at the time of marriage and it was her guardian's consent which could have been obtained by force or fraud. It is not the case of the appellant that his consent was obtained by force or fraud as to the nature of ceremony or any material factor concerning the husband. As a matter of fact it was known at the time of marriage itself to the appellant that the girl is a minor and no fraud about the nature of ceremony has been proved. Thus, under no circumstance, the marriage between persons who, or one of whom, fall within the definition of child within the CMRA is void ab initio, but is merely voidable under the provisions of CMRA and under the provisions of Section 12 (1) (c) of the Hindu Marriage Act.

There is yet another provision under the Hindu Marriage Act which supports the view that marriage solemnized in breach of the provisions of the CMRA, is not void. Section 13 of the Hindu Marriage Act deals with the circumstances in which a party to the marriage may seek dissolution by a decree for divorce in case her marriage was solemnized before attaining the age of 18 years.

The decisions in this case have been rendered in the context of provisions of Section 5 (iii) of the Hindu Marriage Act, but it gives enough clue to the underlying legislative policy while disapproving the marriage between the parties before attaining particular age of marriage, but at the same time marriage solemnized in breach of such policy is not to be considered invalid, which position has been further clarified and strengthened by insertion of clause (c) in Section 12(1) of the Hindu Marriage Act.

As a result of aforesaid discussion, I am of the opinion that a marriage solemnized between two Hindus who are of the age which makes one of them punishable under the CMRA does not itself render the marriage invalid or void. Therefore, rights and obligations arising from such valid marriage cannot be avoided by not recognizing the marriage at all. No other point has been urged before me.

*As a result, this appeal fails and is hereby dismissed with costs throughout.*

### ***3. Patel Verabhai Kalidas Vs. State of Gujarat***

Decided on 19.03.1999

Constitution of India – Art 226, CMRA, Hindu Minority and Guardianship Act

In this case, a minor girl was allegedly abducted by the respondents Nos. 3, 4 and 5 and married to the respondent No. 3. The petitioner, who is the father of the minor girl, in the first instance, did not report to the police for the fear of bad name. On enquiring from the respondents, he received threats and abuses. When he could not locate his daughter even after a month had passed, he reported the matter to the police who did not register a case. So he filed a petition of Haebus Corpus under Art 226 of the Constitution to claim custody of his missing daughter from the respondents. In the proceedings that followed, the girl expressed that she had herself got married to the respondent No. 3 and that she had no wish to go back to her parents. However, she said that she was willing to go and stay at Nari Vikas Gruh, Paldi, Ahmedabad. Accordingly, her custody was handed over to the Superintendent of the Nari Vikas Gruh.

Later, the respondent No. 3 filed an application claiming that the girl's parents were trying to influence her to come to them with the intention of depriving the respondent No. 3 of cohabiting with his legally wedded wife and asked for handing over her custody to him.

The court observed three points to be decided upon:

- concerning the age of the girl
- custody of the girl
- welfare of the girl

The court took into consideration the various legislations concerning the age of the girl. Section 3 of the Indian Majority Act, Section 2 of the CMRA, the Hindu Marriage Act, Section 361 of the IPC, Hindu Minority and Guardianship Act all set out the age of majority as 18 years. Considering the age in the girl's birth certificate, she was still a minor at the time of her marriage. But the respondent No. 3 could avail the defense under Section 79 of IPC since he

placed reliance on the school-leaving certificate and was under a mistake of fact. As to the question of the girl's custody and her welfare, the court observed that the respondent No. 3 was divorced and had falsely showed himself to be unmarried, and his first wife had committed suicide after divorce and since the girl was unwilling to go to her parents but expressed her desire to stay with the Nari Vikas Gruh, the court let her custody remain with the Nari Vikas Gruh.

#### ***4. Mahendra Shyamsunder Purohit Vs. State of Gujarat: MANU/GJ/0481/2000***

Decided on 29.08.2000: CMRA-S. 5

In this case, one Mahendrabhai Shyamsunder Purohit, also the DW, was booked for abetting offences punishable under Ss. 366 and 376 of the IPC read with S.114 of the IPC and under Section 5 of the CMRA. The case came to the present court when the DW filed for a revision against the application under Section 319 of the Cr. P. C. The main accused in this case was being tried for abduction, kidnapping and rape and the DW was said to have solemnized the marriage of the main accused and the prosecutrix. He was being examined to show that the case was not so as made out above by the prosecution but the prosecutrix was the legally wedded wife of the accused.

From the facts, it was seen if there was any prima facie evidence against the DW and it was found that it was not so. Hence he could not be prosecuted for abetting the offences under Ss. 366 and 376 of the IPC read with S. 114. As to the commission of offence under section 5 of the CMRA, the main accused was not prosecuted under this section and the observation of the Addl. Sessions Judge that he did not enquire about the age of the prosecutrix was uncalled for. When the DW had tendered an affidavit showing the age of the prosecutrix as 19 years, while deposing, the prosecution had not countered it. Hence the application of S. 319 was misconceived. The court held that the word 'evidence' in S.319 was not to be construed as inclusive of the defense evidence.

The court relied on the judgment in the case of Ranjit Singh v. State of Punjab, AIR 1998 SC 3148 and held that the sessions court could invoke S. 319 only after reaching evidence collection and it shows positive involvement of the person who was not included in the array of accused by some inadvertence or omission. Then it is open to the session court to send a report to the High Court

detailing the situation so that the High Court in its inherent powers or revisional powers direct the committing Magistrate to rectify the committal order by issuing process to such left out accused. But the said procedure needs to be resorted to only for rectifying or correcting such grave mistake.

Hence the court allowed the revision.

## **B. IN THE HIGH COURT OF BOMBAY**

### *i. Rambhau Ganjaram Vs. Rajaram Laxman and Ors.*

Decided on 06.10.1955

- Laxman died in the year 1938 leaving behind surviving three sons and a widow, Chandrabhagabai. On the death of Laxman, Chandrabhagabai entered upon the management of her husband's property, his sons being all minors. Chandrabhagabai died in the year 1943 and one Anandrao, maternal uncle of the plaintiffs, entered upon the management of the property of the minor sons of Laxman and posed himself as de facto guardian of the minors. On 27.10.1943 Anandrao, de facto guardian of the plaintiffs sold certain properties belonging to the minor plaintiffs to the defendant for satisfying debts which had been incurred for the marriage ceremony of plaintiff 1 which had taken place about six months before October 1943. After plaintiff 1 attained the age of majority plaintiff 1 filed suit No. 84 of 1940 in the Court of the Joint Civil Judge, Junior Division, at Shrigonda, against the defendant for a declaration that the sale deed dated 22.10.1943 passed by Anandrao, their maternal uncle as their guardian, was void and not binding on them and for possession of the property together with future mesne profits and for costs of the suit.
- The suit was resisted by the defendant contending that Anandrao Genba who sold the property was the natural guardian of the plaintiffs during their minority and the property was sold for legal necessity and for the benefit to the estate, and therefore the sale was binding upon the plaintiffs. The learned trial Judge dismissed the plaintiffs' suit. In appeal to the District Court at Ahmednagar, the learned District Judge reversed the decree passed by the trial Court. The learned Appellate Judge held that Anandrao Genba was a de facto guardian of the plaintiffs after the death of



their mother, but there was no necessity to sell the land, and therefore the sale deed was void.

- On the findings of the Courts below it is evident that the debts for the satisfaction of which the land was sold by Anandrao Genba were debts incurred for defraying the marriage expenses of plaintiff 1 who was married about 6 months before October 1943. Normally, such expenses may be regarded as expenses incurred for purposes of legal necessity. But the marriage of plaintiff 1 was performed in violation of the provisions of the Child Marriage Restraint Act of 1929. The marriage of plaintiff 1 having taken place contrary to the provisions of the CMRA the persons who helped to bring about the marriage and participated in it committed an offence, and a debt incurred for doing an illegal act cannot be regarded as a lawful debt.
- Even if it were held that by reason of making an application to the Debt Adjustment Court, the first plaintiff assented to the alienation, it cannot amount to ratification as the alienation was void and the plaintiffs were entitled to file a suit to set aside the alienation. The learned District Judge was therefore right in passing a decree for possession and mesne profits. The appeal fails and is dismissed with costs.

*Appeal dismissed.*

### ***ii. Meharunissa Khan Vs. Kamlesh Naik and Anr.***

Decided on 16.07.1993: IPC-S. 361

I. P. C-S. 361 states, “Kidnapping from lawful guardianship – whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such a person or minor from lawful guardianship”.

In this case the petitioner’s minor daughter converted from Islam to Hinduism to get married to the respondent. The petitioner filed charges against the respondent u/s 361 of IPC and also filed an application under Section 98 of the Cr. P. C. for restoration of custody of her daughter. The respondent married her

by furnishing a false School Leaving Certificate that showed her to be a major. The case came up in the present court when the J. F. M. C, Panaji, rejected the application under Section 98 of Cr. P. C.

The counsel for the petitioner argued that the magistrate had overlooked the law regarding marriage less than 18 years of age rendering it a nullity. Also, the respondent had furnished a forged certificate to mislead the court, showing that the petitioner's daughter was a major. The magistrate had also erred in holding that the detention of the girl was not illegal by believing on the statement made by the girl, when a case of kidnapping had been made out by the petitioner. Since the girl was a minor, she could not legally and validly marry without her parent's consent, the marriage on the face of it was null and inoperative and did not create any rights either to the minor or the respondent.

The counsel for the respondent laid stress on the word 'may' which confers discretionary powers to the magistrate and also contended that the application of the petitioner before the Trial Court did not allege any abduction or illegal detention by the respondent for any unlawful purpose. Also, the minor girl was allowed to go wherever she wanted after being interviewed by the magistrate and she chose to go to the respondent. He also threw open some questions before the court as to whether an application for the custody of the child could still be maintained by the parents under Section 98. He stressed the fact that S. 98 was just a procedural provision to secure the custody of a female minor child who has been kidnapped or illegally detained to the parents and it does not determine the rights of parents on their children. He cited a number of rulings.

The court however did not consider the rulings since they pertained to special facts. The respondent's contentions were also found to be irrelevant by the court. In the light of the fact that the petitioner and her husband were the lawful guardians of the girl at the time of filing the complaint u/s 361 of the IPC, and the filing of the complaint itself, the act of marrying the girl by the respondent, was thus rendered an act for an unlawful purpose. The record showed that the purpose of the respondent in getting the girl out of the house where she was under their lawful guardianship was unlawful.

The court referred to the decision in Thakerlal D. Vadgama vs. The State of Gujarat (1973) 2 SCC 413, in which the Apex Court had held that the word 'takes'

did not necessarily connoted taking by force alone. Hence, it had to be read along with 'entices' so that to some extent both the words would take the color and content from each other. Hence from the facts of the case the court observed that the respondent had indeed committed the offence under section 361 of the IPC. Hence, the order of the magistrate was quashed.

However, considering the fact that the girl had attempted suicide claiming harassment by her parents on account of her affair with a Hindu boy, and that she would soon attain majority, the court acting as *bonus pater familias*, allowed the minor girl to stay with the respondent and directed the Probation Officer in the respondent's area of residence to report within ten days a satisfactory report about the character and conduct of the respondent from the date of the receipt of the order. Only then would a final order on the custody of the girl would be passed. The respondent was directed by the court to make himself available to the Probation Officer for the necessary.

## **C. IN THE HIGH COURT OF RAJASTHAN**

### *i. Ms. Jati Vs. Daljit Singh*

Decided on 30.11.1956

- This is a reference by the session's judge, Pali, in a proceeding under section 12 of the Child Marriage Restraint Act of 1929, and arises under the following circumstances.
- On 15.6.1956, one Daljit Singh filed a complaint against Panna and Ms. Jati who is a petitioner before me to the effect that Panna and Ms. Jati were about to solemnize the marriage of their daughter Pukli aged six years and of another girl Najuri aged 12 years and that the marriages were to be performed on the same evening and therefore prayed an injunction be issued against Panna and his wife prohibiting the said marriages. A further prayer was made that "the accused" be punished in the matter. Sub Divisional Magistrate Pali in whose court the aforesaid application was filed examined Daljit Singh, registered it under Section 6 of the child marriage restraint act and directed the notices be issued to Panna and his wife to refrain from performing the marriages of Pukhli and Najuri until further orders and to file their written statements in the matter. However,

on 22nd June, 1956 Panna appeared in the court but Ms. Jati did not. The application filed by Ms. Jati before the magistrate for exemption from attendance in Court under section 205 of Cr. P. C. was rejected. She thus went in revising application before the learned session's judge and thus the present reference has arisen.

- As per the sessions judge the magistrate was right in refusing the exemption application but the same should have been allowed under the Child Marriage Restraint Act. Since the same has not been allowed the present reference is made in order to direct the magistrate not to compel the attendance of the accused in the court.
- The court below has misconceived the entire legal position of the case. The magistrate was entirely wrong in having registered the case under section 6 of the Child Marriage Restraint Act, 1929. This section comes in to play only when the marriage has been performed and not before. The application should have been filed under section 12(1) of the Act and thus registered. The main object of section 12 is preventive, to prevent child marriages from being performed. Since no marriage has been performed under this Act thus there is no question of the complaint being registered under section 6 of the Act.
- The only question, which remains for discussion is whether in proceeding under section 12 of the Act, the magistrate should have compelled the person complained against to put his or her personal appearance. Sub-section (4) of this section provides that where such an application is received, the court shall afford the applicant an early opportunity of appearing before it either in person or by pleader. This clearly shows that so far as the applicant is concerned he need not personally appear before the court. There is also nothing in the section that demands that the person to whom the notice is given or who is complained against shall also appear in person.

*For the reasons mentioned above, I accept this reference and set aside the order of the magistrate compelling Ms. Jati to make her personal appearance in court hereby direct that he shall proceed to dispose of the case in light of the observations made above.*

***ii. Smt. Sushila Gothala Vs. State of Rajasthan and Ors.***

Decided on 16.05.1994: CMRA-S. 13

- The petition was a Public Interest Litigation filed by Smt. Sushila Gothala for issuance of directions to the respondents to immediately stop the menace of child marriages and enforce the provisions of Child Marriage Restraint Act, 1929 and further, to punish the officer responsible for not prohibiting child marriages.
- The court held that by virtue of S.13 of the Act, the state governments have been authorized to appoint Child Marriage Prevention Officers for the whole state or such a part that may be specified in the notification and since there was no correct information as to the appointment of such officers given by the Government Advocate, the court directed the state government to consider the feasibility of appointing such officer. The Central and the State Governments should also consider the feasibility of making the provisions of the Act more stringent, deterrent and punishment for contravention of the Act should be severe.

***iii. Dev Kishan and Ors. Lrs. of Kishan Lal Vs. Ram Kishan and Others:***

Decided on 09.05.2002: CMRA

- In this case, the defendant No. 2 had mortgaged his properties to the appellant-defendant No.1 by way of two mortgage deeds and taken loan from him for the marriage of his two minor daughters. He had also executed a sale deed in favor of the appellant-defendant no. 1 for the marriage of his minor son. The defendant No. 2 had alienated properties belonging to a joint Hindu family citing the marriage of his minor children as a legal necessity. The plaintiffs, who were also the members of the joint Hindu family, challenged the alienation and their suit was decreed in the two lower courts.

When the case came up in the present court, three questions came up:

- (i) whether the taking of a debt by a major member of the family for the marriage of the minor member of the family is a debt incurred for a legal necessity or is for illegal purpose?

(ii) whether the debts incurred by the father for satisfying the earlier mortgages should be considered to have been incurred for legal necessity?

(iii) whether the sale for satisfying the earlier mortgage debt of the Joint Hindu Family and for performing the marriage of a minor member of the family was rightly held to void by the learned first appellate court?

- As regards the first question, the court decided that alienating a property against a loan for the purpose of marriage of minor daughters was not for legal necessity. This was so because the Child Marriage Restraint Act prohibited the marriage of minor children. The court cited the decisions in Panmull Lodha and Ors. vs. R.B. Gadhnull, Hansraj Bhuteria and Anr. vs. Askaran Bhuteria and Anr., Rambhau Ganjaram vs. Rajaram Laxman and Ors. and Maheswar Das vs. Sakhi Dei.
- As regards the second question, the court held that the debt taken by the defendant no.2 from the appellant-defendant No. 1 was not an antecedent debt. They were taken for the marriage of minor children and not for discharging a debt contracted for a personal benefit. Besides, the marriage expenses of the minors were born by other members of the Joint Hindu Family.
- As to the third question, the court held that considering the above two questions, the lower courts had rightly held that the sale deed was void.

*Hence the appeal was dismissed.*

## **D. IN THE HIGH COURT OF KARNATAKA**

In the matters of **Seema Begaum v. State of Karnataka, W. P. (C) No. 75889 of 2013**, the **Hon'ble High Court of Karnataka** held that no Indian citizen on the ground of his belonging to a particular religion can claim immunity from the Prohibition of Child Marriage Act, 2006.

## **E. IN THE HIGH COURT OF DELHI**

- **The Delhi High Court in the case of Association for Social Justice and Research vs. Union of India and Others, W. P. No. 535 of 2010** stated that

child marriage is a violation of human rights, compromising the development of girls and often resulting in early pregnancy and social isolation, with little education and poor vocational training reinforcing the gendered nature of poverty.

- In **Lajjadevi vs. State And Others (Delhi High Court 2012)** made the following observations:

.....child marriage is such a social a social evil which has the potentialities of dangers to the life and health of a female child and plays havoc in their lives, who cannot withstand the stress and strains of married lives and leads to early deaths of such minor mothers. It also reflects the chauvinistic attribute of the Indian Society.

## **F. IN THE HIGH COURT OF ORISSA**

### *Birupakshya Das Vs. Kunja Behari*

Decided on 07.04.1960

This was the plaintiff's second appeal against the reversing judgment of the lower Appellate Court arising out of a suit for declaration of title, recovery of possession and for damages. The plaintiff was the brother of the father of the present defendant. The disputed land belonged to Dibakar, the father of the defendant, and the defendant himself. The plaintiff based his title on the basis of an unregistered sale-deed dated 27.5.1940 (Ex.1).

The plaintiff's version was that the transaction executed by Dibakar on his own behalf and on behalf of his minor son Kunja Behari, was for legal necessity, and as such is binding against the present defendant, Kunja Behari. Since 1952 the defendant had not been paying rent due, so the present suit was brought in 1952 for ejection. The item of legal necessity recited in the deed was to meet the marriage expenses of the defendant himself who was a minor at the time when the deed was transacted.

The question, therefore, was whether the expenses incurred for the marriage of a minor could be taken to be a necessity under the Hindu Law on account of the statute of Child Marriage Restraint Act, 1929.

The CMRA does not affect the validity of the marriage even though it may be in contravention of the provisions of the Act. To incur expenses for performing a ceremony which was a criminal act could be taken to be a legal necessity for which a Karta of the family was empowered under the Hindu Law to effect alienation. Thus in confirmation with the view taken by the learned Subordinate Judge, the present court held that the transaction was not supported by legal necessity.

*The second appeal accordingly failed and was dismissed.*

## **G. IN THE HIGH COURT OF MADRAS**

### ***I. Sivanandy Vs. Respondent: P. Bhagavathy Amma***

Decided on 07.06.1961

- Bhagvathy Amma sued her husband Sivanandy for restitution of conjugal rights. The parties belong to Velar community governed, by the Mitakshara school of Hindu law. The plaintiff alleged that she was married to the defendant on 13th Panguni 1119 M. E. according to Hindu Shastric rights. The plaintiff was a mere girl 13 years old at the time of the alleged marriage. She had not attained puberty at that time. The defendant was also a minor on the alleged date of marriage aged, about 15 or 16 years. According to the plaintiff, after she attained the age, the marriage was consummated and a nuptial ceremony was performed, and that she was living with the defendant in his house for about a month or so. It is alleged by the plaintiff that the defendant was not prepared to live with her and that therefore she had to live away from him in his parent's house.
- The defendant resisted the suit and contended that there was no valid marriage between him and the plaintiff though he was made to undergo a form of marriage without the proper consent of his family. The issue here is whether the parties were lawfully married and whether the plaintiff had a cause of action for restitution of conjugal rights.
- Subordinate judge, Nagarcoil found that the plaintiff was lawfully wedded wife of the defendant and therefore was entitled to sue for restitution of conjugal rights as the defendant had without reason failed to fulfill his



marital obligation and accordingly granted a decree in favor of the plaintiff. The husband, against the said decree and judgment, thus preferred this appeal.

I have no hesitation in concurring with the finding of the learned subordinate judge that there was a marriage between the plaintiff and the defendant as alleged by the plaintiff.

- It was next contended on behalf of the appellant that the marriage even if true, was not valid in law as it was in violation of the provisions of the CMRA. This marriage came within the ambit of this act. But a child marriage, which is prohibited by this Act, is not rendered invalid by any provision therein.
- It was next contended on behalf of the appellant that the marriage even if true was not valid in law as it was in violation of the provisions of the CMRA. Marriage was one, which came within the ambit of the Act. But, a child marriage though prohibited by that Act.

## *ii. Radha Krishan and Ors. Vs. Ellamma Reddy*

Decided on 19.07.1983: CMRA-Ss. 4, 5 and 6

- In this case, the respondent-complainant filed a complaint under Sections 4, 5 and 6 of the CMRA, 1929 against the petitioners. The petitioners filed an appeal seeking quashing of proceedings in the court of the Judicial First Class Magistrate No. II, Salem on the ground that the said court did not have territorial jurisdiction.
- The complainant had filed the case alleging that the first petitioner had married the second petitioner before she had completed the age of 15 years and the other petitioners had abetted the commission of the marriage and hence they were liable under Sections 4, 5 and 6 of the CMRA. The marriage was solemnized at Palani, which fell within the territorial limits of Madurai district and hence the said court in Salem district had no territorial jurisdiction. The petitioners were living in Salem as man and wife at the time the complaint was filed.

- Relying on the judgment in *Matuk Dev Narain Singh vs. Vinayak Prasad*, AIR 1934 All 829(1), the Court held that it was only the place where the marriage was solemnized that had to determine the court having jurisdiction to entertain the complaint. In the present case, even the complainant agreed that the marriage had been solemnized at Palani and not Salem. Hence the fact of the petitioners living today as man and wife could not confer the jurisdiction on the Salem court.
- The proceedings however were not quashed since what was prohibited under the Act was the fact of marrying a girl under 15 years of age. The court directed the Magistrate to return the complaint to the complainant for presenting to the proper court and to that extent the appeal was allowed.

### *iii. Premchand Vs. Padmapriya Decided on 01.11.1996*

- The husband is praying for a decree of nullity by annulling the marriage solemnised between the appellant and the respondent on 8.3.1987 at Madras is the appellant in the above appeal before this court.

The case of the appellant is briefly stated hereunder:

- The appellant (husband) and the respondent (wife) got married in 8.3.1987 at Madras as per Hindu rites and customs. The marriage has not been consummated till the date of filing of the present petition. Based on the bio -data and horoscope showing the date of birth as 15.2.1963 sent in the month of September 1986 by respondent's father to the appellant's father, the appellant gave his consent for the marriage. In November, 1987, the respondent disclosed that her father gave false horoscope misrepresenting her year of birth as 1963 whereas it was actually 1961. The respondent's father wrote a letter on 11.11.87 showing the true horoscope of the respondent wherein it is mentioned the date of birth as 6.1.1961. After knowing the true date of birth of the respondent and when questioned, it was asserted by the respondents father by a letter dated 22.11.87 that the correct date of birth is 6.1.1961 and not the other two dates and apologised for the same. The horoscopes did not tally on certain vital aspects. The respondent who is a Homeopathy Doctor was unable to explain the fraud. The respondent has also filed M. C. No.285 of 1988 on the file of Additional Chief Metropolitan Magistrate, Hyderabad, claiming maintenance and the same is being contested by the appellant....

- According to the appellant/ husband the basic thing for filing the present petition is that his consent was obtained by giving wrong date of birth of the respondent/ wife prior to the date of marriage. He further contended that if the said fact is known, namely, the true date of birth as 6.1.61, he could not have given consent because the difference of age is only few months. The date of birth of the husband is 24.4.60 and the age of the wife, as seen from Ex.R-20, is 6.1.1961. In those circumstances, we have to find out whether the consent of the appellant has been obtained by fraud and so the marriage has been annulled by a decree of nullity. It is the evidence of P.W.I that under Exs.P-5, P-6 and P-7, the father of the wife informed that the date of birth of the respondent is 15.2.1963 and on that basis, consent of the husband has been obtained, on the other hand, the correct date of birth is 6.1.1961, as admitted in Exs.P-1, P-3 and P-4. As far as this aspect, even the court below, on the basis of Exs.P-5, P-6 and P-7, which are letters written by the father of the respondent to the father of the appellant and in the light of the oral evidence of P.W.I and R.W.I, came to the conclusion that consent of the petitioner/ appellant was obtained on the basis that the respondent was born on 15.2.1963. Since this aspect is found by the court below in favor of the petitioner/ appellant, there is no need for us to elaborate once again.
- Now we have to consider the case of the respondent that the appellant was made aware of the correct date of birth as 6.1.1961 prior to the date of marriage on 8.3.87. For this, the respondent has very much relied on the necessary averment made in her counter affidavit filed before the court below, which is extracted hereunder:

*"I deny the allegations contained in paragraph (5) or of the petition, prior to the celebration of our marriage, my elder brother Sri V. Lakshminarayaria and my elder sister-in-law Smt. V. Latha visited the house of the petitioner in M.K.B. Nagar on 15.2.87 for extending personal invitation for our marriage. At that time my elder brother informed the petitioner's father and mother on an enquiry made by them regarding my age that my year of birth is 1961 and not 1963. Thereafter, the petitioner's father asked the petitioner, who was then working at Kakinada, to ascertain from me full facts regarding my age. Accordingly the petitioner came to Hyderabad on 22-2-1987, he telephoned to my residence telephone No. 227498. My second brother Sri V. Chandrasekhar received the telephone call. The petitioner desired that I should go over to Paradise Cinema theatre premises in Secunderabad and meet the petitioner.*

*Accordingly my second brother took me to Paradise Cinema premises in Secunderabad. Then myself and the petitioner went to Hotel Asrani International at about 7-30 p.m., on 22-2-1987. There the petitioner enquired from me all the details regarding my age and years of passing my S. S. L. C., Inter and M. B. B. S. (Homoeo) examinations. I gave him all the required information and informed him that my year of birth was 1961 and also about my age. The petitioner was then satisfied that I am younger to him and he then did not raise any objection for celebrating our marriage in the first week of March, 1987.”*

## **H. IN THE HIGH COURT OF KERALA**

### ***I. Sivaraman Vs. Padmaja***

In Sivaraman vs. Padmaja, ILR (1975) 1 Ker 469, a Division Bench of Kerala High Court with reference to S. 12(1) [c] of the Act has held that even if there was mis-representation at the time when consent was obtained from, one party to the marriage by the other party, if the solemnization is not vitiated by any fraud or force, there is no scope for seeking annulment of the marriage. Since the Division Bench has considered various decisions of other High Courts, we are extracting some of the relevant paragraphs hereunder:

The term ‘fraud’ is not defined in the Hindu Marriage Act. Fraud cannot be taken to mean the same as what is indicated by the definition of that term in S. 17 of the Indian Contract Act.

The relevant part of S. 12 of the Hindu Marriage Act reads:

“Any marriage solemnized..... shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:

[c] that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner is required under S. 5, the consent of such guardian was obtained by force or fraud.”

- If any marriage solemnized may be annulled on the ground that the ‘consent’ was obtained by fraud the consent must have been to such solemnization. Normally parties agree upon the marriage proposal prior to the solemnization ceremony. There would be proposal and acceptance

and it is after such acceptance that the parties agree upon a date and time for the marriage ceremony. Therefore even prior to the solemnization there is a stage at which consent is given by one party to the other. But at the time when solemnization takes place pursuant to such consent there is no question of any misrepresentation on any of the above grounds. There could be fraud or there could be force in the matter of solemnization, independent of these matters. To these cases S. 12 (1) [c] will be attracted but not to a case where though there is no fraud or force in the solemnization of the marriage there is fraud or misrepresentation for obtaining consent to the proposal for the marriage.

- The position therefore is that even if there was misrepresentation at the time when consent was obtained from one party to the marriage by the other party, if the solemnization is not vitiated by any fraud or force, there is no scope for seeking annulment of the marriage. Therefore even if the act of substitution of horoscope of another girl amounts to fraud on the part of the girl or her parents, that may not be sufficient in this case to hold that the marriage should be annulled. Therefore it follows that the appellant herein should fall.”

The term ‘fraud’ is not defined in the Hindu Marriage Act. In the absence of any definition in the relevant Act ‘fraud’ cannot be deemed to mean the same as what is mentioned by the definition of that term in Section 17 of the Indian Contract Act. Normally parties to the marriage agree upon the marriage proposal prior to the solemnization ceremony. There would be proposal and acceptance and it is after such acceptance that the parties agree upon a date and time for the marriage ceremony. In our case also number of letters have been sent by either parties and both the parties agree to conduct the marriage on 8.3.1987. According to the appellant, by fraudulent misrepresentation, his consent was obtained by the respondent and her father. It is already established that prior to the solemnization of the marriage, the appellant, husband was aware of the truth and the marriage was solemnized.

It is evident from the fact that at the time of the solemnization of the marriage, the alleged fraud did not exist, hence we are in agreement with the proposition of law rendered by the Division Bench of the Kerala High Court reported in ILR (1975) 1 Ker 469 cited supra and hold that there is no scope for seeking annulment of marriage if the solemnization is not vitiated by any fraud or force.

16-B. The other important fact to be noted in this case, as seen from the records, is that the appellant, husband had agreed for a divorce by mutual consent. Likewise, he had also agreed to pay maintenance in a petition filed by the respondent under Section 125 of the Code of Criminal Procedure on the file of Mahila Court, Hyderabad and paid maintenance also. As rightly pointed out by the learned counsel for the respondent, if there was no valid marriage, questions of divorce or payment of maintenance will not arise.

17. Finally, presuming there was misrepresentation with regard to the date of birth, that will not, in any way, affect the “ordinary marital life” so that it amounts to “fraud” under Section 12(1) [c] of the Act. We are right in saying that the appellant was aware of the wife's true date of birth even on 15.2.1987 that is well prior to the date of marriage on 8.3.1987. We are also satisfied that the appellant was aware and known of the true age of the wife before the marriage. we are unable to accept any one of the arguments advanced by the learned counsel for the appellant consequently, the appeal fails and the same is dismissed. However, there will be no order as to costs.

*Appeal dismissed.*

## ***ii. Yousef Rawther Vs. Sowramma***

Decided on 24.06.1970: CMRA, Dissolution of Muslim Marriages Act, 1939 - S. 2

In this case, a Muslim girl (plaintiff) was married even before she attained puberty. However, after a month, and consummation of the marriage, the girl returned to her father's house. The separation lasted for two years during which the defendant admitted not maintaining her. Though he was willing to keep her with him but the wife wrongfully did not return to him. He moved the mosque committee but he could not succeed. The matter came to the court with the wife seeking dissolution of the marriage. The trial court dismissed the suit but the Subordinate court granted a decree for the dissolution of the marriage. The husband appealed in the present court.

The plaintiff cited section 2 (ii), (vii) and (ix) of the Dissolution of Muslim Marriages Act. The court struck down the S. 2(vii) saying that the marriage had already been consummated. Notwithstanding the CMRA, the plaintiff pleaded that she was married at the age of 13.

The court did not decide anything on Khula under the S. 2 (ix). But the appeal was dismissed on the ground as under S. 2 (ii) the court cited the decision in AIR 1950 Sind 8 according to which the said section did not speak of the wife's right of maintenance but only the fact of her being provided with maintenance. Referring to the observations made by various scholars on Muslim law, the court came to the conclusion that when the marriage was not a sacrament and when it was not possible to make it a reality, it should be dissolved. The respondent also urged the point that since the parties had taken up different spouses, therefore, they should be granted the decree of dissolution.

*Hence the appeal was dismissed.*

## **I. IN THE HIGH COURT OF ALLAHABAD**

*Parasram and Ors. Vs. Smt. Naraini Devi and Ors.*

Decided on: 20.01.1972

1. Learned counsel has submitted that the debt having been incurred by the major members of the joint Hindu family for the purpose of the marriage of the minor member would not be binding on the joint Hindu family as the marriage of a minor being prohibited by virtue of the provisions of the CMRA, the debt would be for illegal purposes and not for legal necessity.

2. The facts of the case are that Daulatram and Ghanshyam, second and third defendants in the suit giving rise to this appeal, executed a simple mortgage on 19.4.1952 in favor of Smt. Naraini Devi, the first defendant in the suit, for securing a loan advanced by the mortgagee for the purpose of marriage of Horilal, a minor brother of the two mortgagors. A suit was then brought by the mortgagee in the year 1958 for sale of the mortgaged property. In 1959 a decree for the sale of the mortgaged property was passed. However, in execution of the decree the mortgaged property was sold and purchased by Babulal. The four plaintiffs in the case were the minor sons of Daulatram and Ghanshyam, the mortgagors. The relief sought in the suit was sought on the allegations that Daulatram and Ghanshyam were gamblers and that they had taken the loan for immoral purposes and not for legal necessity and that they had taken the loan in their personal capacities and not as members of the joint Hindu family,

hence the mortgage debt was not binding on the family properties and therefore the transaction of mortgage, the decree passed in its enforcement and the auction held in execution are void and not binding. The courts below have recorded a concurrent finding that the loan was taken by Daulatram and Ghanshyam for performing the marriage of their brother Horilal. This finding is binding in the second appeal, as it has not been shown to be vitiated by any error of law and procedure. The trial court recorded the finding that the loan was taken for legal necessity and dismissed the plaintiff's suit. The lower appellate court however took the view that the plaintiffs were not competent in law to question the transaction or loan incurred by their fathers as they were under a pious duty to discharge the debts, there being no evidence that the debt being taken for immoral or illegal purposes. The learned judge thus did not go in to the question of whether it was necessary to go into the question of whether it was legal necessity or not.

3. The counsel for the defendants – respondents submitted that even though the lower appellate court judge did not delve in to the question of legal necessity or not it was however implicit in his findings as he did not find any evidence establishing immorality or illegality on the part of Daulatram and Ghanshyam. I am inclined to agree with this submission of the counsel.

4. The question remains whether the minority of Horilal at the time of his marriage in 1952 would make the transaction of loan incurred by his elder brother as illegal and not binding on the family. The plaintiffs themselves had pleaded that Horilal was a major when his marriage was performed. I think the law is settled that a plaintiff cannot be allowed to succeed against his own pleadings. Secondly, no plea was raised in the plaint as to the non-binding nature of the mortgage debt grounded on the fact that the marriage of Horilal being violative of the provisions of the Child Marriage Restraint Act, 1929, any debt incurred for its performance would be illegal, devoid of legal necessity and will not bind the joint family property. Babulal in his evidence stated that Horilal must have been about fourteen years in age at the time of his marriage in 1952. The statement of Babulal, who admittedly is not a member of the joint family, elicited from him in cross -examination without the parties being at issue on this question, would hardly be conclusive of the age of Horilal at the time of his marriage. I am therefore, not inclined to accept the contention of the



counsel for the appellants, Sri Nigam, as there is no satisfactory evidence on record on the age of Horilal at the time of his marriage.

Even assuming for a moment that Horilal was below 18 years of age in 1952 when he was married, I do not think a loan incurred by major members of the family for performance of his marriage would not be for legal necessity or binding on the joint family property. With respect to the learned judges, I think the marriage of Hindu male below 18 years of age with a Hindu girl below 15 years of age is not invalidated or rendered illegal by the force of the Child Marriage Restraint Act, 1929. It will remain a valid marriage binding under the Hindu law if otherwise performed under any recognized form of Hindu law. Once it is held that the marriage itself is not illegal or invalid under the Child Marriage Restraint Act, 1929, and then a debt incurred by the major members of the family for marrying a minor member of the family will not be for an illegal purpose as the marriage is legal and the debt is incurred for the marriage. I do not see any good reason, therefore to hold that if in a Hindu joint family a *karta* or major member of the joint Hindu family incurs a debt for illegal purposes as the marriage which would be performed would yet be binding and legal.

## **J. IN THE HIGH COURT OF PUNJAB AND HARYANA**

- In **Amnider Kaur and Anr. v. State of Punjab and Ors**, 2010 CRL. L. J. 1154 the Single Judge of the said Court took a view that the provisions of Section 12 of the PCM Act, 2006, marriage with a minor girl would be void.
- **Rulia and Ors. Vs. Jagdish and Anr.**

Decided on 28.08.1972: CMRA, 1929 - Sec. 2

In this case, a sale was affected citing the marriage of a child aged 15-16 years as necessity. It was contended by the counsel for the appellants that the plaintiff (vendee's son) was a "child" as defined under section 2(a) of the CMRA, 1929 at the time of sale. And that such a marriage, if solemnized would be an offence. The counsel for the appellants relied on the two Single Bench decisions in Hira Lal vs. Mt. Amri, AIR 1951 Punj 421 and Ghulam Bhik vs. Rustom Ali, AIR 1949 EP 354. In these two judgments, the court held that a provision for such a marriage, which was an offence under the law, couldn't be recognized as a valid necessity to justify the sale of ancestral land.

However, in the present case, the provision had been made for the plaintiff's own marriage, which actually took place after a year the sale had been made. At the time of the sale the plaintiff was nearing the age when he could have been lawfully married. The necessity for making a provision for a marriage is due to be solemnized and the vendee had no reason to believe that the vendor would not wait long enough to avoid committing an offence while celebrating the marriage of his son. In both the cases cited, provision has been made for marriage of children of the alien or six or seven years before the marriages could be lawfully solemnized. Under these circumstances, it could be argued that it was not necessary to make a provision for such marriages so many years in advance. In the present case, the son for whose marriage a provision was being made had very nearly attained the age on which marriage could be lawfully solemnized and the vendee had no reason to believe that the vendor would be acting with such haste when he could easily have avoided breaking the law by waiting for another year or so.

The two Single Bench decisions are, therefore, distinguishable and do not apply to the facts of the present case. The sale was held to be binding on the reversioners on the ground that it was for consideration and necessity.

## **K. IN THE HIGH COURT OF MADHYA PRADESH**

### *Nihal Singh Vs. Ram Bai*

Decided on 03.10.1986

Constitution of India - Arts. 13 (2), 21 and 23; Contract Act-S. 65

In this case, a Dhangli woman (plaintiff) arranged for a mistress for her son aged 24 years and paid the defendant Rs. 4,000. According to the Dhangli caste custom, she was supposed to marry her son off at a very early age but she could not and hence she arranged for the mistress.

However, the woman who came by way of sale was called back by the defendant, saying that the Court had issued a warrant against the woman. It was later discovered that she was not a Dhangli woman. Then the plaintiff asked the defendant to refund the amount but the defendant denied all allegations and also pleaded that the contract was unenforceable and void,

and the suit was not maintainable. The two lower courts invoked Section 65 of the Contract Act and decided in favor of the plaintiff.

The court however, struck down the judgments of the lower courts and ruled in favor of the defendant. The court held that S. 65 could be invoked only in a case where the two Latin maxims 'ex dolo malo non oritur actio' and 'in pari delicto potior est conditio possidentis' did not cover such a case and on the footing that when an agreement was in its inception was not void and is hit by the maxims and was subsequently discovered to be void. The court also cited the Wharton's Law Lexicon, which says that where both the parties are equally in the wrong, the defendants' position would be stronger. Section 65 did not derogate the two maxims.

The court also laid stress on the supreme primacy attached to the constitutional prohibition under Article 23 which prohibits 'traffic in human beings' and also Article 21 which secures dignified existence to a human being. The court held that Section 65 should be construed to be applicable to limited cases only, like those that did not fall under the prohibition under the Constitution. Hence, the traffic of the woman was void ab initio by virtue of Arts. 13(1), 21 and 23 of the Constitution. The court cited the cases of Olga Tellis and Kharak Singh. In the former Article 21 was held to inhere the right to live with human dignity and in the latter, the definition of the term 'life' as given in Munn vs. Illinois was accepted.

*The defendant's appeal was allowed.*

## **L. IN THE HIGH COURT OF PUNJAB AND HARYANA**

### ***1. Indira Vs. Balbir Singh***

Decided on 17.08.1994: CMRA

In this case, the appellant filed the appeal to set aside judgment declining divorce to her under Section 13(2)(iv) of the Hindu Marriage Act, 1955.

The appellant had filed for divorce contending that she was married to the respondent when she was 8 years of age and that she had repudiated the marriage on attaining the age of 15 years but before attaining 18 years. The

respondent-husband disputed the factum of repudiation as well as the age of petitioner-appellant.

From the facts of the case and from the evidence of the School Leaving Certificate of the appellant that she was over 15 years of age and below 18 years of age at the time of filing the divorce petition and that the repudiation was effected as soon as the divorce petition was filed.

*Hence, the appeal was allowed and a decree for divorce was granted.*

## **2. Ammasi Vs. State represented by Sub-Inspector of Police, Omalur and Ors.**

Decided on 09.02.1996: IPC-Ss. 109, 147, 148 and 506

In this case, a revision petition was brought forth to the court by the petitioner against the acquittal of respondents' Nos. 2 to 8 in respect of offences punishable under Sections 5 and 6 of the CMRA.

The respondents had conducted a child marriage of the son of the petitioner who was 10 years of age at the time of the marriage. The prosecution witnesses deposed that the respondents kidnapped the petitioner's son and they performed his marriage with a girl aged 17 years.

Charges were filed under the CMRA read with S. 109, IPC read with S. 18 of Hindu Marriage Act, 1955, read with Ss. 147, 148 and 506(2) of IPC. The accused were questioned under section 313 of the Cr. P. C but they refused to admit their complicity in the crime. The alleged bridegroom, DW -1, deposed that the complaint by his father, the petitioner, was false and that no marriage took place. After appreciating the evidence thoroughly, the trial court acquitted all the accused.

The present court upheld the decision of the trial court citing the reason that the petitioner, who was also the first informant, had filed the revision under Sections 397 and 401 of the Cr. P. C. If an appeal had been filed by that state then the court would have appreciated the evidence and might have reached a different conclusion if such had been warranted.

*Hence, the court upheld the acquittal of the accused.*

## IN THE SUPREME COURT OF INDIA

### *a. Muzaffir Ali Sajjad and Ors. Vs. State of Andhra Pradesh and Ors. (2004) 4 SCC 764*

Decided on 09.03.2003: CMRA - S. 10

1. The second respondent filed a criminal complaint before the second metropolitan magistrate at Hyderabad alleging that the appellants herein had committed the offence punishable under sections 4, 5 and 6 of the CMRA. The complainant alleged that these accused persons entered into conspiracy and contracted the marriage of Mahajabeen Fatima with the 3rd accused Muzamil Ahmed Sajid on 24.2.1997 at 7 p.m. at Sameera function hall in Hyderabad. The complainant alleged that Mahajabeen was born on 4.1.1980 and at the time of her marriage with the 3rd accused she was a “child” and hence the accused committed the offence under the Act. The complainant gave a sworn statement before the Magistrate on 19.3.1997 and thereafter summons were issued to these accused persons.
2. The first petitioner is the wife of the de facto complainant and the second petitioner is the mother of the first petitioner and petitioner 3 to 8 are the children of the second petitioner. The allegation in the final report is that the first petitioner was living separately from the de facto complainant on account of ill-feelings between her and the de-facto complainant, who is her husband, and that the first petitioner by joining with the other petitioners got her daughter, aged about 13 years, married to her younger brother Gopalkrishnan.
3. The learned counsel for the petitioner submits that in view of section 10 of the Child Marriage Restraint Act forwarding of the complaint in view of section 156 (3) of the Cr. P. C. for investigation and report is bad in law, as the magistrate has no jurisdiction to take cognizance of the offence on a police report under the said Act, in view of the bar under section 10 of the Act.
4. Heard the public prosecutor.
5. The question to be decided by the court in this petition is – “Whether the learned magistrate was justified in taking cognizance of the offence on a police report filed under Section 173 Cr. P. C.?” In the said chapter, Section

200 requires the Magistrate taking cognizance of an offence on a complaint to examine upon oath the complainant and the witnesses present, if any. It is open to him to decline to take cognizance of the offence for appropriate reasons in appropriate cases. Once he takes cognizance, he has to issue process under section 204 of the Act and where he decides to postpone issue of process, he may conduct an enquiry into the case himself or direct an investigation to be made by a police officer or by such other person as he deems fit for the purpose of deciding whether or not there are sufficient grounds for proceeding. This is a judicial discretion of the magistrate.

6. The learned magistrate in the present case overlooked the provisions of section 10 of the Act and therefore ordered investigation under Section 156 (3) of Cr. P. C. by forwarding the complaint.
7. Thus unless the magistrate dismisses the complaint of offence under Section 203, he has to make an enquiry by himself or direct such enquiry to be conducted by a magistrate subordinate to him.
8. The Act has been enacted to restrain solemnization of child marriages and offences under the Act are to be treated as cognizable offences under the Act as could be seen from Section 7 of the Act. One may also refer to C. K. Moidoo and others vs. Vayyaprath Kunnath Mayan wherein the Kerala high court held that it is open to the magistrate to take cognizance and issue process or otherwise deal with the matter in law but where he does not choose to dismiss the complaint under Section 203 of Cr. P. C., after receiving the same, he has a statutory duty to make an enquiry himself under section 202 of the Act Thus when we apply the above principles, the magistrate in forwarding the complaint for investigation under section 156(3) Cr. P. C., and later taking cognizance of an offence on a police report is bad in law as it is against the provisions of Section 10 of the Act. Thus, the proceedings in C. C. No. 308 of 2001 are quashed. The criminal original petition is allowed. Consequently, connected miscellaneous petitions are close.

***b. Forum for Fact Finding, Documentation and Advocacy (FFDA) Vs Union of India, PIL No 212/2003.***

A petition was filed in the Supreme Court challenging the fact that child marriages continued despite there being legislation in forces which prohibited

child marriages. The petitioner was 'Forum for Fact Finding, Documentation and Advocacy', which is (hereinafter referred to as "FFDA") a registered society and non-governmental organization, which works for the promotion and protection of human rights in India by working for the welfare of tribal, women, children and other weaker sections of society who are victims of exploitation, torture, sexual, economic and physical abuses, child marriages, female auctions and discrimination against untouchables. FFDA has conducted research, documentation, awareness and training programmes to ensure the rights of the above target groups, in Chhattisgarh and Odisha. The Petition, amongst other things, focused on the fact that the age group of the children who were married in mass marriages was between 2-17 years.

As per a survey conducted by UNICEF in March 2001, the custom of child marriage survives on the giving away of small children in marriage, on the auspicious day of 'Akha Teej'. The mass solemnization of marriage between young boys and girls is viewed by the parents as a "tried and tested way of organizing the passing on of property and wealth within the family". A small but significant proportion of children are married off while they are under the age of 10 years, some are mere toddlers of 2 years. The UNICEF survey examines the extent of early marriage before 18 years, its context, causes and impact on society. According to the UNICEF report, there were various effects of child marriages. For instance:

**Psychological disadvantage:** The loss of adolescence, forced sexual relations, denial of freedom and personal development attendant on child marriages has a profound psycho-social, physical and emotional consequence. It includes such intangible factors as the effect of the girl's loss of mobility and her confinement to household roles.

**Adolescent health and reproduction:** The notion of an adequate reproductive health covers all aspects of the reproduction process, including a safe and satisfying experience of sexual relations, capability to reproduce and the freedom to decide if and when to bear a child, right to not engage in sexual relation and the right to exercise control over reproduction may both be violated by early marriage.

**Pregnancy and child birth:** The risks involved in early conception are death, premature labour, reproductive morbidity, infertility, low weight at birth, pelvic inflammatory diseases, complication during delivery and a greater

chance of the new born not surviving. Pregnancy related deaths are a leading cause of mortality for 12 to 18 years old girls in Chhattisgarh. The main causes of death during childbirth are haemorrhage, sepsis, pre-eclampsia, eclampsia and obstructed labour.

**Infant and early childhood care:** Evidence shows that infant mortality is higher in the causes of young mothers, sometimes being twice that of elder peers. If a mother is below 18 years, her baby's chances of dying in its first year, is 60% higher than a baby born to an adult woman. A 1993 survey conducted among women married in Rajasthan, shows that 63% of children, under the ages of four years, whose mothers were minors during pregnancy, suffered from extreme malnourishment.

**Violence and abandonment:** Early marriages are often linked to wife abandonment, as shown by its association with divorce and separation. Violent behaviour towards a wife, including coercive sex, plays a major role in marital breakdown. Yet, the major trigger of the breakdown of marriages across India, is physical violence – generally women choose to endure sexual violence at the hands of their husbands, rather than disrupt their marriages on that ground.

On 17th and 18th March 2002, FFDA conducted the first phase of its surveys and found that 67 child marriages were solemnized in a fortnight between 3/3/2002 and 18/3/2002, in seven villages of Badoura, Pipria, Siraha, Bakoula, Bainsadabra, Telipani and Chiandad in Kawardha District, among the Baiga tribes (one of the most primitive tribes of India). On being questioned by the Petitioner, the tribal reported, that they had been instructed by the 'Sarkari Babus' to give their ages as 18 (female) and 21 (male), in case of any enquiry.

In the second phase of the study, 166 marriages of children between the age group of 7-17 were solemnized, in 11 villages, on 17/3/2002 and 18/3/2002. Prior to the third phase of the survey, the Petitioners received information on the basis of spot identification of about 3000 marriages that were arranged to take place on 21/4/2002, in 1021 villages of Kawardha District. On that particular day, the Petitioners witnessed in person, 127 marriages being solemnized in six villages of Padhi, Kesligudan, Kamthi, Khairjiti, Godhra and Gungpur of the Pandharia block. It may be added here that Pandharia block consists of 287 villages. The children were in the age group of 4-13 years and did not even know the name of their spouses and largely belonged to the primitive Baigan and Marrar tribes.



In the fourth phase of the survey, the Petitioner came across 15,000 child marriages solemnized in the whole of Chhattisgarh. The Petitioners visited Abhanpur, Bilaigarh, Simga, Gariyabandh, Kurud block of Raipur district where 1,200 child marriages were performed on the day of 'Akiti'. In Dhamtari, Kawardha, Bilaspur, Rajnandgaon and Drug, a detailed district wise survey was carried out on 15/5/2002 and its findings are given herein:

On 5/2/2003, the Petitioner found in their fifth and last survey, over 1000 child marriages were solemnized in Surguja district of Chhattisgarh, where the age group of the children getting married was 9-17 years. The states of Rajasthan, Madhya Pradesh and Chhattisgarh are still gripped by a number of superstitions and low literacy rates as the law restraining child marriages are violated year after year, on auspicious days and festivals like Ram Navami, Akshaya Tritiya, Karma Jayanti and Basant Panchami. Hundreds of people flock to the site of these mass weddings and take pride in celebrating these marriages. In Rajasthan, on the festival of Teej, the most auspicious time of the year, it is customary in the Gujar, Jat and Rawat castes, to solemnize child marriages. There is a high prevalence of these mass child marriages among the thick forests and hill tribes like the Marrar, Kunwar and Baiga. The Marrar tribe falls under the classification Other Backward Classes (OBC) and comprises around 15% of the entire population of Kawardha district in Chhattisgarh state. More than 50% of the Marra tribe lives below the poverty line. The Petitioner's field research in Kawardha, which is the among the poorest of the 16 districts of Chhattisgarh, based on combination of the Human Development Index and Index of Deprivation shows, for example, that the female literacy rate is 14.2%. Owing to the high infant mortality rate among married women, only a few people have lived to the ages of 50 years, in the 'Baiga' tribal community. The Petitioner's survey has brought to light the possibility that the Baiga tribe is nearing extinction, if no immediate steps are taken to curb the prevalence of child marriages.

### **The grounds on which the petitions are filed are:**

1. The indifference of the administration and indeed the encouragement given to child marriage is in breach of Child Marriage Restraint Act 1929.
2. Such apathy is also in breach of the Constitution on Right of Child, which India has ratified, and Convention on the Elimination of all Forms of Discrimination against Women, which has also been ratified by India.

3. Child Marriages are merely a camouflage for servitude and child sexual abuse of the girl child, which is also a violation of her right to life under Article 21 and constitutes bondage and beggar within the meaning of Article 23 of the Constitution of India.
4. Therefore, the officials are liable to be punished in exercise of the power under Article 32 of the Constitution of India and the erring parties should be prosecuted and compensation to be awarded to the victims.

**The petition has asked for the following reliefs:**

- I. Issue a Writ of Mandamus or any other appropriate Writ, Order or Direction to the Chief Secretaries and the Director General Police as well as the Collectors and Superintendents of police of all the Respondent states, to forthwith prevent child marriages from taking place.
- II. Issue a Writ, Order or Direction directing the Respondents to issue orders holding that government officials who fail to prevent child marriages from taking place shall be liable to be punished.
- III. Issue a Writ, Order or Direction directing the Respondents to ensure, that the provisions of the Child Marriage Restraint Act, 1929 are implemented strictly throughout the states.
- IV. Issue a Writ, Order or Direction directing the Respondents to launch a state level campaign against child marriages including regular programmes on Doordarshan and All India Radio.
- V. Issue a Writ Order or Direction directing the Respondents to pay exemplary compensation to girl children who, in the guise of child marriages, are in servitude or are being sexually abused, with the option of recovering the amount from the family of the boy.
- VI. Issue a Writ, Order or Direction directing the Collectors of the districts of each of the Respondent States to involve reputed NGOs in the implementation of the orders of this Hon'ble Court and to make a monthly report on the states of implementation of the court orders and to make this report public.

VII. Issue a Writ, Order or Direction, directing the Respondents to make it mandatory to register all births and marriages.

*The petition is disposed.*

### **c. SEVA Vs Union of India (2017)**

In 2017, a petition was filed in the Supreme Court for the implementation of PCMA. The petitioner was SEVA a non-profit organization working for the eradication of child marriage. The petition is filed based on the primary source of data derived from the fact finding report conducted by a group of lawyers and activist from HRLN.

According to UNICEF report above mentioned titled “Reducing Child Marriage in India 2016” states as under:

“More than 47 per cent of women in the age group of 20-24 years were reported to have married before attaining the age of 18 in 2005-2006 (NFHS- 3). The 2011 census has estimated that nearly 17 million children in the age group of 10-19 years to be married”.

- The 2011 census report reveals that child marriage is still rampant, with almost one in every three women having been married of while she was still under the age of 18 years. The key findings of the census report were:
  - a. About 78.5 lakh girls were married while they were not yet 10 years of age.
  - b. 30.2% of all married women (or 10.3 crores) were married before they had turned 18.
  - c. Though the trend of child marriage seems to be on decline (in 2001 it was 43.5%), the latest figure of 30.2% is alarmingly high.
  - d. About 38.1% of illiterate married women were married below the age of 18, and 23.3% of literate married women got married below the legal age.
  - e. Rajasthan leads the country in child marriages with 10.29 lakh or 2.88% of 3.57 crore children married before the age of 10. This is followed by

Andhra Pradesh (2.70%), Karnataka (2.70%), Maharashtra (2.57%), Karnataka (2.43%), Uttar Pradesh (2.10%) and Gujarat (2.09%).

- The 2013 National Strategy document on Prevention of Child Marriage published by the Ministry of Women and Child Welfare makes the following statement:
  - i. 43% of women aged 20-24 were married before 18. Over the last fifteen years the incidence of child marriage has declined by 11 percentage points, less than a percent a year, underscoring an extremely slow pace of change. It is estimated that there are 23 million child brides in the country, approximately 40% of the child brides globally.
  - ii. The Central Act Prohibition of Child Marriage Act (2006) is the main piece of legislation to prevent child marriage. This is a Central Act, administered by Ministry of Women and Child Development, Government of India, but the implementation rests with the States.
  - iii. Evidence suggests that although individuals are aware of the illegality of child marriage, the details regarding the law and the consequences for violating it are either not known or disregarded.
- The United Nations Family Planning Agency Report 2012 “Marrying Too Young – End Child Marriage 2012” states the following:

Despite near-universal commitments to end child marriage, one in three girls in developing countries (excluding China) will probably be married before they are 18. One out of nine girls will be married before their 15th birthday. Most of these girls are poor, less-educated, and living in rural areas. Over 67 million women 20-24 year old in 2010 had been married as girls. Half were in Asia, one-fifth in Africa. In the next decade 14.2 million girls under 18 will be married every year; this translates into 39,000 girls married each day. This will rise to an average of 15.1 million girls a year, starting in 2021 until 2030, if present trends continue. While child marriages are declining among girls under age 15, 50 million girls could still be at risk of being married before their 15th birthday in this decade.

- Similar statistics have also been mentioned in the 2016 UNICEF report titled “Reducing Child Marriages in India” where it is stated as under:

- i. The 2014 compendium of Crime in India lists just 280 reported cases of child marriage (National Crime Records Bureau), which obviously does not begin to reflect the true extent of child marriage in India.
  - ii. States with the highest prevalence of child marriage (50 per cent and above) are Bihar, Rajasthan, Jharkhand, Uttar Pradesh, West Bengal, Madhya Pradesh, Andhra Pradesh and Karnataka. However, there also exist variations between districts within a given state. For example, Tamil Nadu has a low state prevalence rate for child marriage, but one of its districts has a prevalence rate close to the national average.
  - iii. In Rajasthan, the prevalence of child marriage in the western districts is between 20 and 50 per cent, while in eastern districts the prevalence rates are higher at between 50 and 75 per cent. Only 5 out of 32 districts in Rajasthan have a prevalence of more than 75 per cent. In West Bengal, only 1 out of 12 districts has more than 70 per cent prevalence. Among other districts, the prevalence is predominately between 50 and 75 per cent. While the data from Gujarat does reflect high prevalence of child marriage in any of its districts, however the prevalence in majority of the districts ranges between 25 and 50 per cent.
- In an earlier petition filed in this Court, W. P. (C) No. 212 of 2003, Forum for Fact Finding Documentation vs. Union of India, the petitioner therein documented several cases of child marriages being celebrated on a large scale during auspicious days.
  - On 17 & 18 March, 2002, in the first phase of FFDA's survey, it was found that 67 child marriages were solemnized in a fortnight between 03.03.2002 and 18.03.2002 in seven villages of Badoura, Pipria, Siraha, Bakoula, Bainsadabra, Teliapani, and Chiandad in Kawardha district, among the 'Baiga' tribes (one of the most primitive tribe of India). On being questioned by the petitioner, the tribals informed that they had been instructed by the 'Sarkari Babus' to give their ages as 18 (female) and 21 (male), in case of any enquiry.
  - In the second phase of the study 166 marriages of children between the age group of 7-17 were solemnized in 11 villages on 17.03.2002 and 18.03.2002. Prior to the third phase of the survey, the petitioners received information on the basis of spot identification of about 3,000 marriages, that were said to take place on 21.04.2002, in 1021 villages of Kawardha District. On that

particular day the petitioners, witnessed in person, 127 marriages being solemnized in six villages of Padhi, Kesligudan, Kamthi, Khairjiti, Godhra and Gungpur of the Pandharia Block. It may be added here that Pandharia Block consists of 287 villages. The children were in the age group of 4 to 13 years and did even know the name of their spouses and they largely belonged to the primitive Baiga and Marrar Tribes.

- In the fourth phase of the survey the Petitioners came across 15,000 child marriages solemnised in the whole of Chhattisgarh. The Petitioners visited Abhanpur, Bilaigarh, Simga, Gariyabandh, Kurud Blocks of Raipur Districts, where 1200 child marriages were performed on the day of 'Akti'. In Dhamtari, Kawardha, Bilaspur, Rajnandgaon, and Durg, a detailed district wise survey was carried out on 15.05.2002, and its findings are given herein below:

Name of District	No. of Child Marriages Solemnised*
Rajnandgaon	2,778
Kawardha	9,000
Raipur	1,200
Durg	900
Bilaspur	800
Dhamtari	200
<b>TOTAL</b>	<b>14, 878</b>

- On 05.02.2003, the Petitioner found in their fifth and last survey, over 1,000 child marriages solemnized in Surguja District of Chhattisgarh, where the age group of children getting married was 9-17 years.
- The Section 2 of The Prohibition of Child Marriage Act, 2006 defines:
  - “Child” means a person who, if a male, has not completed 21 years of age, if a female, has not completed 18 years of age;
  - “Child Marriage” means a marriage to which either of the contracting parties is a child

- The Section 3 of the Act states that,

Child Marriages to be voidable at the option of contracting party being a child: (1) Every Child Marriage whether solemnized before or after the commencement of this Act, shall be voidable at the option of the contracting party who was a child at the time of marriage; provided that petition for annulling a child marriage by a decree of nullity may be filed in the District Court only by a contracting party to the marriage who was a child at the time of the marriage, (2) If at the time of filing a petition, the petitioner is a minor, the petition may be filed through his or her guardian or next friend along with the Child Marriage Prohibition Officer, (3) The petition under this section may be filed at any time but before the child filing the petition completes two years of attaining majority, (4) While granting a decree of nullity under the section the District Court shall make an Order directing both the parties to the marriage and their parents or guardian to return to the other party his or her parent or guardian, as the case may be, the money, valuables, ornaments and other gifts received on the occasion of the marriage by them from the other side, or an amount equal to the value of such valuables, ornaments, other gifts and money:

Provided that no order under this section shall be passed unless the concerned parties have been given notices to appear before the District Court and show cause why such orders should not be passed.

- According to Section 10 of the Act whoever performs, conducts or direct any child marriages shall be punishable with rigorous imprisonment which may extend to two years and shall be liable to fine which may extend to 1 Lakh Rupees unless he proves that he had reasons to believe that the marriages was not a child marriage.
- The Section 13 of the Act clearly states the power of the court to issue injunction prohibiting child marriages:
  - i. Notwithstanding anything to the contrary contained in this Act, if, on an application of the Child Marriage Prohibition Officer or on receipt of information through a complaint or otherwise from any person, a Judicial Magistrate of the first class or a Metropolitan Magistrate is satisfied that a child marriage in contravention of this Act has been arranged or is about to be solemnized, such Magistrate shall issue an

injunction against any person including a member of an organization or an association of persons prohibiting such marriage.

- ii. A complaint under sub-section (1) may be made by any person having personal knowledge or reason to believe, and a non-governmental organization having reasonable information, relating to the likelihood of taking place of the solemnization of a child marriage or child marriages.
- iii. The Court of the Judicial Magistrate of the first class or the Metropolitan Magistrate may also take *suo motu* cognizance on the basis of any reliable report or information.
- iv. For the purposes of preventing solemnization of mass child marriages on certain days such as *Akshaya Trutiya*, the District Magistrate shall be deemed to be the Child Marriage Prohibition Officer with all powers as are conferred on a Child Marriage Prohibition Officer by or under this Act.
- v. The District Magistrate shall also have additional powers to stop or prevent solemnization of child marriages and for this purpose, he may take all appropriate measures and use the minimum force required.
- vi. No injunction under sub-section (1) shall be issued against any person or member of any organization or association of persons unless the Court has previously given notice to such person, members of the organization or association of persons, as the case may be, and has offered him or them an opportunity to show cause against the issue of the injunction:  
  
“Provided that in the case of any urgency, the Court shall have the power to issue an interim injunction without giving any notice under this section”.
- vii. An injunction issued under sub-section (1) may be confirmed or vacated after giving notice and hearing the party against whom the injunction was issued.
- viii. The Court may either on its own motion or on the application of any



person aggrieved, rescind or alter an injunction issued under sub-section (1).

- ix. Where an application is received under sub-section (1), the Court shall afford the applicant an early opportunity of appearing before it either in person or by an advocate and if the Court, after hearing the applicant rejects the application wholly or in part, it shall record in writing its reasons for so doing.
  - x. Whoever knowing that an injunction has been issued under sub-section (1) against him disobeys such injunction shall be punishable with imprisonment of either description for a term which may extend to two years or with fine which may extend to one lakh rupees or with both: provided that no women shall be punishable with imprisonment.
- Section 15 of Prohibition of Child Marriage, 2006 states: Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under this Act shall be cognizable and non bailable.
  - According to Section 16 of the Act:
    - a. The State Government shall, by notification in the Official Gazette, appoint for the whole, State, or such part thereof as may be specified in that notification, an officer or officers to be known as the Child Marriage Prohibition Officer having jurisdiction over the area or areas specified in the notification.
    - b. The State Government may also request a respectable member of the locality with a record of social service or an officer of the Gram Panchayat or Municipality or an officer of the Government or any public sector undertaking or an office bearer of any non-governmental organization to assist the Child Marriage Prohibition Officer and such member, officer or office bearer, as the case may be, shall be bound to act accordingly.
    - c. It shall be the duty of the Child Marriage Prohibition Officer-
      - I. To prevent solemnization of child marriages by taking such action as he may deem fit;

- II. To collect evidence for the effective prosecution of persons contravening the provisions of this Act;
  - III. To advise either individual cases or counsel the residents of the locality generally not to indulge in promoting, helping, aiding or allowing the solemnization of child marriages;
  - IV. To create awareness of the evil which results from child marriages;
  - V. To sensitize the community on the issue of child marriages;
  - VI. To furnish such periodical returns and statistics as the State Government may direct; and
  - VII. To discharge such other functions and duties as may be assigned to him by the State Government.
- d. The State Government may, by notification in the Official Gazette, subject to such conditions and limitations, invest the Child Marriage Prohibition Officer with such powers of a police officer as may be specified in the notification and the Child Marriage Prohibition Officer shall exercise such powers subject to such conditions and limitations, as may be specified in the notification.
- e. The Child Marriage Prohibition Officer shall have the power to move the Court for an order under sections 4, 5 and 13 and along with the child under section 3.

**Prayers:**

1. Issue a writ of mandamus or any other appropriate writ, order or direction to all the Chief Secretaries of the States and the Administrators of the Union Territories as well as the Director Generals of Police to ensure that the Collectors and the Superintendents of Police in all the Districts of India forthwith take active steps to prevent child marriages from taking place;
2. For an order directing all the Chief Secretaries of the States and the Administrators of the Union Territories to identify the officials who failed to prevent child marriages in their jurisdictions and to institute departmental proceedings against them and impose punishment in accordance with law;

3. For an order declaring all child marriages where the male is less than 21 years and the female is less than 18 years irrespective of religion or custom or any law, illegal and void;
4. For an order directing all States and Union Territories to ensure that the Collectors and Superintendents of Police of all the districts in the country, identify all child brides within their jurisdictions and thereafter ensure that the child bride receives entirely at government expense comprehensive and modern education, health services, food and nutrition as well as substantial compensation for herself and her children;
5. For an order directing all States and Union Territories to disclose on affidavit the number of marriages taking place district wise, the number of prosecutions and their end results and the number of child marriages prevented;
6. For an order directing all States/UTs to appoint exclusive Child Marriage Prohibition Officers under section 16 of The Prohibition of Child Marriage Act, 2006 for every district, and by notification invest these officers with police powers as set out in section 16(3) of the Act, and to display the contact details of such officers on an exclusive child marriage website;
7. For an order directing all Judicial Magistrates First Class / Metropolitan Magistrates to, on an application or on receipt of information or suo moto, to prohibit child marriages in accordance with section 13 of the Act;
8. For an order directing all District Magistrates in the country to prevent solemnization of mass child marriages on certain days such as *Akshaya Trutiya* in accordance with section 13(4) of the Act;
9. For an order directing the Superintendents of Police throughout India to prosecute all such persons, by whatever designation called, who solemnise child marriages;
10. For an order directing all States and Union Territories to encourage the active assistance of the sample NGOs listed at Annexure ....hereto and all other reputed NGOs that volunteer to assist, in the prevention of child marriages and to monitor the performance of the authorities under the Act;

11. For an order directing all States/Union Territories to include in their education curriculum and material information regarding the hazards of child marriages and the salient features of the law;
12. For an order directing all states and Union Territories to forthwith put in place an online system for information to be received by the authorities even anonymously in respect of child marriages;
13. For an order directing all the Legal Aid Services Authorities and NALSA to mobilise substantial numbers of legal aid lawyers and paralegals from the colleges to do fact findings, trainings, and other legal work in respect of the implementation of the Act;
14. For an order directing Prasar Bharati to prominently cover at regular intervals the salient provisions of the Act and any order that may be passed by this Hon'ble Court so that awareness of the law may be increased;
15. For an order declaring section 3 of the Prohibition of Child Marriage Act, 2006 ultra vires Articles 14 and 21 of the Constitution of India.

### *b. Independent Thought v Union of India*

In October 2017, a landmark judgment was given by the Supreme Court in the case of *Independent Thought v Union of India* regarding child marriage and the question of the legality of sexual intercourse with a minor bride. The key question was whether Exception 2 to the offence of Rape under Section 375 of the Indian Penal Code, which states that a husband cannot rape his wife, applies to wives who are minors (under the age of 18). The Supreme Court clarified in this case that sex with a minor wife was indeed rape, and thus deviated from the marital rape exception in the case of minors. It made reference to the social harms of child marriage and the harms of sexual violence against minors through the judgment. This chapter contains relevant excerpts from both the Writ Petition filed by *Independent Thought*, and the subsequent Supreme Court judgment, followed by HRLN's conclusive remarks on the judgment.

#### **Synopsis of the Petition**

The Petitioner, which is a registered society and a voluntarily organization involved in issues relating to child rights, has approached this Hon'ble Court by way of the present Writ Petition under Article 32 of the Constitution seeking a writ of declaration that Exception 2 to Section 375 of the Indian Penal Code, 1860 [as amended by Criminal Law (Amendment) Act, 2013] is violative of Articles 14, 15 and 21 of the Constitution to the extent that it permits intrusive sexual intercourse with a girl child aged between 15 to 18 years only on the ground that she has been married. The Petitioner is aggrieved by the prescription of age of 15 years in the said Exception and it is the Petitioner's case that the age should be 18 years as a person below 18 years is a child under Indian law. It is the Petitioner's respectful submission that the law should not encourage sexual relationship with a girl child less than 18 years under any circumstance and simply because the girl is married, she cannot be subjected to such a violation.

Relevant part of Section 375 IPC, as amended by Criminal Law (Amendment) Act, 2013 is extracted herein below for ready reference:-

"375. A man is said to commit "rape" if he-

- a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- b) inserts, to any extent, any object or a part of the body, nor being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:-

**First** - Against her will.

**Secondly** - Without her consent.

**Thirdly** - Without her consent, when her consent has been obtained by putting her to any person in whom she is interested, in fear of death or of hurt.

**Fourthly** - With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

**Fifthly** - With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

**Sixthly** - With or without her consent, when she is under eighteen years of age.

**Seventhly** - When she is unable to communicate consent.

**Explanation 1** - For the purposes of this section, "vagina" shall also include labia majora.

**Explanation 2** - Consent means as unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

**Exception 1** - A medical procedure or intervention shall not constitute rape.

**Exception 2** - Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape."

A perusal of the aforesaid provision would show that Parliament has increased the age of consent for a girl child to 18 years. Reference is craved to Sixthly of Section 375 IPC. Earlier, right from 1940, the age of consent was 16 years. Therefore, now sexual intercourse with a girl less than 18 years is an offence of rape, irrespective of the fact that she may have consented to the same. The increase in the age of consent to 18 years by way of Criminal Law (Amendment) Act, 2013 is consistent with the legislative policy being followed in India at least from the year 2000, which shows a female, below the age of 18 years, is treated as a child by law and consequently is deemed to be neither in the mental or physical condition to give consent to sexual intercourse. Infact, there is medical literature to indicate that sexual intercourse with a girl less than 18 years can have adverse consequences on her mental and physical health in case it results in pregnancy/child birth. The Juvenile Justice (Care and Protection of Children) Act, 2000, Protection of Children from Sexual Offences Act, 2012 and Prohibition of Child Marriage Act, 2006 reflect the legislative policy that the girl child less than 18 years should not be subjected to any kind of sexual assault or infringement of her body/mind. Consent in such circumstances is irrelevant.

However, while making such progressive change in Section 375 IPC by the

Criminal Law (Amendment) Act, 2013, Parliament has incorrectly continued the age of 15 years in Exception 2 to Section 375 IPC, whereby a girl aged between 15 to 18 years can be compelled to have sexual intercourse simply because she has been married of by her parents/guardians. It is humbly submitted that this provision is discriminatory and violates Article 14 of the Constitution. The said provision fails to protect the rights of the girl child between ages 15 to 18 years and thereby offends Articles 15 and 21 of the Constitution. Parliament has failed in its duty to protect the rights of the girl child between the ages 15 to 18 years by placing undue reliance on the decision of her parents/guardians to get her married. Simply because the girl child has been married by her parents, law could not permit intrusive sexual relationship with a girl child, when she is otherwise not competent under law to give consent to the sexual relationship, as she is still a child.

The Petitioner begs to submit that while the age for consent for a girl has been increased from 16 to 18 years, Parliament was required to increase the age provided for in the Exception to Section 375 IPC to 18 years, so that it does not encourage sexual relationship with the girl child only because she is married. Child marriage is a social evil. It has been penalized by the Parliament. In such circumstances, Parliament has wrongly not penalized sexual intercourse with a girl between 15 to 18 years, only on the ground that she is married.

## **Grounds and Prayers**

### **GROUNDS**

- 1) For that Exception 2 to Section 375 of IPC, as amended by Criminal Law (Amendment) Act, 2013, is violative of Articles 14, 15 and 21 of the Constitution.
- 2) For that the said provision discriminates between a girl child aged between 15 to 18 years and those above 18 years on the ground of marriage which has no rationale nexus to the purpose sought to be achieved.
- 3) For that once it is recognized by Parliament that a girl child less than 18 years is not in a physical or mental condition for a sexual relationship, making an exception for married girl children between 15 to 18 years, only because they are married, amounts to hostile discrimination as the fact



that the girl child is married has absolutely no relationship with the age for grant of consent. Hence, the said provision is violative of Article 14 of the Constitution.

- 4) For that the age for grant of consent for sexual relationship has increased over a period of time from 10 years in 1860 to 16 years in 1940 and now the same has been increased to 18 years by way of Criminal Law (Amendment) Act, 2013. There is no justification whatsoever to maintain the age at 15 years only because the girl child is married. Thus, the provision is arbitrary and violates Article 14 of the Constitution.
- 5) For that by virtue of provisions of Juvenile Justice (Care and Protection of Children) Act, 2000 and provisions of Protection of Children from Sexual Offences Act, 2012, Parliament has recognized that a girl less than 18 years is a child and therefore, not in a physical and mental condition to take an informed decision as to sexual relationship. In such circumstances, there is no reason for Parliament to retain the age of 15 years in Exception 2 of Section 375 of IPC. Hence, the said provision is arbitrary and violates Article 14 of the Constitution liable to be struck down.
- 6) For that by permitting sexual intercourse with a girl, who is a child, only because she has been married off by her father/guardian, Parliament has failed to protect the rights of the girl child. The provision impinges upon of a girl child to grow in an inviolate and trouble free environment till she attain majority. It is humbly submitted that the girl child aged 15 to 18 years is also vulnerable and is in no position to make an informed choice as to her marriage or sexual relationship. Parliament has not taken steps to protect the rights of said girl child till he attains the age of majority. Hence, the lower age of 15 years in Exception 2 to Section 375 IPC is violative of Articles 15 and 21 of the Constitution. The right to life has been given a very expensive interpretation by this Hon'ble Court and the forced sexual relation of a girl child between 15 to 18 years under the pretext of marriage violates her right to live.
- 7) For that the Criminal law (Amendment) Act, 2013 and the provision of Penal Code i.e. Exception 2 to Section 375 IPC is also unconstitutional, as by flux of time, law has recognized that the age of consent should be 18 years. Infact, for a girl child who is not married, the age of consent if 18 years. The age of consent has been increased progressively from 1860 onwards. The

huge disparity between the age of consent of a married girl and unmarried girl post 2013 amendment makes provision of the Exception 2 to Section 375 IPC unconstitutional.

- 8) For that Parliament has failed to take notice the recommendation of the Law Commission made in 84th Report and 172nd Report. The earlier 84th Law Commission Report had recommended that the age of consent for all girl children, irrespective of marriage, should be increased to 18 years. The 172nd Law Commission Report, though suggesting that the age of consent should be 16 years, had clearly opined that there should be no distinction between the age of consent on the ground that the girl was married.
- 9) For that Parliament has failed to note that various medical studies and data show that pregnancy in a girl, less than 18 years, is detrimental not only to the health of the girl, but also to the child in the womb, Parliament by permitting lawful sexual intercourse with a girl aged 16 to 18 years who is, in a matrimonial relation, has put the lives of lacs of such girls at risk [and also the lives of children in their womb at considerable risk].
- 10) For that Parliament has failed to take note of provisions of other acts like Child Marriage Act, 2006 Protection of Juvenile Justice (Care and Protection of Children) Act, 2000 and the most recent which specifically bars all consensual sexual activities below the age of 18 years leave alone the gravest form of penetrative sexual assault, the Protection of Children from Sexual Offences Act, 2012. Infact, in the Criminal Law (Amendment) Order, 2013, the age provided in Exception 2 to Section 375 IPC was 16 years. The huger gap between the age for consent under Section 375 and the age for consent for a married girl child is unfair, unjust, arbitrary and violative of the Constitutional provisions. Hence, is liable to be struck down.
- 11) For that the impugned provisions of the Indian Penal Code are consistent with Article I of Convention on the Elimination of all forms of Discrimination against Women [CEDAW] which has been ratified by the Government of India.
- 12) For that any individual below 18 years has been considered as Child and minor as per the Justice Juvenile (Care and Protection of Children) Act, 2000 and marriage of any girl child below age of 18 is also an offence as per The Prohibition of the Child Marriage, 2006. The girl between the ages of

16-18 years are Child and minor and their marriage is prohibited as per the laws stated above they have to legally face penetrative sexual assault due to the Exception Clause of the Section 375 of The Criminal Law (Amendment) Ordinance, 2013. This is clear fact that through some laws girls between ages of 15-18 are protected and secured while the Exception Clause of the Section 375 of The Criminal Law (Amendment) is legalizing penetrative sexual assault. This is clear contradiction in law.

- 13) As per UNICEF girls who are married below the age of 18 has to face many health problems because of pregnancy and the child born are also not healthy and there are more instances of Infant Mortality as per evidence of UNICEF (Annexure). According to UNICEF, Girls age 15-19 are more likely (66.6%) to experience delivery complications compared to 30-34 year-old women (59.7%)<sup>2</sup> and neonatal, infant and child mortality rates are much higher for younger girls (Annexure A). Risks of HIV/AIDS infection are higher among young girls as their negotiation skills and experience to ensure a healthy sexual life are less developed. This is clearly evident that Exception to the Section 375 of The Criminal Law (Amendment) Act, 2013 which legalizes penetrative sexual assault on the girls between the ages of 15-18 raises major health issue of the girl Child as well as of child born.
- 14) For that legalizing penetrative sexual assault on the minor girls who is being forcibly subjected to marriage and the consequent cruelty. The girls between the ages of 15-18 years are being forced and illegally married as per Section 3 and 9 of The Prohibition of the Child Marriage, 2006 and as per Section 5 of the Protection of Children from Sexual Offence Act, 2012, but they are being legally subjected to sexually assault as illegally married minor.
- 15) For that though child marriage had been a social phenomenon, after independence, a number of steps have been taken by Parliament and the Government to ensure that child marriages come to an end. The Prohibition of Child Marriage Act, 2006 also reiterates the commitment of the Government to stop child marriages. In such circumstances, it was time for Parliament to have sent a clear message that marriage of girls less than 18 years would not be accepted and it was time for Parliament to penalize sexual interaction with a girl child less than 18 years, rather than permitting the same simply because the parents have married the girl.

- 16) For that there have been number of social practices which have been prohibited by Parliament e.g. bigamy, sati and Mritu Bhoj (social practice prevalent in Rajasthan). Hence, it was time for Parliament to have penalized sexual intercourse with a child less than 18 years. Child marriage is a social evil. It put the child in a position where she cannot decide for herself, what is good for her. It also adversely impacts the health of the child. Parliament was duty bound to protect the rights of the girl child by ensuring that she was not forced into marriage at an age earlier than 18 years. Parliament was duty bound to protect the health of the girl child as well.
- 17) For that the Exception 2 to Section 375 IPC places too much importance on the decision of parents/guardian of the girl child as the parents/guardian have the unabridged right to marry the child at the age less than 18 years, as the child of age of 15 to 18 years is not in a position to decide on her future and perhaps is in no position to protest against the decision of her parents/guardian. In such circumstances, Parliament should have intervened and should have made its policy very clear that a girl child, less than 18 years, should not be married and forced to have sexual relation which has the ill effects not only her mental health, but also on her physical health. Parliament could not have refrained from intervening only on the ground that the parents/guardians have an absolute right to marry the girl child, when she is less than 18 years. More than 65 years after independence, there is no justification whatsoever for permitting marriage of children less than 18 years only on the ground that this is a family matter. The Petitioner respectfully submits that considering the scientific and educational advancement over a period of time and with more data being available as to the ill effects of pregnancy at age less than 18 years, Parliament should not have refrained from penalizing inclusive sexual intercourse with a girl child.
- 18) For that Parliament should have taken note of a number of instances where the parents/guardians have married of their girl child for purposes of sexual exploitation, trafficking, forced labour etc. and also for making some quick money for themselves. These social evils could be prevented if the age of consent for sexual relations is increased to 18 years so that the child is not forced into a marriage by their parents/guardian and the law could protect the rights of such a girl child and thereby give her the freedom to ground physically and mentally and in a position to take a decision for herself.

- 19) For that Parliament could not have upheld the right of the parents to violate the rights of their daughters who are less than 18 years, who have the right, like any other citizen, to grow in the best way possible manner, without being forced into sexual intercourse only on the ground that they have been married of by their parents.
- 20) For that Parliament ought to have taken note of developments of other countries whereby the parents of a child do not have an absolute right to determine the destiny of the child. Unfortunately, by not penalizing sexual intercourse between 15 to 18 years for a girl child on the sole ground that she has been married by her parents/guardian, Parliament has failed to keep pace with the global developments in the law of Right of Children and has thereby condemned girl child in this vulnerable age group of 15 to 18 years to sexual intercourse [at the choice of her parents] and life threatening pregnancy/child birth.

### **Prayers**

In these premises, it is most respectfully prayed that this Hon'ble Court be pleased to -

- a) issue an appropriate writ, order or direction in the nature of certiorari or such other similar writ, in the nature of declaration, declaring that the provisions of Exception 2 to Section 375 of IPC, as amended by Criminal law (Amendment) Act, 2013 is unconstitutional and liable to be struck down;
- b) issue an appropriate writ, order or direction in the nature of certiorari or a writ of declaration that the age of consent for sexual relationship should be treated as 18 years, irrespective of the marital status of the girl child;
- c) Pass such other order or orders and directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case as also in the interest of justice,

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

## Judgment

### Supreme Court of India

Independent Thought vs Union Of India on 11 October, 2017

Author: M B Lokur

Bench: D Gupta

#### **Madan B. Lokur, J.**

The issue before us is limited but one of considerable public importance whether sexual intercourse between a man and his wife being a girl between 15 and 18 years of age is rape? Exception 2 to Section 375 of the Indian Penal Code, 1860 (the IPC) answers this in the negative, but in our opinion sexual intercourse with a girl below 18 years of age is rape regardless of whether she is married or not. The exception carved out in the IPC creates an unnecessary and artificial distinction between a married girl child and an unmarried girl child and has no rational nexus with any unclear objective sought to be achieved. The artificial distinction is arbitrary and discriminatory and is definitely not in the best interest of the girl child. The artificial distinction is contrary to the philosophy and ethos of Article 15(3) of the Constitution as well as contrary to Article 21 of the Constitution and our commitments in international conventions. It is also contrary to the philosophy behind some statutes, the bodily integrity of the girl child and her reproductive choice. What is equally dreadful, the artificial distinction turns a blind eye to trafficking of the girl child and surely each one of us must discourage trafficking which is such a horrible social evil.

We make it clear that we have refrained from making any observation with regard to the marital rape of a woman who is 18 years of age and above since that issue is not before us at all. Therefore we should not be understood to advert to that issue even collaterally

The social cost of a child marriage (and therefore of sexual intercourse with a girl child) is itself quite enormous and in the long run might not even be worth it. This is in addition to the economic cost to the country which would be obliged to take care of infants who might be malnourished and sickly; the young mother of the infant might also require medical assistance in most cases. All these costs eventually add up and apparently only for supporting a pernicious practice.

We can only express the hope that the Government of India and the State Governments intensively study and analyze these and other reports and take an informed decision on the effective implementation of the PCMA and actively prohibit child marriages which encourages sexual intercourse with a girl child. 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 favour of the girl child who can then look forward to a better future.

### **Provisions of the Indian Penal Code (IPC).**

Section 375 of the IPC defines rape. This section was inserted in the IPC in its present form by an amendment carried out on 3<sup>rd</sup> February, 2013 and it provides that a man is said to commit rape if, broadly speaking, he has sexual intercourse with a woman under circumstances falling under any of the seven descriptions mentioned in the section. (A woman is defined under Section 10 of the IPC as a female human being of any age). Among the seven descriptions is sexual intercourse against the will or without the consent of the woman; clause Sixthly of Section 375 makes it clear that if the woman is under 18 years of age, then sexual intercourse with her - with or without her consent - is rape. This is commonly referred to as statutory rape in which the willingness or consent of a woman below the age of 18 years for having sexual intercourse is rendered irrelevant and inconsequential.

However, Exception 2 to Section 375 of the IPC provides that it is not rape if a man has sexual intercourse with a girl above 15 years of age and if that girl is his wife. In other words, a husband can have sexual intercourse with his wife provided she is not below 15 years of age and this is not rape under the IPC regardless of her willingness or her consent.

However, sexual intercourse with a girl under 15 years of age is rape, whether it is with or without her consent, against her will or not, whether it is by her husband or anybody else. This is clear from a reading of Section 375 of the IPC including Exception 2.

Therefore, Section 375 of the IPC provides for three circumstances relating to rape. Firstly sexual intercourse with a girl below 18 years of age is rape (statutory rape). Secondly and by way of an exception, if a woman is between 15 and 18 years of age then sexual intercourse with her is not rape if the person

having sexual intercourse with her is her husband. Her willingness or consent is irrelevant under this circumstance. Thirdly sexual intercourse with a woman above 18 years of age is rape if it is under any of the seven descriptions given in Section 375 of the IPC (non-consensual sexual intercourse).

The result of the above three situations is that the husband of a girl child between 15 and 18 years of age has blanket liberty and freedom to have non-consensual sexual intercourse with his wife and he would not be punishable for rape under the IPC since such non-consensual sexual intercourse is not rape for the purposes of Section 375 of the IPC. Very strangely, and as pointed out by Sakshi before the LCI, the husband of a girl child does not have the liberty and freedom under the IPC to commit a lesser sexual act with his wife, as for example, if the husband of a girl child assaults her with the intention of outraging her modesty, he would be punishable under the provisions of Section 354 of the IPC. In other words, the IPC permits a man to have non-consensual sexual intercourse with his wife if she is between 15 and 18 years of age but not to molest her.

The Protection of Children from Sexual Offences Act, 2012 (for short the POCSO Act) is an important statute for the purposes of our discussion. The Statement of Objects and Reasons necessitating the enactment of the POCSO Act makes a reference to data collected by the National Crime Records Bureau (NCRB) which indicated an increase in sexual offences against children. The data collected by the NCRB was corroborated by the Study on Child Abuse: India 2007 conducted by the Ministry of Women and Child Development of the Government of India.

While the above Study focuses on child abuse, it does refer to the harmful traditional practice of child marriage and in this context adverts to child marriage as being a subtle form of violence against children. The Study notes that there is a realization that if issues of child marriage are not addressed, it would affect the overall progress of the country.

The above Study draws attention to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to which India is a signatory. Article 16.2 thereof provides 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 and to make the registration of marriages in an official registry compulsory.



The above Study also makes a reference to gender equity to the effect that discrimination against girls results in child marriages and such an imbalance needs to be addressed by bringing about attitudinal changes in people regarding the value of the girl child.

The Preamble to the POCSO Act states that it was enacted with reference to Article 15(3) of the Constitution. The Preamble recognizes that the best interest of a child should be secured, a child being defined under Section 2(d) as any person below the age of 18 years. In fact, securing the best interest of the child is an obligation cast upon the Government of India having acceded to the Convention on the Rights of the Child (the CRC). The Preamble to the POCSO Act also recognizes that it is imperative that the law should operate in a manner that the best interest and well being of the child are regarded as being of paramount importance at every stage, to ensure the healthy, physical, emotional, intellectual and social development. India became a signatory to the CEDAW Convention on 30th July, 1980 (ratified on 9th July, 1993) but with a reservation to the extent of making registration of marriage compulsory stating that it is not practical in a vast country like India with its variety of customs, religions and level of literacy. Nevertheless, the Supreme Court in the case of *Seema (Smt.) v. Ashwani Kumar*, (2006) 2 SCC 578 directed the States and Central Government to notify Rules making registration of marriages compulsory. However, the same has not been implemented in full. Finally, the Preamble also provides that sexual exploitation and sexual abuse of children are heinous crimes and need to be effectively addressed. This is directly in conflict with Exception 2 to Section 375 of the IPC which effectively provides that the sexual exploitation or sexual abuse of a girl child is not even a crime, let alone a heinous crime on the contrary, it is a perfectly legitimate activity if the sexual exploitation or sexual abuse of the girl child is by her husband.

Under Article 34 of the CRC, the Government of India is bound to undertake all appropriate national, bilateral and multi-lateral measures to prevent the coercion of a child to engage in any unlawful sexual activity. The key words are unlawful sexual activity but the IPC declares that a girl child having sexual intercourse with her husband is not unlawful sexual activity within the provisions of the IPC, regardless of any coercion. However, for the purposes of the POCSO Act, any sexual activity engaged in by any person (husband or otherwise) with a girl child is unlawful and a punishable offence. This dichotomy is certainly not in the spirit of Article 34 of the CRC.

Further, in terms of our international obligations under Article 1 and Article 34 of the CRC, the Government of India must undertake all appropriate measures to prevent the sexual exploitation or sexual abuse of any person below 18 years of age since such sexual exploitation or sexual abuse is a heinous crime. What has the Government of India done? It has persuaded Parliament to convert what is otherwise universally accepted as a heinous crime into a legitimate activity for the purposes of Section 375 of the IPC if the exploiter or abuser is the husband of the girl child. But, contrarily the rape of a married girl child (called aggravated penetrative sexual assault in the POCSO Act) is made an offence for the purposes of the POCSO Act.

The Preamble to our Constitution brings out our commitment to social justice, but unfortunately, this petition clearly brings out that social justice laws are not implemented in the spirit in which they are enacted by Parliament. Young girls are married in thousands in the country, and as Section 13 of the PCMA indicates, there is an auspicious day Akshaya Trutiya - when mass child marriages are performed. Such young girls are subjected to sexual intercourse regardless of their health, their ability to bear children and other adverse social, economic and psychological consequences. Civil society can do just so much for preventing such child marriages but eventually it is for the Government of India and the State Governments to take proactive steps to prevent child marriages so that young girls in our country can aspire to a better and healthier life. We hope the State realizes and appreciates this.

On a complete assessment of the law and the documentary material, it appears that there are really five options before us:

- (i) To let the incongruity remain as it is this does not seem a viable option to us, given that the lives of thousands of young girls are at stake;
- (ii) To strike down as unconstitutional Exception 2 to Section 375 of the IPC in the present case this is also not a viable option since this relief was given up and no such issue was raised;
- (iii) To reduce the age of consent from 18 years to 15 years this too is not a viable option and would ultimately be for Parliament to decide;
- (iv) To bring the POCSO Act in consonance with Exception 2 to Section 375 of the IPC this is also not a viable option since it would require not only a retrograde amendment to the POCSO Act but also to several other pro-child statutes;
- (v) To read Exception 2 to Section 375 of the IPC in a purposive manner to make it in consonance with the POCSO Act, the spirit of other pro-child

legislations and the human rights of a married girl child.

Being purposive and harmonious constructionists, we are of opinion that this is the only pragmatic option available.

Therefore, we are left with absolutely no other option but to harmonize the system of laws relating to children and require Exception 2 to Section 375 of the IPC to now be meaningfully read as: Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape. It is only through this reading that the intent of social justice to the married girl child and the constitutional vision of the framers of our Constitution can be preserved and protected and perhaps given impetus.

We make it clear that we have not at all dealt with the larger issue of marital rape of adult women since that issue was not raised before us by the petitioner or the intervener.

We express our gratitude to Mr. Gaurav Agrawal, Advocate and Ms. Jayna Kothari, Advocate for the effort that they have put in and the able assistance that they have given us for the purpose of deciding this case.

In my view, as far as this case is concerned, this Court is not creating any new offence but only removing what was unconstitutional and offensive.

### **Deepak Gupta, J**

In this case, we are concerned mainly with Article 14 and 21 of the Constitution of India. The legislative history given above clearly indicates that a child has universally been defined as a person below 18 years of age in all the enactments. This has been done for the reason that it is perceived that a person below the age of 18 years is not fully developed and does not know the consequences of his/her actions. Not only is a person below the age of 18 years treated to be a child, but is also not even entitled to deal with his property, enter into a contract or even vote.

The fact that child marriage is an abhorrent practice and is violative of human rights of the child is not seriously disputed by the Union of India. The only justification given is that since a large number of child marriages are taking place, it would not be proper to criminalize the consummation of such child marriages. It is urged that, keeping in view age old traditions and evolving social norms, the practice of child marriage cannot be wished away and,

therefore, legislature in its wisdom has thought it fit not to criminalize the consummation of such child marriages.

I am not impressed with the arguments raised by the Union of India. Merely because something is going on for a long time is no ground to legitimise and legalise an activity which is per se illegal and a criminal offence. No doubt, it is totally within the realm of Parliament to decide what should be the age of consent under clause Sixthly of Section 375 IPC. It is also within the domain of the Parliament to decide what should be the minimum age of marriage. The Parliament has decided in both the enactments that a girl below 18 years is not capable of giving consent to have sex and legally she cannot marry. Parliament has also, in no uncertain terms, prohibited child marriage and come to the conclusion that child marriage is an activity which must come to an end. If that be so, can the practice of child marriage which is admittedly an evil, and is also a criminal offence be set up as an exception in a case of a girl child, who is subjected to sexual intercourse by her so called husband. Shockingly, even if this sexual intercourse is forcible and without the consent of the girl child, then also the husband is not liable for any offence. This law is definitely not right, just and fair and is, therefore, arbitrary.

There can be no dispute that every citizen of this country has the right to get good healthcare. 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. Life should be meaningful and worth living. Life has many shades. Good health is the *raison detre* of a good life. 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.

It is true that at times the State, because of paucity of funds, or other reasons beyond its control, cannot live up to the expectations of the people. At the same time, it is not expected that the State should frame a law, which adversely affects the health of a citizen, that too a minor girl child. The State, under Article 15 of the Constitution, is in fact, empowered to make laws favouring women. Reservation for women is envisaged under Article 15 of the Constitution. In *Vishakha v. State of Rajasthan*<sup>62</sup>, this Court held that sexual harassment of working women amounts to violation of the rights guaranteed by Articles 14, 15 and 23 of the Constitution.

When a girl is compelled to marry before she attains the age of 18 years, her health is put in serious jeopardy. As is evident from various reports referred to above, girls who were married before the age of 19 years are likely to suffer medical and psychological problems. A 15 or 16 year old girl, when forcibly subjected to sexual intercourse by her husband, undergoes a trauma, which her body and mind is not ready to face. The girl child is also twice as more likely to die in child birth than a grown up woman. The least, that one would expect in such a situation, is that the State would not take the defence of tradition and sanctity of marriage in respect of girl child, which would be totally violative of Article 14, 15 and 21 of the Constitution. Therefore, this Court is of the view that Exception 2 to Section 375 IPC is arbitrary since it is violative of the principles enshrined in Article 14, 15 and 21 of the Constitution of India.

Approaching this aspect from another angle. As is evident from various reports filed in this case, child marriages are not restricted to girls aged above 15 years. Even as per the National Plan of Action for Children, 2016 prepared by the Ministry of Women and Child Development, Government of India, 30.3% of marriages i.e. almost 1 in every 3 marriage takes place in violation of the PCMA. Many of these relate to child brides aged less than 15 years. A girl may be married when she is 3-4 years or may be 10-11 years old. She may be sent to her matrimonial home on attaining the age of puberty, which may be well before she attains the age of 15 years. In such an eventuality, what is the reason for fixing the magic figure of 15 years. This figure had relevance when under the criminal law and the marriage laws the age was similar. In the year 1940, the age of consent was 16 years, the age of marriage was 15 years and the age under the

exception was also 15 years; in 1975, the age of consent was 16 years, the age of marriage was 18 years, but the age under the exception remained 15 years. That may have been there because there was no change in the age of consent under Clause Sixthly. Now when the age of consent is changed to 18 years, the minimum age of marriage is also 18 years and, therefore, fixing a lower age under Exception 2 is totally irrational. It strikes against the concept of equality. It violates the right of fair treatment of the girl child, who is unable to look after herself. The magic figure of 15 years is not based on any scientific evaluation, but is based on the mere fact that it has been existing for a long time. The age of 15 years in Exception 2 was fixed in the year 1940 when the minimum age for marriage was also 15 and the age of consent under clause Sixthly was 16. In the present context when the age for marriage has been fixed at 18 years and when the age of consent is also fixed at 18 years, keeping the age under Exception 2 at 15 years, cannot be said to be right, just and fair. In fact, it is arbitrary and oppressive to the girl child.

Law cannot be hidebound and static. It has to evolve and change with the needs of the society. Recognising these factors, the Parliament increased the minimum age for marriage. The Parliament also increased the minimum age of consent but the inaction in raising the age in Exception 2 is by itself an arbitrary non-exercise of power. When the age was being raised in all other laws, the age under Exception 2 should also have been raised to bring it in line with the evolving laws especially the laws to protect women and the girl child aged below 18 years. Therefore, I have no hesitation in holding that the Exception 2, in so far as it relates to the girl child below eighteen years, is unreasonable, unjust, unfair and violative of the rights of the girl child. To that extent the same is arbitrary and liable to be set aside.

### **THE PRIVACY DEBATE**

Ms. Jayna Kothari, learned counsel for the Intervener, had raised the issue of privacy and made reference to the judgment of this Court in the case of Justice 64 (1888) 22 Q.B.D. 23 65 (1949) 2 All E.R. 448 W.P. (C) No. 382 of 2013 Page 125 K.S. Puttaswamy (Retd.) & Anr. v. Union of India and Ors.66 to urge that the right of privacy of the girl child is also violated by Exception 2 to Section 375 IPC. I have purposely not gone into this aspect of the matter because anything said or urged in this behalf would affect any case being argued on marital rape even in relation to women over 18 years of age. In this case, the issue raised is only with regard to the girl child and, therefore, I do not think it proper to deal with this

issue which may have wider ramifications especially when the case of girl child can be decided without dealing with the issue of privacy.

### **RELIEF**

Since this Court has not dealt with the wider issue of marital rape, Exception 2 to Section 375 IPC should be read down to bring it within the four corners of law and make it consistent with the Constitution of India.

In view of the above discussion, I am clearly of the opinion that Exception 2 to Section 375 IPC in so far as it relates to a girl child below 18 years is liable to be struck down on the following grounds:

- (i) it is arbitrary, capricious, whimsical and violative of the rights of the girl child and not fair, just and reasonable and, therefore, violative of Article 14, 15 and 21 of the Constitution of India;
- (ii) it is discriminatory and violative of Article 14 of the Constitution of India and;
- (iii) it is inconsistent with the provisions of POCSO, which must prevail.

Therefore, Exception 2 to Section 375 IPC is read down as follows:

Sexual intercourse or sexual acts by a man with his own wife, the wife not being 18 years, is not rape. It is, however, made clear that this judgment will have prospective effect.

It is also clarified that Section 198(6) of the Code will apply to cases of rape of wives below 18 years, and cognizance can be taken only in accordance with the provisions of Section 198(6) of the Code.

At the cost of repetition, it is reiterated that nothing said in this judgement shall be taken to be an observation one way or the other with regard to the issue of marital rape.

Extremely valuable assistance was rendered to this Court by Mr. Gaurav Agarwal, learned counsel appearing for the petitioner and Ms. Jayna Kothari, learned counsel appearing for the intervener and I place on record my appreciation and gratitude for the same.

## **Conclusion**

This was a landmark judgment, in that it partially challenged the Section 375 IPC exception to rape in marriage, and solidified the view that the rape of a minor, even if a bride, is illegal. However, there were disappointing gaps in the judgment, in that it failed to address the issue of marital rape in full, which remains a contentious issue in India and hugely disadvantages women. Nevertheless, this judgment is a positive one. Although child marriage is illegal and has been illegal for decades, this publication demonstrates that the practice pervades for a myriad of reasons. This judgment, at least, will mean that child brides can lodge criminal complaints against husbands forcing them into sex whilst they are still minors – thus challenging marital rape to the point where wives are minors, and entitling girls to live lives free from sexual coercion and violence.



## CHAPTER V

### FINDINGS FROM THE FIELD: TESTIMONIALS FROM SIX STATES

*SLIC, along with a team of activists and lawyers from the states surveyed, carried out fact findings in Chhattisgarh, Uttarakhand, Bihar, Haryana, Assam and Odisha from January 2015 - July 2016. The objective of the research conducted was to document case studies of child marriage, and examine the gaps in the implementation of the PCMA that has been established to prevent child marriages. The team interviewed child brides, CMPOs, and various government stakeholders during the visit. The findings below are based on primary sources of information (collected through interviews) and secondary data (by analyzing reports and articles).*

#### CHHATTISGARH

##### A. Interviews with Child Brides:



**(I) Rinky Yadav – Former Child Bride (Pregnant),  
Majhipara, Karli Village, Dantewada**

When the research team met with Rinky, a Hindu girl, she was 9 months pregnant. She stated that she was 20 years old, although she seemed a year or two younger. At the time of the interview, she was pregnant with her first child.

Rinky said that she visits Anganwadi centres and gets iron supplements and ready-to-eat food from them, but did not get any other medicine from them. She had been regularly monitored by the *mitanins*.<sup>29</sup> All of her medical check-ups at the hospital had been free. She told the research team that she had gotten married around May, 2015.

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<sup>29</sup> Mitanins are the front line workers from the community itself, the first level of care and services are brought at the doorstep of all rural families of the state.

Rinky's husband is a construction site labourer, and she informed the team that there are 9 members in her family. She planned to deliver her baby at the hospital, rather than at home. She had studied until the 9th grade, but dropped out of school a year after as she eloped to get married. From her statements, the team concluded that she was probably approximately 17 years old when she got married. After she dropped out of school, none of the school authorities made any enquiries into her absence. Nevertheless, her education was completely free of cost, and her school was not very far away – mitigating many of the parental concerns noted in the above chapters regarding education of girls

Rinky remarked that she was happy with her married life, and as a result did not want to go back to school. At the time of interview, she was not engaged in any kind of work. She stated that she did not suffer from any kind of abuse or domestic violence at home – stating that her husband, who was approximately 2 years older than her – was 'nice to her' and did not sexually abuse her. In addition to this she stated that she was consulted on family related decisions. She had not gotten her marriage registered. When we asked her if she was aware about the illegality of child marriage and its criminal consequences, she conveyed a lack of awareness.

### **(ii) Sita Mani – Child Bride (Pregnant), Chotekarka Village**



The team set out to talk to Sita, as she did not look to be any older than 15 years old. Sita was generally hesitant when answering questions. She stated that she was 7 months pregnant, and claimed to be 20 years of age – although it should be noted that this claim came after much hesitation and thought. She told the team she was of the Nag caste and was a Hindu. She had come to the hospital along with her husband, who seemed to be as young as her, and who was a *mitanin* worker. She had never attended school in her life, as she was an orphan and had no one to send her to school. Both Sita and her husband agricultural labourers, although Sita's husband did not know how much he earns a monthly basis. Sita told the team that she did not want to go to school. Her and her husband had eloped in order to get married, and she informed the team she hoped to have one girl and one boy.

Sita claimed that she got married 3 years ago. Neither of her nor her husband seemed to be completely aware of how old they were. They had got married at home, and the marriage had never been registered. At the time of interview, Sita was pregnant with her first child. Both her and her husband were unaware that child marriage is illegal. She said she had been consulted on family related decisions. Both of them were orphans, and they had eloped to get married. She told the team she hoped to have one boy and one girl. Sita informed the team that her husband drinks the local alcohol, but does not abuse her in any way after that.

Neither of Sita nor her husband reported any contraceptive usage (Sita had no awareness of contraceptives in general) but they had not been able to conceive until now. Regarding her pregnancy, Sita stated that she had not been regularly monitored by the *mitanin* workers. She had only come to the hospital once her hands and feet started swelling up after pregnancy. She said that she used an ambulance to arrive at the hospital, and that the ambulance service was free of cost – though it took an hour for the ambulance to reach her. The team were told by her that the CHC at Geedam is the nearest hospital from their house. She was unaware about the government schemes and benefits provided to pregnant women. The services provided to her at the hospital have been free.

### **(iii) Birji Bai - Child Bride, Bhisadabra Village, Kawardha**



Birji Bai did not know how old she was, but the team estimated her age to be between 17 and 19 years. Birji belongs to the Bhaiga Tribe of Bhisadabra Village. At the time of the interview, she lived with her husband, 3 children and her parents-in-law. She had not attended school at any point of time as her parents never sent her to school, although she stated that she does agricultural chores every day. She estimated that she earned approximately 10-20 thousand per annum. She informed the team that she did not want to go to school as she was needed for work at home. At the time of her marriage, she had started menstruating, and reckoned that she would have been between 10-15 years at the time of marriage – she could not provide an exact age.

When asked about the registration of her marriage, she seemed to be completely unaware of the concept of registration. She said that her husband was much older than her – estimating his age to have been between 20 to 21 years at the time of marriage. She was aware of the legal provisions under the PCMA, but said that she had to get married as her caste forced her to do so. Birji claimed that she was not consulted on any family related decisions, but that her husband does not abuse her in any way. She has 3 children – 2 girls and 1 boy. Although she had taken pills as a mode of contraception, she was unaware about the consequences of using contraceptives.

Her children were born at an interval of 3 years each. She accepted that she had multiple pregnancies only because of her husband's insistence and pressure. She had not gotten any entitlements from government schemes, although she had been sterilized and had received certain entitlements for that. Birji told the team that *mitanins* meet her regularly and give her pills, iron supplements etc. *mitanins* had asked her to go to the hospital for delivery, but she had found it more convenient to deliver at home. The "Dhai ma" had helped her with her delivery. Birji claimed the *mitanins* monitored her regularly, right from the first month of her pregnancy. They visited her every month during and after pregnancy as well. All the health services that were provided to her were free.

Birji's husband is also an agriculturalist, who earns approximately 5-6 thousand rupees per month, although he is apparently addicted to "beedi" and alcohol.

#### **(iv) Keji Bai – Child Bride, Teliapani Village, Kawardha**



Keji Bai was unaware of her age, but the team estimated her to be 18-19 years of age. She belonged to the Bhaiga tribal group of Teliapani Village. Keji had apparently never been to school in her life, and she laughed at the research team when asked about school. She stated that the school was about 2 km away from her house and education was offered for free, but when asked why she never went to school claimed that she was scared to go to school. Keji used to be

engaged in agricultural activities but lately had been sick, thus had not been going to work.

Until the time of interview, Keji already had 4 pregnancies. One of her children died immediately after birth, and another child died after a month of being born. The other two of her children were alive and well at the time of interview. Her elder child was around 5-6 years old and the younger was around 2-3 years. She told the team that she preferred male children to females.

Keji's marriage was not been legally registered. She estimated that she was 10-11 years old when she got married. Her husband, 2-3 years elder to her, was also an agriculturalist. She lived with her husband and her children at home. When asked by the team, Keji stated that she had never heard of any law on "Bal Vivah" or any of the provisions of PCMA. She shyly accepted that she had never been consulted on family related decisions, and, when asked, was not able to clarify if her husband sexually abuses her. She had no awareness about contraceptives, nor had she used any to date. She said that family pressure and husband pressure is what led to her multiple pregnancies. Despite her hesitancy to talk about sexual abuse, Keji claimed she had not suffered any other sort of violence in her house.

**(v) Jaya Kashyap – Mitanin Worker (Child Bride), Karli Village, Dantewada**



Jaya is a 22 year old Hindu girl. She stated that she had two children; the elder child being 5 years old and the second 1.5 years old. At the time of interview, she had been a *mitanin* worker for 3 years.

She had been married for 6 years, which meant that she was 16 years when she got married. In a break from tradition, Jaya had a love marriage, eloping from her village with her husband. She had not got her marriage registered. When asked if she was aware that child marriage is an offence under the PCMA, she said that she was aware now, but was unaware of its illegality at the time of her marriage. She told the team she would not get her children married before their legal age.

She had studied in school up to the 7th grade, and education was completely free for her. Nevertheless, she dropped out of school as there was nobody to take care of her as she was an orphan. None of the school authorities came to monitor her subsequent to her dropping out. Jaya told the team that she still

wanted to go to school, but felt that it was too late.

Her husband, about 25 years old, is a construction site worker, earning about Rs. 3000 per month. Her husband is apparently addicted to cigarettes and nothing else. Jaya claimed that he did not subject her to any sort of violence, including sexual violence. She stated that he ‘loves her very much’ and that she was happily married.

Jaya told the team that child marriages used to happen in the past, but claimed that they had now completely stopped – the only ones remaining being love marriages. She claimed that women in her village generally got married after turning 18, and would get pregnant by 20 or 21.

## ***B. Interviews with State Authorities***

### **District Collector, Bilaspur**

The team met with the District Collector, Mr. P. Anbalagan, I. A. S. He had been the District Collector of Bilaspur since August 2015 and had been an I. A. S. officer for 12 years. When asked if any case regarding child marriage had been filed with him in Bilaspur he said no such case had been filed in the 12 years of his service. He stated that such case get filed with the Child Welfare Development and judicial court through the police.

*‘The bride, groom or any third person complains to the government about this issue only once in a blue moon.’*

When asked about his opinion on child marriage in Chhattisgarh, he stated that child marriage is a social problem with several reasons as to why it is happening. Generally, the government officials are not able to act on it as they do not get to know about such events. In marriages, especially happening between lower and middle class people, the events are very clandestine.

*‘But such steps taken by the government and judicial authorities alone are not enough to stop this menace.’*

Mr. P. Anbalagan, I. A. S said that there should be awareness amongst people and a change in their mindset. Child marriage is just one thing, but there are several problems which arise as a consequence. The communities or families which follow such customs can’t be prevented or punished by law alone as

discussions and spread awareness about social issues like child marriage etc. Hirno said that Anganwadis and schools have created a few self-help groups as well, and that the government provided scholarship schemes in the context of adolescent welfare. In addition to this, girls in the 9th grade and above were given bicycles and both girls and boys were given monetary scholarships as an incentive to stay in school.

#### *D. Interviews with Teachers*

##### **Kusum Anand, Teacher, Jakraguda Village, Bastar District**

Kusum Anand was a teacher at the government school at Jakraguda Village. At the time of interview, she had been working as a government teacher for 8 years. There were 29 boys and 24 girls in the middle school, and there were apparently no students who had completely dropped out of school. Kusum stated that when students drop out, the teachers meet up with them and their parents and convince them to rejoin school. She said that students usually drop-out due to a lack of parental support. They like their kids to be engaged in labour and lend them a hand with work. As a result, the children also lose interest in studies. When asked if there has been any case of students dropping out due to marriage, she answers in the negative. There were no apparent cases of child marriages in the middle school according to her.

Another teacher added that the students who do get married in high school, elope to get married. Parents never arrange for such marriages. There had not been any instance of a CMPO coming to the school for any reason. The state government has not taken any step to combat drop-out rates.

After this interview, the female members of the research team had a private discussion with the female teachers. They confessed that child marriage is a little prevalent in that area amongst the tribal people. They also said that the tribal men and women of that village are habitual to a cultural practice of group-sex and open-sex, thus even middle school boys engage in sexual intercourse within the school premises. The local doctor had told them about many cases where their female students from the middle school and high school openly ask her for pills to abort their pregnancy. The peon complains about condoms lying around everywhere in the school premises in the days after village rituals and celebrations. The teachers said that they are unable to talk about all this in school, as a few of their colleagues belong to the same

they constantly find loopholes to every impediment. When asked about the efficiency of CMPOs in his district, he said, for so many villages within so many districts within so many cities within so many states, it is very hard to provide government staff for several functions. This is due to the multitude of work; the CMPOs are also working on several other tasks. Thus, they are not able to perform their duties properly. When asked if awareness programmes have been conducted regarding this issue, he said that they regularly conduct such programmes. When asked if any protection is provided to ensure the safety of complainants in such cases, he said that in order to encourage information they ensure anonymity of the complainants.

### *C. Interviews with Sarpanchs*

#### **Savitri Kashyap, Sarpanch of Karli Village, Dantewada**

The team had a brief discussion with Mrs. Savitri Kashyap, the Sarpanch of Karli Village, Dantewada. She was 36 years old at the time of interview. She said that education is the most efficient method to eradicate all kinds of social evils from the society. She stated that both girls and boys are sent to school in her village, but nobody can help children who voluntarily stay out of school. Savitri claimed that mass marriages were prevalent under the 'Mukya Mantri Kanya Dhan' scheme, but that girls usually get married when they are 22-25 years of age. She said that child marriages used to happen at one point of time, but now people have become more aware and it does not happen very often.

#### **Hirmo Ram Mmandavi, Sarpanch, Jakraguda Village**



Hirmo was 50 years old at the time of interview. This was his third term as a Sarpanch. He said that there were 1683 people living in his village. A mass marriage took place in his village in 2014, but no child marriage happened. The people getting married under mass marriages are supposed to give a proof of age. In case of orphans who are also illiterates, the Gram Panchayat makes a proof of age for them. However, the necessity for such things has significantly reduced now. He claimed that child marriage does not happen in the village. Girls usually get married at the age of 19-20 and boys at the age of 23-24. He was aware about the legal provisions under the PCMA, and noted that people from the Legal Aid Services often visit their village in order to hold



tribe that practice said rituals.

### **C. S. Bhagel, Principal, Government High School, Badanji**

Mr. C. S. Bhagel was 46 years old at the time of interview. He was the principal of the Government high school, Badanji. The high school consisted of just two classes, 9th and 10th grade. There were 103 boys (43 in 9th and 60 in 10th) and 97 girls (49 in 9th and 58 in 10th). Until the 9th grade, the students are not introduced to the concept of examination. Thus, when they arrive at high school, it becomes extremely difficult for them to adapt, meaning many children drop out as they are not able to cope with the system. Out of 79 students, only 39 have successfully completed their high school education between 2010 and 2015. He claimed that when students drop out of school, the parents meet up with the teachers in order to convince them to send their children back to school. He stated that the government authorities also ask for details regarding drop-out rates in school. According to him, boys drop out more than girls.

In his experience, he had never come across any child dropping out of school in order to get married. He stated that child marriages were not prevalent in that area, and that no CMPOs have ever come to their school or that area regarding any issue. He had not come across any instance of teenage pregnancy either. Although the gram sabha spreads awareness about certain issues sometimes, he conceded that the school does not conduct awareness programmes.

## ***E. Interviews at the Women and Child Development Department***

### **Mahila Bal Vikas, Dantewada**

The authorities of the WCD at Dantewada were not very co-operative with the research team. They were highly defensive when asked about child marriage issues, and the answers given to the research team were not very convincing. We were told that in 2015 they intervened in 2 child marriages and prevented them from happening. Mahila stated that he had not come across any marriages that had been nullified or declared void, and that no incentive or compensation has been given to anybody under the Act. He claimed that child marriages do not happen in mass marriages, as they are hosted by the department and the government. Mahila stated that awareness programmes

are conducted by the WCD department at the district, block and panchayat level, but when asked if he could provide any pamphlets or any details regarding such awareness programmes, he answered in the negative. The District Child Protection Unit and the State Juvenile Protection Unit perform the tasks of the CMPOs under the Act, as Prohibition Officers have not been specifically appointed in that regard.

### **Kavita Kashyap, Mahila Bal Vvikas, Kudoor, Pandriya Block, Kawardha**

The team went to the high school at Kamti Village, Kawardha where they met Kavita Kashyap who was 38 years old at the time of interview. She had worked for the WCD for 5 years. When asked about instances of child marriage in that area, she promptly answered that there was only one case of child marriage in 2015, which the department intervened in and prevented. The family had arranged for the marriage, in which the girl was a few months short of being 18. Kavita said that it was very difficult to convince them – with a lot of fighting and chaos ensuing – but they were asked to conduct the marriage between the same people a year later. The anganwadi karyakarta informed the department about the pending marriage. The people were convinced only because the department took policemen along; otherwise – Kavita claims – the problem would have gotten out of control.

Kavita stated that mass marriages do happen in this village, but child marriages do not feature. Ration cards, birth certificates, school certificates etc., are collected as proof of age. She claimed the department do conduct awareness campaigns – at least 5 or 6 a year. Kavita told the research team that no compensation or incentive is given to the department for stopping child marriages.

### **Staff of Women and Child Department, Kawardha**

The team visited the WCD department at Kawardha. There was a lot of apprehension and reluctance amongst the staff when the team arrived on the pretext of research and study on child rights. When asked about cases of child marriage, the staff there blatantly denied any such incidents having taken place in that area. The person in charge was also reluctant in revealing his personal details or allowing any photographs. He was not pro-active in

## UTTARAKHAND

### Champawat District

#### *Pawai Village:*

On 24th January, 2016 the fact-finding team visited Champawat and the village of Pawai.

#### **(i) Bhawana Pandey**

The team spoke to Bhawana, a housewife, who said she had been married for 1 year at the age of 22. She informed the team that she had studied until class 12th and then she was married. She had wanted to continue her studies, but due to poor economic conditions, her family forced her to get married. She was 9 months pregnant with her first child at the time of interview. Though she was aware of the legal age of marriage, she was not aware of the legal provisions of PCMA.

#### **(ii) Mamta Pandey**

At the time of interview, Mamta was 25 years old and had been married for 9 years, with two children - thus it was clear that she was married at the age of 16 years. She had studied until class 8th, and claimed she was married off at an early age since her parents could not afford her education.

#### *Mandlak Village:*

On 25th January, 2016 the team visited the village of Mandlak. The village is located near the Indo-Nepal border.

#### **(i) Nirmala Devi**

Nirmala was 24 years old at the time of interview and had 3 children. She had completed her education to 8th level. With her children being the age they were, it was apparent that she had been married before she turned 18. She was not aware of the illegality of child marriage, or any of the government mechanisms.

**(ii) Bishna Devi**

Bishna was 25 years old at the time of interview and had been married for 15 years. She had already borne four children, aged 14, 10, 7 years and 6 months. Neither she nor her family were aware of child marriage, or of the prohibitions against it.

**(iii) Mamta Devi**

Mamta was 20 years old and was married she was 17 years. She had only reached 4th grade when she dropped out of school, because her family couldn't afford her education.

**(iv) Nanda Devi**

Nanda told us that she did her schooling until 5th grade and that she enjoyed school and would have preferred to remain. However, she was removed from school and then married off at the age 17. She had now been married for 8 years and was 25 years old at the time of interview. She had four children, and her husband was a hotel worker.

**(v) Nirmala**

Nirmala, 25 years old, had been married for 8 years at the time of interview. She was married at 17 years, and had only completed 5th level schooling. She has two girls and one boy, and was happy having a boy.

**(vi) Heena**

Heena was 24 at the time of interview, and was married at the age of 16. She had 2 children.

**(vii) Deepa**

Deepa was 25 years old at the time of interview. She was married at the age of 16 and continued her education until the 9th level. Deepa stated was disappointed at leaving school, but claimed that it was necessary as she was to be married.

**(viii) Kamala**

Married at 16, Kamala was 25 at the time of interview and had been married for 9 years. Although she was reluctant to speak with us, we learned that she had two children; one girl of one and a half years and a one-month-old boy.

**(ix) Jeevanti**

Married at 15, Jeevanti had been married for 10 years. She was only able to pursue her education until 8th grade. At the time of interview, she had one girl aged 4 years and one boy aged one and a half years.

**(x) Sumita**

The team spoke to Sumita while she was with her two young children. She told us she was 24 years old and had been married for 8 years, although she looked younger. She claimed she was 16 years old at the time of her marriage.

**Pithorgarh District***Maspati Village:***(i) Suman**

Suman married her husband 8 years ago. She said that she was 24 years old, making her 16 at the time of her marriage.

**(ii) Chandini**

Chandini was 22 years old and said that she has been married for 5 years. She insisted that she was 17 years old at the time of her marriage. She had only studied up to the 10th grade and told us that she would have preferred to stay in school, but had to leave to get married. Chandini had two children at the time of the interview; one is 3 years old and the other is one year old.

**(iii) Nina**

Nina, age 20, had been married for 5 years, meaning she had been married at 15. She told us her education had extended to 12th level, suggesting that she was

allowed to continue her studies after her marriage. Her role now was centered on taking care of the family and her one child.

### *Pitoragarh Village:*

#### **(i) Soni Devi**

Soni Devi, age 24 years, was illiterate. She had been married for 9 years, meaning that she was 15 years old when she got married. Her family was economically backward and since there was no employment or educational opportunity for her, her family married her off at an early age.

#### **Interview with District Collector**

During the interview with the District Collector, we observed that he was not aware of the provisions of PCMA. He informed us that to date, no child marriage cases have been registered and that no Child Marriages Prohibition Officers have been appointed in the district.

#### **ASHAs**

The ASHAs in Madlak village had been active since 2007. The ASHA that the research team spoke to claimed that child marriages were prevalent in the area, which is inaccessible to the city. She cited the main reasons for its prevalence as poverty and unemployment.

#### **Police Station – Kotwali (Pithoragarh)**

The police station had no child marriage cases, and there was no Child Protection Officer present. A police officer stated that child marriage does not happen in the area. His conduct was not supportive or helpful, and generally his demeanor could be regarded as rude and inaccessible. The interview was concluded with the research team being referred to another department.

This department the team was referred to was the women's helpline. Although the main programme leader was absent, it was stated to us that there were no cases of child marriage and when and if such cases did occur, it would be only the women's helpline that would attend to the issue.

## ASSAM

### *Bhuvan Valley Tea Estate*

On 1st November, 2015 the fact finding team visited Bhuvan Valley Tea Estate. The tea estate had been closed since 1st October, 2015 due to an ongoing wage dispute. It had approximately 472 permanent workers.

#### **(i) Lakshmi Sabar**

Lakshmi Sabar married her husband Rama Shankar Sabar about four years prior, around the age of 16 years. Lakshmi's age was incorrectly recorded as 25 in her ASHA booklet. It is likely that the ASHAs overestimated her age to avoid reporting child marriage and pregnancy. Rama claimed that he was 28 years old but his age was recorded as 22 on his school certificate. It is likely that he married around the age of 18.

On 9th October 2015, Lakshmi Sabar died at age 20, seven days after giving birth to her second child. Her first child was stillborn one year ago. The child is only one month old. We also spoke to Lakshmi's mother-in-law Kokila Sabar about Lakshmi giving birth at home without a midwife. She said that as the tea garden was closed, there was no tea garden ambulance available. Moreover, the family could not call an ambulance because they had no mobile phone. After the delivery, Lakshmi suffered from intense swelling of the whole body (but no bleeding). A doctor came two or three weeks after Lakshmi's death, but could not identify the reason for her death.

#### **(ii) Dipali Dati**



Dipali stated that she was around 25 years old, but she looked younger. She had been married for around six years, and likely got married around the age of 18 or 19 years according to her age claims. She completed primary school up to the fourth standard when her father passed away. She gave up school and worked for ten to twelve year before her marriage. She was five months pregnant at the time of interview. She was not aware of the PCMA Act, and her marriage had not been registered.

**(iii) Pratima Santhal**

Pratima said that she was 28 years old, although she looked younger. She had been married for 13 years, thus was married around the age of 15 years. She had a son called Mintu – two other children of hers had died. Her first child, Rintu, was born in 2004 and died at the age of 4 due to a stomach infection. She delivered her first child after two years of marriage (around the age of 17). Her husband died of malaria seven or eight years ago.

Pratima went to school up to Class 7. After she left school, she joined as a worker in the tea garden, worked there for three years, and then got married at the age of 15 or 16. She moved in with the husband's family after marriage.

When asked whether she wanted to get married so young, she said her consent was not necessary. Her parents and other family members arranged for the marriage and she felt that she had to agree. She did not feel it was very early, and generally did not hold an opinion on the matter.

**(iv) Ruma Tanti**

Ruma reported that she was 25 years old. She said she was married about 8 years ago, meaning she would have been 17 years old at the time. She had three children at the time of interview, a seven-year-old (in class three), a four-year-old, and a two-year old. She was orphaned at a young age and raised by her village. Her village arranged her marriage and paid for her dowry. The dowry consisted mostly of cooking utensils.

Ruma's husband, Bipol Tanti, was approximately 30 years old at the time of interview. When asked if she was ready to marry, she said she did not have an opinion on it and that everything was okay after she got married.

**(v) Lukhi Banwari**

Lukhi got married in 2005 at around the age of 13. She was approximately 26 years old at the time of the interview and had three children. She had her first child at the age of 16 and the second at the age of 18. Her parents were the ones who decided when she should marry. She gave her consent and was not against it. When asked if she thought she had gotten married at too young an age, Lukhi stated that it was 'just the system' to get married at that age.



**(vi) Roshna Begum**

Roshna reported that she was 20 years old. She was married five years ago in an arranged marriage and immediately after a year was pregnant with her first child in 2010. She had two children, a five-year-old, Hasna, and a two-year-old, Rabia. At the time of interview, she was eight-months pregnant with her third child. Roshna stated that she wanted a boy child, and that once she has a boy child she will get sterilized.

Roshna had not attended school because her parents did not have the money to pay for her attendance, which was the case with many girls from her village. When asked whether she felt ready to marry at such a young age, she said that she didn't have an opinion one way or another, and that she gave her consent for the marriage.

**(vii) Jaymati Ree**

Jaymati, who claimed she was 25 but looked significantly younger, had two children; the oldest was six years old at the time of interview. She was from Didar Kush village and was an orphan, as both of her parents died when she was young. She was very poor when growing up, thus she did not go to school at all. Her husband sold firewood for money. She married him about 10-15 years ago meaning she must have married around the age of 10 or 15 years. Her ASHA card says she is 33 years old, but she said that she did not fill that out, and that the ASHAs just put her age down themselves.

When the team asked if she felt she married at the right time and not too soon, she said she did not have an opinion on this. She married here in this village and gave her consent because her parents arranged the marriage.

**(viii) Astami Bawri**

Astami, from Didar Kush Division 7, was six months pregnant with her first child at the time of interview, and had been married for two years. She claimed to be 20 and to have been married at age 18, but the team noted that she looked significantly younger than this. Her husband said he was 22, however, according to the voter list, he was only 19 years old. He went to school until grade , but Astami never attended school. When her father died, she was young, so she went to work at the tea garden to earn some money.

**(ix) Subna Bawri**

Subna, from Didar Kush, had been married for a year. She had a child about a month prior to the interview in her home, but the child died within 2 hours. She did not know why. She said her husband was 20 years old, but did not know how old she was. She guessed she was less than 18 years old – she looked to be around 16 years old. She did not attend school because her family didn't have money to send her to school. She claimed she gave consent for her marriage and did not have an opinion on whether or not she was ready to get married.

**(x) Sunita Tanti**

Sunita, from the Rosekandi village, had been married for approximately 7-8 years. She gave her consent for her arranged marriage. She said she was approximately 30 years old, but looked much younger than that – more likely in the early twenties region. Her husband was a shopkeeper of a small grocery store in town. She had two children at the time of interview, and was nine months pregnant. She did not attend school, and worked as a domestic help. Her mother and father died when she was young.

**(xi) Upsai Bawri**

Upsai had two children at the time of interview, ages 7 and 2 years. She had a third child that died shortly after death. She was 25 years old and had married when she was around 17 years, having her first child around the age of 18.

***Lakhipur Block:*****(i) Amota Begum**

Amota was pregnant with her second child. Her first child died about a year ago. She married about two years ago at age 17, to Ajmer Hussein, a private driver. She went to school until grade 9. When we asked how old she was the ASHA said that she was 22 years old but the girl said she was 19 years old.

**(ii) Kulsuma Begu**

Kulsuma had just delivered her second child two days prior to the interview. Her first child was two or three years old. Her husband's name is Kabil Hussein

and he was a cement maker and carpenter. She married in 2012 and became pregnant after two months of marriage. She went to school until age 18. She said she married at age 18 and is 22 years old now, but she clearly looked younger than 22 and seemed to have to calculate her age when asked.

### **(iii) Roshana Begum**

Roshana never went to school. She had two children. Her husband worked as a cement maker and carpenter. She said she was married at 18 and was now 22 years but she looked notably younger.

## **Interview with ASHAs**

### **Raina Begum Khan and Sultana Begum Laskar (ASHAs)**

The ASHA workers stated that the average age for a first delivery is 17 years old. However, girls from remote areas are often as young as 15 or 16.

## **Lakhipur Police Station**

### **Bhupen Borah, Inspector of Police**

Bhupen stated that in his two years at Lakhipur, no FIRs have been filed regarding child marriage. He claimed that child marriages do not happen in the area, but that kidnapping cases are filed against boys who elope with girls (whether the girl is above or below 18). There had been two or three such cases in the past two years, and the prosecutions were ongoing. There were no cases of child trafficking reported in the past two years. When told that child marriage does indeed happen in the area, he told the research team that the “police cannot do anything if it is not reported.” He accepted that there was a certain level of unawareness regarding child marriage, which could explain the lack of reporting. There was no Child Protection Officer at this police station.

## **Interview with Senior Medical and Health Officer, Lakhipur PHC**

### **Dr. Surendra Singha**

Dr. Surendra Singha is the Senior Medical and Health Officer, and has been working here for 15 years (since 1995). He said the PHC serves about 2.5 lakh

people. Many women who should be delivering at the Medical College end up delivering here instead.

He claimed that delivery by minors is not very common, and there is a low incidence of child marriage in the area. He also told the research team that certain people, such as those living in tea estates, have no idea what their ages are, and if prompted, might say '20' just because someone mentioned it. Some of them, he stated, do not even know what the concept of 20 years old entails.

### *Cachar Block:*

#### **Cachar District Police Station**

##### **S. Viswanathan, Deputy Commissioner and District Magistrate for Cachar**

Mr. S. Viswanathan had been Deputy Commissioner and District Magistrate for six months at the time of interview, and in that time no cases of child marriage had been filed. He told the team that child marriage was not really a problem in Cachar. When asked whether it was problematic that Assam was yet to appoint a single Child Marriage Prevention Officer, as per Section 16 of the PCMA, he told the team that they already have CPOs, and that they do not need two people to do the same job.

##### **Rajveer Singh, Superintendent of Police**

Rajveer Singh had been the Superintendent since 4 August 2015 at the time of interview. In that time, no FIRs relating to child marriage had been filed anywhere in Cachar. He began by saying that child marriage was not a problem in this area. We told him we had found many cases and asked him why these cases went unreported. Firstly, he told the team, the tea estates were very traditional societies where people are afraid to go the police, as they would be boycotted and stigmatized by their neighbours. Secondly, he remarked that the community do not see child marriage as a problem; they are illiterate and do not understand the consequences of child marriage. Rajveer told the research team that there is supposed to be a Child Protection Officer in every police station, and assured the team that he would investigate why there were none at Lakhipur Police Station.

At the time of interview, there was also an additional Superintendent of Police at Cachar District Police Station who supervises all the CPOs in the district, but unfortunately she was not available for our interview.

## **Office of Joint Director of Health for Cachar District**

### **Dr Sudip Jyoti Das, Joint Director of Health**

Dr. Das acknowledged that Jalalpur PHC had many problems, and only one doctor. He said there is a wider problem throughout Assam, as doctors are not willing to serve in these rural parts. For instance, this year 500 doctors were selected to serve in Assam, but only 95 actually came. Thus, there are many vacancies, and only a policy decision from the central government – such as increasing salaries - can remedy this.

Dr. Das said that most tea garden hospitals do not have any doctors, and acknowledged that specialized services are available only in district hospitals or medical colleges. For instance, four doctors are needed for a hospital to perform a C-section (a surgeon, an anaesthetist, a gynaecologist and a pediatrician), so it is no wonder PHCs cannot perform them – despite their being mandated to do so under NHM).

When told that bribes are routinely extracted from women who come in to deliver babies, Dr Das said that unless there is a formal complaint he cannot act on it. Moreover, he told us that sometimes patients withdraw complaints weeks or months later because they have come to an arrangement with the nurse or doctor concerned.

Dr. Das also told us that many pregnancies in Bhuvan Valley are identified as high-risk pregnancies because the women have such low levels of haemoglobin, but they refuse to be referred to the medical college. As for the closure of the tea garden hospital in Bhuvan Valley, he said the government has given the funds to the garden authority, and it is up to the garden authority to operate the hospital. Child marriage is not such an issue in Cachar, he tells us. Moreover, under an incentive scheme started in 2011, ASHA workers get a Rs. 500 bonus if they successfully encourage women to wait three years between births. He says there is no scheme for hospitals to reimburse patients taking private vehicles to a hospital because an ambulance was not available.

## BIHAR

### *Village, Bodhgaya Block*

A majority of residents of this village are from the Manjhi caste. The fact finding team first visited the school, where there were large crowds gathered to receive their old-age and widow pensions. Here, the team spoke with several teachers.

#### **Nitu – Assistant School Teacher**

##### *Success of Government schemes in keeping girls in school*

Almost all the girls who attend school in this area finish their 9th and 10th classes because there are so many incentives from the government for them to do so. For the past two years, various government schemes give female students bicycles, dresses, stipends, and other benefits to keep them in school. More boys actually drop out from school than girls since they are not benefitting from these schemes and are also under great pressure to migrate to find work to support their families. Five years ago, before the advent of these schemes, only a handful of girls would finish 10th class. In general, over 70% were married after 8th class and then left school.

##### *Child marriages still continuing*

Currently the teachers know of a few girls in 8th class and almost ten girls in 9th class who are married. These 10 girls represent a third of the girls in the class, as there are just 30 girls and 21 boys in the class. This number of married girls does not include the girls who are betrothed or who are married that the teachers don't know about. Usually what happens in this area is that immediately after her marriage the girl spends three nights at her in-laws' home. Then she returns to her parents' home for about a year before her *gona* takes place and she moves to her in laws' permanently. After that it is rare that she will continue her education, except in atypical cases of educated or progressive families.

Child marriage is highly prevalent in the village, but awareness of the law and the risks associated with child marriage is very low. Most child marriages take place within the Manjhi caste, which is an SC community. In this community,

even today, almost all girls get married soon after they turn 13. They are one of the largest and most marginalized communities. They are also one of the communities least likely to send their daughters to school.

### **Group Discussions with Shivani and Dulari Kumari (Assistant School Teachers) and Krishna (from a neighbouring Yadav Community Village)**

#### *Continuing prevalence of child marriage*

Most girls are married when they are around 12-13 years; the custom of marrying them when they are very young is no longer prevalent. Almost everyone in this area is married by the time they are 18. Families do not conceal child marriages. Large group marriages, called *Samuhik Vivaahs* still happen, and many people attend them. In these marriages, over 200 couples will be married. These happen at temples like the Vishnu Pad Mandir in Gaya or the Tikari Mandir. Normally boys and girls get married at about the same age, with maybe one or two years difference, so child marriage is as prevalent among boys as girls.

Child marriage is also quite prevalent in the Yadav community. Earlier, 100% of girls would be married at 10-11 years. Today, the average age at marriage has increased to about 15-16.

## **Case Studies**

### **(i) Baijanthi Devi**

Baijanthi Devi is a widow from Turikalan village, near Dhambodhi, who had come to the school to collect her widow pension and old age pension. She said she was 55 but her pension card said she was only 34. She had one son and three daughters; all were married at around age 12-13. One of her daughters managed to pass 10th class even after her marriage, and the other one finished her 8th recently.

Her son is now 18, and was married at about 12. Her eldest daughter had 2 children, ages 5 and 10. Her younger daughter had one child, who was 5 years old at the time of interview. She really wanted to get her daughters married later, but she was a widow and had no money.

*“Because I am helpless, I do not have the power of a man, and these days things are very bad; without a man to protect my daughters I had no choice but to marry them when I did.”*

Her eldest daughter was married while her husband was still alive and they managed to pay 20,000 rupees in dowry. For the second daughter's dowry she paid 10,000 rupees. With the youngest daughter she had no choice but to marry her to a very poor family because she didn't have any money for dowry.

*“I had no money to give for my third daughter, that's why I married her early so that at least she now has a home. Who wants to marry their daughter early to a poor family? But at least she has a strong body and can work for herself.”*

### **(ii) Arti Devi, Mina Devi and Sheel Devi**

Each of the women estimated their ages to be over 55, which was much older than they appeared. When the team discussed this, they agreed, but they said that having so many children from such a young age made them feel older. They wished that they had gotten married at an older age, having all been married in their early teens. A small group of about ten men and women agreed that everyone practices child marriage. One person said, *“actually, it really is a bad thing for girls”*. Everyone vehemently agreed, but also argued that child marriage is impossible to prevent. Most of them possessed knowledge of the PCMA and knew that girls cannot get married until they turn 18.

### **(iii) Sudami Devi**

Sudami Devi estimated that she was between 50 and 60 years old, but after she discussed her age with the other women she said that although she feels old, she was probably around 35. She had 5 children, the youngest of whom was 8 years old. All of her children also got married in their early teens. She wished she had gotten them married later because *“you get old and weak if you have children early”*. Nevertheless, she got her daughter married in her early teens, and her daughter now has children of her own.

### **(iv) Binod Manjhi**

Binod Manjhi, aged 30, from the Manjhi caste, was a mason, meaning he earns slightly more than most other people in the community. He was married at 16,



and his wife was 13-14 at the time. They had 4 children together. He understood the gravity of child marriage, but stated that 'it is so accepted by society that it is hard to act otherwise'. His mother died when he was young. Because of that, there was no one to cook for his siblings, so they were all married early so they could be taken care of. The principal reason why Binod thought child marriage was so bad was that he and his wife were so young when they got married and no one informed them of any issues surrounding sex and reproduction, meaning neither he nor his wife had a basic understanding of their bodies, sexuality or reproduction. On their marital night, they both had to drink a lot of alcohol to endure it.

*"My thinking is that my children should study and I will marry them after 18 years, all of them. And I want them to marry into a good family. If I give them a good education I will be able to marry them into an educated family".*

#### **(v) Jit Paswan**

Jit was in his sixties at the time of interview. He was married at about 16; his wife was 12 at the time. He married off his children very early, though he did not want to. He said, *"We have to marry our girls as early as possible. They are a burden - financially, to feed, and also because we are low caste and downtrodden so they face even more discrimination. From the moment our daughter is born we are thinking, how will we marry her?"*

#### **Group discussions with Turubi Devi, Mamta Devi, Sunana Devi, Bina Devi, Kanchan Devi, Pinky Devi, Rekha Devi, Ruby Kumari, and Poonam Kumari**

*Focus group discussions revealed:*

All of the women in the group were from the Yadav community. Normally, women in this area get married at the age of about 12 to 13, just after they get their first menstrual period. Sometimes the *gona* happens a year or two later so the girl will continue to live with her parents after marriage.

#### *Reasons for child marriage*

One of the main reasons why child marriage occurs is because parents are worried their daughters will run away or dishonour the family if they don't marry them early. It is also expensive to marry girls later because the family has

to have adequate funds to provide for girls until marriage. The women told the fact-finding team that later marriage is better because it makes child bearing and child rearing less difficult.

There is no implementation of the PCMA in the village. The mukhiya and the police never say anything about child marriage. They only come around to the village when it is time to get votes. Otherwise the villagers never see them, and life just continues.

### *Child marriage and education*

According to the group, people's awareness about child marriage has improved. All children are eligible for free education from the government. All the women in the focus group vehemently agreed that things have changed and they will definitely not marry off their daughters before the age of 18. All of their children are currently attending school, and these days in this area both boys and girls usually study until 10th class. Girls are especially more likely to finish 10th because they get benefits from the government like bicycles. Marriages still happen when the girl is 13 to 14 years old, but then she continues to go to school until 10th if she still lives with her parents. The problem is that once the marriage happens, whether the girl can continue to study, and for how long, is completely up to her in-laws. No matter what they say, the parents no longer have any control. The girl has to move to her in-laws' whenever the in-laws call her. Only if she is lucky will she be allowed to study further. Other than child marriage, there are no challenges for girls to go to school; it is accessible.

## **Case Studies (Participants in Focus Group)**

### **(i) Turubi Devi**

Turubi Devi had two children at the time of interview. Her older child was four years old, and the second child was one and a half years old. She is now pregnant with her third child. Turubi Devi got married ten years ago, in 2004. At the time, she was in school, but after her marriage she discontinued her studies, having completed 8th class. One year after her marriage, she moved to her in-laws' and two years later she delivered her first child. She did not want any more children and plans to get sterilized at the Block Hospital after this third child is born.

**(ii) Mamta Devi**

Mamta Devi estimated that she got married when she was around 12 or 13, and subsequently had four children, two boys and two girls. She was planning to get sterilized in October or November.

**(iii) Bina Devi**

Bina Devi got married when she was 12 years old and subsequently had four children. She was still getting her periods after the birth of her last child, which is why she decided to get sterilized.

**(iv) Kanchan Devi**

Kanchan was sixteen years old at the time of interview, and had gotten married two years ago, falling pregnant not long after. Her first child died, and she was five months pregnant again at the time of interview. She was not happy about her marriage and said her husband did not treat her well. She appeared for her metric and then dropped out of school.

**(v) Pinky Devi**

Pinky Devi got married in her early teens and at the time of interview had four children. During the interview, she started crying and said, *“The main problem is that we are poor. We can't do anything if we can't even feed ourselves. In this situation we have little choice over what we do with our daughters. How does studying help them if we don't even have enough food to eat?”*

**(vi) Rekha Devi**

Rekha Devi, 14, was in 10th class at the time of interview. She got married about four or five years prior, and hoped to continue studying until her gona.

**(vii) Poonam Kumari**

Poonam Kumari was in 9th class, and not yet married. Her mother, who was also present, said she plans to get Poonam married next year, but the date had not yet been fixed. Poonam said that after the marriage she would wait and see what her in-laws say, but she would like to study more.

## *Vishnu Pad Mandir, Gaya*

The Vishnu Pad Mandir is the largest and most famous temple in Gaya, and a significant holy place for Hindus in the region. The fact finding team visited it after hearing that it was a site for group marriages that often involves minors.

### **Pandit**

One of the pandits at the Vishnu Pad Mandir agreed to answer some of the team's questions. He explained to the research team that when families want their children to get married, they come to the temple and fill out a form. In this form they are required to fill in their personal and family details, and when they submit the form they are required to give a donation. The families fill the form out themselves and the information is not verified by anybody. He said that this form works like a marriage registration or legal document that can hold up in court. He told the team that according to the forms they receive, the average age of marriage is 21 for men, and 18 for women. Group marriages do happen at the temple, but this pandit did not perform them.

## *Anganwadi, Barachatti Block*

The fact finding team arrived at the anganwadi at 10:30 am on a working day, but the anganwadi worker was not there. The assistant went to call her and she arrived after half an hour.

### **Anganwadi worker**

The anganwadi worker, who had worked at the aanganwadi since 1985, who preferred not to give her name, told the fact finding team that approximately 40 children come to the anganwadi every day. Most of the children who come to this anganwadi have fathers who work in cities, and their mothers stay here in Bihar. Only a few have parents who are employed in agriculture. Some people in the area have up to 8 children, but most have 3-4. However, if they do not get a boy they will keep trying until they get one, and so end up with many children.

The anganwadi worker reported that most women get married between 20 and 22. Earlier, child marriages used to happen. Families would force girls to get married early because they were worried the girls would run away, but this

doesn't happen anymore. A few minutes later when asked about child marriage again she said, "*Haan, lardke ka umr theek hai, lekin lardkiyan ka umr bohot kam hai, aaj kal bhi. Yeh problem kuch nahin kar sakte hai.*" (Yes, boys' age is all right, but girls' age is very low, even today. Nothing can be done about this problem). She then retracted her earlier statement and said that in some villages girls get married as young as 13. When they hear about such cases they never try and stop them, because if they were to call the police the villagers would get very angry and not let them stay in the village anymore. "*So, we cannot do anything. This culture is very dominant, although now it has decreased somewhat. Moreover, it has come down from the grandparents, so you cannot stop it.*"

She said that about 80% of girls in the surrounding villages go to school. Most girls complete 10th class, at most 20% drop out before then. Girls usually drop out because of financial problems if their parents can no longer afford to send them to school.

## ***Village, Barachatti Block***

### **Case Studies**

#### **(i) Khushma Devi**

Khushma had two children; a boy, 3, and a girl, 1. She had never been to school and could not read or write. Her marriage happened five years ago and she estimated that she was 20 at the time of interview. It was not an arranged marriage; she was already pregnant at the time. This was not a problem for her parents. For them, if she and her husband like each other, that was enough. She met her husband when they were both working outside Bihar making bricks, which she has been doing since she was a child. She did not want any more children, and was happy she has one boy and one girl, but her in-laws told her that two children was too few and a good family must have a minimum of four children. She wanted to get sterilized but they would not let her get it done. She did not know of any other kind of contraception except sterilization, and so had never used any other form before.

#### **(ii) Rekha Devi**

Rekha had been making bricks outside of Bihar for many years, since she was a young girl. She met her husband at the kilns. She got married after having her

first son. Rekha's second child is a six-month-old boy. She stated she wanted one more child and then she would get the sterilization operation; she had never used any other kind of contraception. Her wedding happened four years ago. She could not remember how old she was at the time, but it was approximately two years after starting her periods. She had never been to school and could not read or write.

### **(iii) Rinku Devi**

Rinku Devi got married in May 2014. She was fifteen at the time of the interview and was still living with her parents. After two months she planned to move to her in-laws'. Until her marriage, she was attending the local school, and had studied until 4th class. She did not want to get married, but said that her parents forced her to – they felt she was getting 'too big' so she needed to get married, as they were worried she would get into relationships with boys. She was the first of her siblings to get married. None of her other siblings attend school; she chose to because she enjoyed it.

### **(iv) Naina Devi**

Naina was fourteen years old at the time of interview. She was studying in 5th class, but then stopped her studies when she got married in May 2014, together with her cousin Rinku (above). Her husband works in the brick kilns and has never been to school. Naina really wanted to continue her studies until her *gona*, but there were no other girls her age in the village going to school and she did not want to go alone because she was scared. The other two girls who were going with her dropped out after they got married, one was her cousin Rinku. She said, even in front of her mother, that the marriage was not her choice, desire, or wish at all, but that her parents gave her no option.

### **(v) Kusum Devi**

Kusum Devi has five children. The oldest is 18 years old and he is married, but does not have any children yet. Kusum Devi underwent sterilization eight years ago, just after her youngest was born. She was the first person in her village to have the operation. She got it done at a private hospital and had to pay 500 rupees for the procedure. She says now many people get it done, after they have had 2, 3 or 4 children. It is much better today because they can get it done for free at the government hospital, and they get food and money.

**(vi) Soni Devi**

Soni Devi has three children; the youngest is ten months old. Her husband does furniture work. She stated that they fight a lot and there were problems in the past, but claimed that it was better now. She used to be a teacher, and would leave her children with their grandparents. One of her children got sick, and then died. People told her husband it was his wife's fault that the child got sick because she was out teaching, and not taking care of the children. He drank a lot of alcohol and abused her. After that, she stopped teaching.

***Village, Barachatti Block*****Focus group discussions revealed the following facts:***Age of marriage and education*

Most of the children in this village go to school. The few that do not attend school work to help support their families. A substantial number of children are officially enrolled in school, but miss a large number days per year as they have to help their parents with farm or housework. Girls usually drop out of school after 10th class. Some boys continue with further studies.

In general, parents make the decision regarding whom their children will marry. Earlier, children used to get married at a much younger age, around 12 years. Nowadays, more parents wait until the children finish 10th class before getting the married. One of the reasons why there are less child marriages than ten years ago is that now there is more education and awareness about these social issues. However, to avoid high dowries, girls are usually married straight after 10th class because as they get older the demand for dowry increases. If a family has many daughters they might not be able to afford to educate them all. In the perspective of the women the team spoke with, marriage after 10th class does not constitute a child marriage. They did not know the legal age is actually after 18 years for girls.

*Social and political context*

No government officers, such as the police or the mukhiya, have ever bothered them about child marriage, nor has anyone ever been arrested for this offence that they have heard of. The mukhiya only ever comes to their

village at election time. He never comes to functions or weddings because he is afraid they will ask him for money. The villagers therefore do not know that a law regarding the age of marriage exists. None of the people in the village have their own fields, so they have to work as labourers in other people's fields. A very few go elsewhere, to brick kilns, to work. They are all of the Manjhi caste.

## **Case Studies**

### **(i) Nita Devi**

Nita Devi recounted the following story of her family's difficulty in dealing with the government health system. She took her daughter-in-law to the government hospital at the time of her delivery. Her daughter-in-law had a lot of pain and was very weak, so the hospital workers put her on an IV drip. Then at midnight they told her she needed an operation. The PHC referred her to a different hospital. The hospital staff said they couldn't do anything, but didn't give the family any more information or refer them elsewhere. Lacking a referral or any further information, the family had no choice but to go to a private hospital where their daughter-in-law had an operation that cost 20,000 rupees. Nita's son was forced into debt to obtain the money to pay the hospital. The other problem with the government hospitals is that after 4pm, even in emergencies, the staff forces patients to wait for treatment until 10am the next morning.

### **(ii) Anju Devi**

Anju Devi got married 3 to 4 years ago. She was approximately 16 at the time, and 17 at the time of her first pregnancy. She moved to her in-laws' home immediately after her marriage.

### **(iii) Arti Devi**

Anju Devi has one child, who is one and a half months old. During her pregnancy she saw the ASHA twice and got two injections, but no IFA pills.

## **Barachatti Police Station**

The fact finding team spoke to several police officers who agreed to pull out their register to check the case record. According to the officers' accounts and the register, there had been no FIRs filed at the police station regarding child



marriage in the last five years. According to the officers, no one had ever come to the station with a complaint on this issue. When asked, they said that child marriage does happen a lot in the surrounding villages. They said people are scared of coming to the police and being arrested. They felt that education and financial empowerment are the greatest challenges to overcoming child marriage in this area.

### **Barachatti PHC**

The Women and Child Development nurse on staff said that most women usually have their first child at 22. When the team questioned this, stating that many girls they had met in the villages were already married in their teens, she replied that this is because women under 18 usually do not come to the hospital for their delivery. She said possible reasons for this are that the girls are in fear of government staff, but also because they are more likely to be illiterate and ignorant of the benefits of institutional delivery.

## **Case Studies**

### **(i) Shilpa Devi**

The fact finding team spoke to Shilpa Devi in the maternity ward. She had just delivered her second child, a girl. Her eldest child was two years old. She did not want any more children and planned to get the sterilisation operation done as soon as possible.

### **Fatehpur Girls High School**

#### *Insufficient resources for the school*

The Fatehpur Girls High School provides education for an astounding 2500 girls from 9th to 12th standards. Shockingly, the school has only two buildings and 15 teachers. The small space is overwhelmingly insufficient for the number of students. Each class has six sections, and each section has 144 students, an impossibly large number for a single teacher to manage. The headmaster estimated that an average of 60% of the girls in the surrounding areas attends school, and that this figure has increased in recent years due to government programmes like the cycle scheme.

### *Age of marriage for students and barriers to education*

Teachers estimated that approximately 30-40% of their students are already married. These students continue to attend school after their marriage, as nowadays many people delay *gauna* by 3-5 years until after 10th. The problem is not actually that students choose to drop out after 10th class – the main issue is that for all these students, there are actually only 120 seats for 11th and 12th class so the great majority of students cannot continue their studies, even if they or their families wanted to. Only a small handful drop out before 10th class. Less than 10% of students in 11th and 12th classes go on for higher studies. For many girls, their biggest barrier to attending school is that the school is 10 to 20 kms away from their village and they face many transportation problems. There is no bus, and the road is often in very bad condition.

### **Village, Fatehpur Block**

#### *Socio-economic context of the village*

Most children in this village do not attend school. Fewer boys than girls attend school because they are needed for work, either in the fields, or to work in other places. For example, many boys go to Lucknow to make bricks or to work in factories. However, most often whole families go to make bricks, leaving only one or two old people to take care of the houses. There are about 150 people in this village who leave to make bricks each year. From as young as seven years, many of the children are making bricks and cannot attend school, both because they are needed to work and additionally because usually there are no schools near the kilns. The villagers do not have access to a reliable water source. The village does not have a tubewell and villagers use water from a dirty well, which is particularly contaminated during the monsoon season. The lack of access to safe and private sanitation causes many problems; last year a mother of six children was raped and killed when she was going out alone to the fields to defecate in the early morning.

#### *Changing marriage trends*

The villagers the research team spoke to said dowry has changed a lot in the last ten years – the bride's family is expected to pay a lot more, and give more expensive gifts like motorcycles. However, ten years ago girls were much younger at the time of their marriage. The minimum age in this area these days

is twelve years. When the team asked a group of fifteen women what the legal age of marriage is, most of them were unaware that such a legal provision even existed, and only one actually knew what the legal age actually was.

## **Case Studies**

### **(i) Nitu Devi**

Nitu Devi stated that she was twelve years old, though she may have been closer to 14. She was married in April this year. Her *gauna* still had not taken place at the time of interview; it will happen next year. When asked, she admitted she had no idea what the legal age for marriage is or even that such a law exists. She said her parents decided on her marriage. Her husband is approximately 15-18 years old. Nitu studied until 6th class, and wanted to continue her studies. However, after her marriage, her family had a lot of debts to repay, so she and her siblings had to begin work in the brick kilns. She will not have to return after her *gauna*, but her parents have debts they accrued for basic survival as paddy field labour.

### **(ii) Lakshmiya Devi**

Lakshmiya Devi estimated her age to be about 25. She has three sons and one daughter. The eldest was about 12 and the youngest was about 6 at the time of interview. She and her family have made bricks for the last six years. Her oldest child was paralysed from polio, which he got when he was about 6 or 7. At the time, she had to borrow a large amount of money from the *tikedar*, about 2 lakh rupees, to pay her son's medical fees. She had first taken him to the government hospital but there was no doctor on duty, and the only nurse just gave her some medicines like paracetamol and told her to take him home. The government facility did not diagnose him with polio or provide treatment for the same. So she had to go to a private hospital, and to pay the high bills the family had to borrow money. Now she, her husband and all her children have to work to pay back this money.

### **(iii) Gudiya Devi**

Gudiya Devi got married in 2003 when she was seven years old. After she finished 8th class in 2010 she had her *gauna*. She now has a one-year-old daughter. Gudiya Devi expressed a desire to have one more child and then be

sterilised. When the team asked if she was interested in using any other family planning methods, she said, “*whatever method is good, I am happy to use,*” but she didn't know of any other methods.

#### **(iv) Kati Vidhyalaya**

Kati Vidhyalaya is a government girls' school that is well known in the district for good management and successful students. The fact finding team spoke to teachers in the middle school and high school.

Last year, three girls in the middle school got married. However, they still live in their parents' home and are continuing their studies. According to the teachers, the first marriage still happens quite early, but these days the *gauna* happens much later. Very few children drop out before 10th class. There are about 1000 students in 9-12th classes. However, this is just the number of students registered; a large number of students never attend class.

About 30% of girls in the high school are married. Less than 10% of girls drop out before 10th class due to child marriage, in cases where the husband or his family says the girl cannot study and must come to live with them. After 10th class, there are only 120 seats each for arts and sciences, so very few students get admission to continue studies. Without opportunities to continue studying, many parents choose to marry off their daughters after 10th class.

The high school teachers said the biggest challenge they face is that they are greatly under resourced. The building they have is far too small and there are only 8 teachers for the vast number of students. For example, in 12th class there are 240 students and only one teacher. This creates another problem – many students do not bother attending school because they know they will not learn in an environment with so few teachers. Many students also face transportation challenges. Some come by bus from up to 40 kilometres away, which is very expensive and takes a lot of time due to poor roads in the area.

When the fact finding team spoke to the head teacher and four other teachers, they said that most of their students' parents are agricultural labourers. A few have parents that migrate, but very few students are from families that work in the brick kilns as such families usually are not able to send their children to school. This school is about 30% SC, and is the biggest and highest performing high school in the area.

**Village, Fatehpur Block**

Most women in this village deliver at home. Only if it appears that there is a serious complication will the ASHA call for an ambulance. Female sterilization is the only available contraceptive option – no one uses the copper T or the pill. Women reported that they do not use the copper T because it causes 'problems and weakness'. A few women also said that they got the sterilization operation and then suffered from post-surgery ailments. When they go to the doctor, they undergo hysterectomies. At least three women also said that their children had polio.

The village has no permanent water source, only a shallow well that gets very dirty in the monsoon season, often making people, especially children, sick. However, they have no choice but to continue to drink from it. One person died last year after falling sick from drinking the dirty well water. In the summer the water levels also fall very low, often causing fights between villagers over water. The families do not have access to adequate nutrition. No one starves, but many are forced to become bonded labour just to be able to feed their families.

All of the people living in this village belong to the SC groups, musers (manjhis) or chamars. The norms in these villages dictate that members of SCs cannot own land. Accordingly the villagers have to work for little pay and are not in a position to negotiate a better situation for themselves, even if it is for just a few kilos of rice. Most of the families in the village almost never eat green vegetables; at most all they can afford to buy in the market are potatoes or daal to eat with their rice. For this reason many women and children suffer from malnutrition, especially anaemia, as was apparent from the rust colour of most of the children's hair.

Only a few families in the village have ration cards. Moreover, the ration shops do not have adequate rations in stock most of the year. For example, Rinku Devi, who the team spoke to, has a card but has not received rations even once in the last year. The fact finding team also spoke to Yashodhara who has filled out the form for widow pension four times but never received her registration. Almost all the families in this village work in the brick kilns. It is normal for whole families to lock up their houses for the year. The only other work in the village is in the paddy fields for a few days of the year. The children do not have access to a school at the kilns.

## Case Studies

### Kanti Devi

Kanti got married 3 years ago, when she was about 13. She now has one child, who she delivered at home nine months prior to the interview. She studied until 5th class, and dropped out of school about 3 to 4 years prior to the interview, just before her marriage. Her husband works making bricks in U. P., and she has also gone there to work since her marriage. Every year they have to take an advance from the *tikadar*. For the rest of the year they have to work to pay it back. Her husband has no parents or family, and because they have no land or money, they have no option but to make bricks to feed themselves.

Kanti takes the baby with her when she returns to the kilns. She has to work in the day and leave the baby alone in the hut, and hope the baby will be alright by herself. She and her husband usually earn 600 rupees a month. That money has to cover their food, medicines and all other expenses, and is usually not enough. If any of them get sick, they have to take more loans to pay for treatment. The biggest challenge is that because they cannot read or write, they have no choice but to follow whatever the employer says in terms of how much debt remains. Since there is no school nearby, their children have no option but to work as soon as they are old enough. The kiln is in such a remote location; there is not even a village or a hospital nearby, and no ASHA ever visits. If they get sick, they see a local compounder. The workers' huts are made of plastic sheets and they have no access to basic sanitation services.

At this point in the conversation, Kanti began to cry. Her heart does not want her to go back to work in the kilns – she hates it. But there is no food; how will she eat, what can she do?

### *Village, Bodhgaya Block*

## Case Studies

### Parmana Devi and Mahinder Manjhi

Parmana and Mahinder got married when Parmana was 13, and they have two children, aged two and four. Parmana is pregnant again, and is very close to

giving birth. They both work at the kilns and will return to the kilns after dussehra. She will have to leave her young children in the hut while she works and hope they sleep. Parmana told the team that she had never been to school. There is a government school not too far from the kiln but workers' children don't attend, "because, if they did, who would make bricks?" At the kilns children from the age of 6 start working. Mahinder first went to the kilns when their oldest child was sick and he needed to borrow money to pay for his medical expenses. He took a 15,000 rupees loan to pay the village doctor. Since then he has had to borrow money when Parmana needed a caesarean for her second delivery and to cover day to day living expenses, which is a struggle for them. Even if they go to the government hospital it is very expensive for them because they have to buy all the medicines from the outside shops. He is not sure how much longer they will have to work at the kilns to pay off their debts. He also does not envision a situation where they stop taking advances because each year they do not have enough money even to survive.

### **Bodhgaya Police Station**

The first officer the fact finding team spoke to refused to give any information about child marriage, though he was willing to give information on other issues. He referred the team to his supervisor. The team spoke to the supervisor, Naresh Kumar, over the phone, and learnt that he had only been in the position for a year, but in that time, no child marriage cases had been filed.

### *Village, Gaya*

### **District Magistrate's Office, Gaya**

The research team spoke to two Child Protection Officers in the District Magistrate's Office. They claimed that if NGOs, the Mukhiya, or anyone else, brings any cases of child marriage to them, they help to stop the marriage and get the police involved. They said they also try to create awareness on this issue and report cases to the Mahila helpline, but they don't have any enforcement powers. However, thus far they have had no opportunity in being involved in any of these activities; they were merely describing their responsibilities. They have not done anything because the unit has only been in existence since March 2014, and since then they have not received any information about child marriage. Before that, the unit was under the Social Security Assistant Director. The Officers were not aware there is also a

position of Child Marriage Prohibition Officer that is meant to carry out many of these responsibilities, demonstrating the poor awareness about the law, even amongst government officials. It also shows poor communication between government bodies, hindering implementation of the Act.

### **Sub-Divisional Officer's Headquarters, Gaya**

When the fact finding team entered the SDO's office and asked to speak to the Child Marriage Prohibition Officer they were at first told that there is no such person working in the SDO's office. The SDO himself and several of his staff were initially confused and made several phone calls to ask colleagues if they knew anything about the Prohibition of Child Marriage Act or CMPOs, to no avail. When the team insisted that under Bihar law, the CMPO is meant to be under the SDOs office, the SDO spoke quietly to his assistant, then suddenly cleared his throat, turned around and said, "This is the CMPO speaking, how can I help you?"

The team asked about the prevalence of child marriage in Gaya District and the SDO/CMPO replied that child marriages happen sometimes, especially in villages, but very rarely. The team then mentioned that according to the DLHS-3 the rate of child marriage is 83% in Gaya District. The SDO/CMPO was shocked and said that the statistic was 'impossible. At the most it might be 20-30%, but 80% is impossible'. They also had no idea that Bihar has the highest child marriage rate in India.

"It must be amongst the lower classes. Amongst those groups these kinds of things happen. They don't know much. Educated people know to get married after 18."

According to the SDO/CMPO there are currently no awareness programmes or outreach activities happening in this area. In the last eight years, there has been only one case pertaining to this issue in their office, which occurred a year ago. They looked for the file of this case for over half an hour, but couldn't find it. The main information they said was that an underage couple from a village approached the pandits who conduct marriages at the Vishnu Pad Temple. The pandits told the police, who in turn informed the SDO. It was a very poor family. The SDO "made the parents aware" and the marriage was voided.



## ODISHA

### *Village 1 – Chadayapada*

#### **Case Studies**

##### **(i) Jhili Dora**

Jhili Dora was married at 16 years and was 17 at the time of interview. Her husband, Udaya Dora, is 23 and works in Surat as an artisan. She became pregnant immediately, and the couple now has a 9 month old son named Rabul. Her mother-in-law is the village leader and is also married to Jhili's mother's brother (her uncle), thus the marriage is considered a blood marriage. Jhili was married at 15 after her mother became terminally ill. Her mother requested that Jhili marry while she was still alive so that she could see the ceremony. She passed away one month later. Jhili's father has also left the community in search of work. Without her parents, Jhili's family wanted her to be married so she could be supported.

Dowry was a factor in the marriage. The dowry included one motorbike, one gold chain and one ring. Jhili has been educated up to class 6, and Udaya has been educated up to class 5. Jhili dropped out of school due to her mother's illness and did not go back due to her marriage. She now lives with her in-laws and cooks and cleans for her husband's family.

The husband was present during the initial interview, and when we asked to speak to Jhili alone, the mother-in-law insisted on being present. During the individual interview, she explained that she had to do all of the housework while her mother was sick, and now has to do all of the housework for her husband's family.

She has not had any counseling on contraception or HIV. She wants to wait three years before having her next child, but she does not know how to make that happen.

Jhili didn't want to get married nor did she want to have children right away. However, if she refused the marriage, her family would have sent her out of the house and refused to support her. She had no choice but to marry according to

her family's wishes. If she delayed her pregnancy, her family would call her 'barren', which carries extreme stigma in the community and can be a traumatic experience for girls. She said that if she had been barren, her life would be a lot worse. She would not be allowed out in the community and would be prohibited from attending community festivals. She said her relationship with her husband is fine and that he doesn't force her to have sex and is not abusive. She was aware there is a minimum age for girls to marry, but was unaware of the minimum age of marriage for boys.

### **(ii) Paliama Dora**

Paliama is now 24 and was married at 15. Her husband, Jagannath Dora, is a 40 year old day laborer. Her family members arranged the marriage. Her mother had died when she was young and Paliama lived with her father and her step family. Her step-mother forced her to marry so she would leave the house. After marriage, she moved in with her in-laws.

Paliama became pregnant immediately. After 7 months of pregnancy, she suffered severe pain. Her family took her to the local Community Health Centre (CHC). She delivered a male child while in transit. The child passed away after half an hour. Paliama became pregnant a few months after her first delivery. She delivered her child after 9 months. She delivered at 6 pm. and the child passed away at 12 am. Paliama was 17 at the time of her second delivery. Paliama became pregnant once again when she was 19. She delivered the child at age 20. The delivery was normal and there were no complications. Her son is now four years old. She began going to Brahmapur each month for antenatal visits during this pregnancy. Paliama became pregnant a year after the delivery of her son. The delivery was normal and the child is now 18 months old. She chose to get herself sterilized after this pregnancy.

Paliama explained that child marriages are conducted by every family in the village. The girls are expected to be married at ages 14-15 because of the caste traditions. She didn't want to get married, but was forced into marriage by her family by putting mental pressure on her. If she had not married, her family would have refused to support her. She did not want to get pregnant right away, but she feared that if she did not, her husband would tell everyone that she was barren. She explained that in the community, if the woman doesn't get pregnant soon after marriage, she faces physical and mental abuse by family members.

She further explained that her husband forces her to have sex when she doesn't want to, and that is why she has been pregnant so many times. He also used to be physically abusive. Her husband is less aggressive now, but he is an alcoholic. She has been counseled on HIV, but never for contraception.

### **(iii) Channchla Dora**

Channchla was 17 years old at the time of interview. She was 16 when she married Agonesh Dora, who was then 24. Agonesh died 6 months ago from jaundice. Channchla is now a widow, and is prohibited from remarrying due to community traditions. She has one male child who is 10 months old. Channchla dropped out of school after class 5 because her mother left for work and Channchla was entrusted with looking after her brother. Her father also left for Surat for work. She now lives with her late husband's family, but is unsure how long they will let her stay now that he has passed.

Her husband sometimes forced her to have sex with him. She has never been counseled on contraception or HIV.

Channchla did not want to marry. In fact, she expressed a desire to tell other girls in the community to wait and not to marry quickly. She did not want to get pregnant right away, but she did not know how to delay it. She knew the legal age of marriage, but her family told her that she had to marry. Her father is now allowing her younger sister to wait until 18 for marriage, due to Channchla's situation.

### **(iv) Sasmal**

Sasmal was 18 at the time of interview. She was married when she was 17. However, she looked much younger and had continually stated she was a different age. She is now 9 months pregnant. She has been for two antenatal check-ups, at three and four months. She became pregnant almost immediately after marriage. She's married to Dhanish, who is 30 and is an employee in a high school.

She had to drop out of class 7 because she had to take care of her family's cooking when her older sister got married. She wanted to continue her education, but her parents didn't agree. She has never been counseled on contraceptives, but she wants a four year gap between her delivery and her

next pregnancy. She is unsure how to do that. She has been counseled on HIV by a health worker.

She currently lives in her parents' home for the duration of her pregnancy. After delivery, she will go to her husband's home in another village. In the first 7 months of the pregnancy, her husband pressured her to have sex when she didn't want to. He has since stopped.

She married because her step-family lives in her home with her father. There was no room for her, and her step-family pressured her to get married. She wanted to delay the marriage.

### **(v) Rashmita Pradhan**

Rashmita said that she was under 17 when she was married, but would not give an exact age. Her JSY/JSSK card says she is 21 or 22. Her husband is 27. They have one 8 month old child. After her family started the marriage negotiations, she was forced to drop out of school. She did not want to stop going to school because she likes to learn and read. She became pregnant 2 months after marriage. She had complications during pregnancy and was severely dehydrated, and explained that all of her "fluid had gone out". She had to travel 60 kms to Brahmapur for delivery, and the delivery was luckily normal and resulted in no major complications.

She has not been counseled on contraception, but has been counseled on HIV. She did not want to get pregnant right after marriage. She has a good relationship with her husband, but he forces her to have sex. He refused to discuss contraception with her or anyone.

## ***Village 2 – Agastinua Gaon***

### **Case Studies**

#### **(i) Rupa Sura**

Rupa was 24 at the time of interview and was married at 17. Her husband, Goutam, is 28. They had their first child, a daughter, after 2 years, when Rupa was 19. Before her marriage, her father had lost all of his property due to medical expenses related to an accident her brother had that put him in a

coma. Her father is also an alcoholic. After they lost the property, her mother thought it would be better for Rupa and her 2 sisters to be married. Both of her sisters were married at 17 as well.

She has not been counseled on HIV or contraception. There was a natural gap before her first pregnancy and since her delivery. She consulted a doctor about her failure to get pregnant immediately, and was able to conceive with the doctor's help. Her husband was mentally abusive toward her due to her inability to conceive immediately.

### **(ii) Jhilli Nayak**

Jhilli was 25 at the time of interview and was married at 17. Her husband, Sudam, is 35 and was 27 when they were married. They have two children, aged 7 and 5. Jhilli became pregnant 2 months after she was married. She was sterilized after her second child.

She was married because it is tradition in her community and her family. She has 3 sisters, and all were married at age 17 or below. She didn't want to get married, and she didn't want to get pregnant right away but she didn't know about contraception. Her husband sometimes forces her to have sex. She was uncomfortable when we asked about her relationship with her husband.

### **(iii) Bigyani Swaim**

Bigyani, 25, was married at the age of 15. She became pregnant after being married for 2 months. Her husband, Bablu Swaim, is 32. Bigyani was in class 9 when her parents decided that she should marry according to the culture of the village. She wanted to study more, but had to drop out of school due to her marriage. She was very close to passing out of school. She didn't want to get pregnant right away, and she laughed when we asked the question like it was a ridiculous thing to want to get pregnant. She had to have surgery for her first pregnancy that cost Rs. 18,000. Her husband spends most of his time in Gujarat for work.

She hasn't been sterilized but they use oral pills as a form of contraception. She has never been counseled on contraception, but her husband purchased oral contraception from a local shop. She stopped using it because it dehydrated her and made her weak.

**(iv) Rupali Baja**

Rupali is 21 and was married at age 17. She had her first child 5 months later. She now has a 3 year old daughter and a 4 month old son. She is married to Santosh and doesn't know his age. Rupali has never been counseled on contraception. She and her husband use oral pills as a contraceptive method. She has only received information on contraceptives from neighbours. Her husband forces her to have sex.

She was married because her father died and her mother wanted Rupali to be married quickly after that. Her older sister was also married at 17. Rupali was not aware that there are laws against child marriage.

***Village 3 – Sananolia Gaon*****Case Studies****(i) Khaullama**

Khaullama is 26 years old. She was married at age 13. She became pregnant immediately after. Her husband, Harrya, is also 26. She has three sons, aged 13, 12 and 8. She explained that she married due to community tradition and said that girls in her village get married at 12-15 and boys get married at 18-21.

She delivered all three children at home with no complications. She has never been counseled on contraception, but she was sterilized after her third pregnancy. She explained that most deliveries in the village are home deliveries, and only some of the women choose to go to nearby health institutions. She has not been educated and has no awareness of child marriage laws.

**(ii) Badia B Laxmi**

Badia is around 30 years. She was married around 14 and had her first child immediately. She has three daughters, aged 15, 8 and 6. Two of her pregnancies were home deliveries and one was at an institution. She had no complications during the deliveries.

Her husband stays in a different village for work. She is currently homeless in

the village and has been staying at a friend's house. She has not been counseled on contraception or HIV. She and her husband use oral pills as a method of contraception. She has not been educated.

She is in negotiations with other families in the village for her daughter to be married, since she just experienced her first menstruation. She would rather her daughter wait to marry until she passes 10th class, but she worries that her daughter will have sex while she tries to delay the marriage which will force her to marry. She's facing community pressure for her daughter to be married soon and her daughter wants to be married. She is not aware of any child marriage laws.

### **(iii) Gorama**

Gorama is now 22 and was married at age 17. Her husband, Raya, is 24 years old. They have a 2 and a half year old and a one month old child. Both of her deliveries were normal and at a hospital.

She has had no counseling on contraception or HIV. She and her husband abstain from sex as a form of contraception. She was educated until class 7 and dropped out due to her mother's death. Her marriage is considered a love marriage and she wanted to get married.

## ***Village 4 – Gajpatinagar***

### **Case Studies**

#### **(I) Sapata**

Sapata is 21 years old and was married at 17. She is married to Nilamber, who is 28. They have a three year-old son and a year-old daughter. Sapata and Nilamber waited one year for her to become pregnant after they got married. She delivered at a hospital and with no complications. She needed an operation where they made a small incision to deliver her second child.

She has not been counseled on contraception. She wanted more time between her two children, but she wasn't aware of any form of contraception. She now wishes to get sterilized. She has not been counseled on HIV, but she has been tested.

She has been educated up to class 5. She comes from a poor family and her father is blind. She is a daily laborer. She married because it was a way for her to be financially supported, but she didn't want to get married. She explained that her brother forced her to get married. When she didn't become pregnant right away, she was ridiculed by her family.

### **(ii) Bahrati Bhera**

Bahrati is 19 and was married at age 16. Her husband, Kishora, is 24 years old and works as a fisherman. They have one daughter who is one and a half years old. Before she delivered her daughter, she had two miscarriages. She delivered her daughter through a c-section.

She has not been counseled on contraceptives or HIV, but she has been tested for HIV. She failed class 10. Her older sister left the house for a love marriage and it disgraced her family. Her parents had her married young because they did not want Bahrati to do the same as her sister. She did not want to get married early.

She became pregnant 3 months after her marriage. She did not want to conceive so early. Her husband forces her to have sex. She is very sick now with low levels of hemoglobin. She suffers from headaches and foot swelling, but she cannot afford a doctor.

### **City Government Hospital, Bhubaneswar**

The team visited the city hospital in Bhubaneswar. Most of the doctors refused to answer any of our questions. Dr. Mamata Brike, the head doctor in the delivery unit, explained that she had never seen any deliveries of women under the age of 18, despite the prevalence of child marriage and child pregnancy in the area. She explained that it probably happens in peripheral hospitals and said that if the girls' cards are manipulated to show a different age, then how would she know? She acknowledged that younger girls getting pregnant are at a much higher risk for delivery and pregnancy complications.

Vikay Biejaya Panda, the head of the OBGYN unit, refused to answer any questions and said "I am not the person to answer those questions" when in fact he was the exact person the team wanted to answer those questions



because of his interactions with pregnant and delivering women.

Alok Swain, the administration officer, answered a few of the team's questions. He explained that the hospital only checks voter cards, and if the woman doesn't have a voter card on her, they do not pursue her age further. He explained that ASHAs are helping girls manipulate their ID cards. He conceded that, "some girls may be underage" but said that the registration is done by Anganwadi workers. The hospital doesn't have any guidelines for doctors. They do not keep a medical history of patients in order to verify ages or past incidents. They only keep medical history of heart diseases. He feels that there is awareness throughout the community of the child marriage laws, and that health workers are helping girls change their ages.

The team finished the day by speaking with Debananda Mohanta who is the programme officer for VHAI. He gave the team more information about what is happening, or what is failing to happen in the State to combat child marriage.

He told us that after the Child Marriage Act of 2006, a state committee was formed. He explained that there is a state child protection unit entrusted with preventing child labor, abuse and trafficking, as well as preventing child marriage. Each district has a child protection unit, which consists of an officer and a district level committee. The committee consists of government employees, activists and NGO members. At the block level, the Child Development Protection Officer (CDPO) is charged with preventing child marriage. At the village level, Anganwadi workers are supposed to report child marriage. However, he explained that while this is on paper, it is not happening in practice. Anganwadi workers are failing to report child marriages because they are generally a part of the community and they don't want to deprive the girls of the various schemes, such as JSY and JSSK due to their age. Also, it is feared that the community will become aggressive toward the worker if they were to report a child marriage. He explained that before the mandatory issuance of birth certificates was created ten years ago, it was very easy to manipulate birth and marriage certificates.

VHAI seeks to mobilize the community through intervention in areas in order to promote community support of the Anganwadi worker. Most of the child marriages are not officially registered.

## HARYANA

### Case Studies

#### (I) Nidhi



Nidhi belongs to a socially and economically backward family. Nidhi's parents enrolled her in a government aided primary school where she studied till class 10.

In her village there is no higher secondary school so most of girls are drop outs in that area. Like many other girls in her area, Nidhi unfortunately had to discontinue her education. Moreover, her parents could not afford to send her to higher secondary school which is at the distance of around 15 kms from her residence. Nidhi now started helping her mother in all the household activities.

In the year 2014, Nidhi's parents forced her into marriage. Nidhi shared with the fact finding team that when she was married and moved to her in-laws' house, she was burdened with the responsibilities of her husband, in-laws and other household activities. Then after a year she got pregnant and in the year 2015 she delivered a son. Now, Nidhi is spending her days taking care of her new born baby and her family at an early age of her life. Nidhi still wants to continue her education, but she knows that it's a distant dream for her.

#### (ii) Sunita

Sunita's father is a daily wage labour and earns approximately Rs. 150 per day. Her mother is a housewife. Like other children, Sunita was enrolled in the government school and she studied there till class 5. Sunita informed the team that since the secondary level of school is at quite a distance from her village her parents did not allow her to continue her education. Sunita was helping her mother after her school. When Sunita was 14 years old her parents forcibly married her due to their poor economic condition and absence of education opportunity. Sunita is now 22 year old and she has been married for 8 years. Her husband is a tailor. She has two boys.

**(iii) Pooja**

Pooja's story was shared by her younger sister.

Pooja, age 17 years, lived in Samlakah village of Panipat. Her father is a daily wage labour and earns approximately Rs 150 per day. Pooja lived with her parents and her younger sister. Due to the family's poor economic condition Pooja's parents compelled her to marry when she was 14 years old. Pooja's sister informed the team that her husband and in-laws were highly abusive; after about eight months of her marriage Pooja escaped back to her parents. Pooja lived with them for a few months, but then her husband and his family came and apologized and said that they loved her and wanted to take care of her so she went back. Pooja's family has not heard from her since. They visited her twice to try and find out her condition but each time they were told that she is away 'on vacation'. They are too scared of the police to go to them for help. They have concluded that she is lost.

**(iv) Shabnam**

Shabnam lives in one of the interior villages of Panipat. Shabnam is 16 years old and she got married three months back. Shabnam studied till 5th class. Since there were no secondary schools in the nearby area Shabnam left her studies. Shabnam's parents informed the team that in her village there are very few boys who are from the same community. So, when Shabnam got the marriage proposal from the same community Shabnam's parents forced her into marriage.

**(v) Seema**

Seema lives in Kamiri village of Panipat district. Seema got married at the age of 14. Seema has been married for four years. Seema is currently 18 years old. Seema informed the fact finding team that due to their poor economic condition she was married at an early age. Just after a year of marriage she was pregnant but it was still born. Seema was pregnant for the second time and she



gave birth to a baby boy but the child survived only for four days. Seema is currently pregnant with her third child. Seema shared with the team that she is anaemic and the doctors suggested not to get pregnant at this age because she is too weak to conceive.

#### **(vi) Seema**

Seema's father is a daily wage labour. Seema never went to school. When Seema was 14 years old she was married off and has now been married for one and half years. After a year Seema got pregnant and has an 8 month old daughter. Seema was not ready to get married at an early age but since her father could not afford the living cost of her in the family she was forced into an early marriage.

#### **(vii) Babita**

Babita is 13 years old and has been married for three years. Her husband is a daily wage earner. Babita informed the fact finding team that she never went to school and she belongs to a very poor family. Babita further shared that since her father was not earning it became difficult for her family to feed her. So, when the marriage proposal came for her from a nearby area, Babita and her family accepted the proposal. Babita delivered her first child at the age of 12 and at the age of 13 she delivered her second child.

## Chapter VI

# CONCLUSION AND RECOMMENDATIONS



### *Conclusion*

India is a party to CEDAW, and as such it has an explicit international obligation to prevent child marriage and to ensure entry into marriage is consensual for both parties. At present, whilst there are laws, policies and programmes in place to prevent child marriages, these are disparate, with inconsistent funding and coverage. They sometimes operate for a limited period of time or only in particular areas. They cannot be said to be binding laws when they are often superseded by religious or cultural ‘personal’ laws.

The eradication of child marriage in India evidently requires a long-term and continuous process that addresses the multitude of intertwined factors that lead to the prevalence of the practice. Approaches must necessarily include the empowerment and education of young girls, attitudinal changes within both families and communities, the development of resource centres, strengthening of the health system, co-operation by educational institutions, and a robust legal framework.

Textbook, trade or business skills based learning improves economic potential, and in turn equips women with a greater self-worth and economic value to their family. This places them in a stronger position to exercise personal autonomy, make their own life decisions, and refuse child marriage. Education regarding life skills is therefore important.

Awareness-raising is vital in order to teach people that there is a law on child marriage, what it means, and their rights and responsibilities under it. Once aware of the law, people know there are alternative avenues to child marriage, that there is the possibility of a more promising future, and possible child brides and their families may therefore be more willing to fight the practice

and the system in which it exists. Awareness programmes can also include information on reproductive health and methods of safe sex and family planning, as well as the concept of consent. Knowledge of contraceptives can help to reduce frequent closely-spaced pregnancies, improving the health of the mother and quality of life for her and her family, due to the decreased costs brought about by a smaller family and less hospital visits.

It is the crucial nature of education, awareness-raising and consistency of approach that the following recommendations relate to. During the field visits, some of the key recommendations that had been shared by the various stakeholders interviewed in the States of Bihar, Uttarakhand, Odisha, Rajasthan, Chhattisgarh and Assam were:

### ***Recommendation 1: A Long-Term Sustainable and Consistent Plan***

Effective law, policy and programmes implemented to remove child marriage require sustainability, legitimacy and consistency. For the implemented programmes to be sustainable requires adequate resources and funding. The programmes need to be wholly inclusive, and set up in such a way that other countries can donate to it and add to it; rather than implement well meaning, but often short term strategies, that are not sustainable when funding discontinues. This would require properly trained and well paid government employees to ensure consistency and countrywide implementation of equivalent programmes across all areas of the country, so that the resources are available to all people. The incorporation of on the ground grass-root NGOs and local communities will allow the programmes to adapt to the multi-faceted and diverse cultures that form India, and the differences that exist within various communities. However, the cohesive unit of programmes and their common basis will allow shared goals and standards, within a culturally flexible and therefore specific format. In such a way, community support can be garnered and maintained, ensuring maximum results and reach for the programme.

This diverse, multilayered but inclusive approach would mean that the programmes would be flexible enough to adapt to the different cultures and requirements of each State, and have greater consistency of resource allocation. Resources will be distributed nation-wide but will be focused in poorer, rural areas with higher risks of child marriage. Prior assessments of vulnerable areas will be conducted to determine resource allocation.

Community interaction and consultation in culture or area specific adaptation of the programmes to communities' specific needs will provide a level of legitimacy, as will the presence of both government and NGO personnel.

***Recommendation 2: Properly Available and Resourced Schools and Incentives to Attend***

Research conducted as part of this publication has determined that the lack of access to a quality education is major contributing factor to the practice of child marriage. Government schools need to be readily available to all school age children. This means a school in every village and town where populations are spread out, and for an unreasonable walking distance from the school, government-funded transportation should be provided, for example, in the form of a school bus. For schools to be fully available to all children they need to be inclusive of all castes, must be and free of cost, so that those from impoverished families can also attend. Further, authorities must ensure active encouragement to families for all students to attend. In many nations it is considered child neglect for a child to not be either attending school or receiving home schooling, and authorities go to great lengths to ensure children are receiving an education. The same must take place in India. Additionally, efforts should be made to demonstrate that there will be no caste or economic based discrimination at school.

The schools need to be properly resourced and funded. This means an adequate number of teachers, classrooms, desks, books and writing material. It also means clean water, and toilets and sanitary products to ensure proper hygiene that provide further encouragement for girls to continue their schooling once they reach puberty. In areas where girls fear for their safety when travelling to and from school, transport and guards should be provided as necessary.

‘Equal access to good quality primary and secondary education’ should be enhanced to eliminate gender gaps in schooling. These needs to be combined with ‘economic support and incentives for girls so that their families can counteract financial motives for child marriage,’ and the girls can therefore continue to make use of the education system.<sup>30</sup>

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<sup>30</sup> *Improving Children's Lives: Transforming the Future*: UNICEF

Schemes such as the 'Apni Beti Apna Dhan' conditional cash scheme should be fully implemented and made available to all eligible girls. The scheme can be modified to reflect Pakistan's 'Punjab Female School Stipend Program' where girls from grades 6-10 receive a quarterly stipend of Rs. 600 to attend school if their minimum attendance is 80%.

However, the Indian adaption of this scheme provides a stipend until the end of 12th grade with an increase of Rs. 100 for each semester for 12th grade as a further incentive to complete their school education. This, rather than the Rs. 500 paid within 15 days of birth and Rs. 20,000 at age 18, would provide greater incentive to attend school and may decrease the likelihood of the money being used as part of a dowry.

Above all, there should be proper mechanisms for regular monitoring of school drop outs by the school authority, with measures in place to prevent students from dropping out.

### ***Recommendation 3: Awareness-Raising and Life Skills Based Education Involving Multiple Actors and Grass Roots Organizations***

There should be more workshops conducted with NGOs, village elders, religious leaders, teachers and adolescents from local communities. These actors need to be mobilized 'to address discriminatory gender norms and create new positive opportunities for girls' (*Improving Children's Lives: Transforming the Future*). These workshops should be targeted at child marriage, how to combat it, the relevant laws and rights, and responsibilities under the laws. They should aim to raise awareness and create support mechanisms and networks so that communities can work together to create systematic change. Workshops should be organized to educate both young men and women on the law, their rights, responsibilities and the penalties.

These workshops should also facilitate the economic empowerment for women by teaching them ways to make a living, such as how to operate a business, and selling skills pertaining to sewing, painting or some other saleable art, craft or service. This economic empowerment means that women can make a greater contribution to their family and personal economic well-being, feel more confident in decision making, as well as have and be aware of options outside of child marriage, and be an active participant in community development.



***Recommendation 4: Greater Accountability and Resourcing for Birth, Death and Marriage Registration as well as Other Government Resourcing***

There should be local officials for birth, death and marriage registration who are equipped with proper training and conversant with guidelines and government reporting in order to ensure accurate verification and enforcement and reduce the incidence of bribes. These government officials who register births, deaths and marriages are to be adequately reimbursed so they have less incentive to accept bribes.

In regard to marriage, the minimum marriageable age should be set the same for both boys and girls instead of younger for girls, in order to avoid reinforcing social norms which regard girls as marriageable at earlier age (PCMA). These norms reinforce the harmful notion that women are of marriageable age much younger than men, thus increasing the rates of child brides. Such age gaps associated with elder men marrying younger girls ought to be discouraged in order to remove the social norm. The larger the age gap, the less authority the woman is likely to have.

Child marriage is explicitly criminalized in CEDAW which states that ‘registration of marriages in an official registry is compulsory’ and that State parties must pass legislation to this effect. Further, men and women must have the same right to enter into marriage; if women can enter into marriage earlier than men because they are classified as a child until 18, and men until 21, then the right is not the same – thus compromising the right to equality enshrined in several articles of the Indian Constitution. Input of this recommendation would ensure India’s international obligations in this area are met.

***Recommendation 5: Amend PCMA:***

The Law Commission of India Report No. 205: Proposal to amend Prohibition of Child Marriage Act, 2006 and other allied laws for amendment of PCMA:

1. That child marriage below a certain age, i.e. 16 years of age be made void. However, all the Sections relating to maintenance in Section 4 of the PCMA 2006 regarding maintenance to the female party to the marriage till her

remarriage and the provisions relating to child custody and legitimacy of the children in Section 5 and 6 of the PCMA 2006 be made applicable to cases of void marriages also.

2. All marriages between 16 and 18 should be made voidable at the option of either party. The sections relating to maintenance, child custody, and legitimacy in Sections 4, 5 and 6 should be applicable to voidable marriages as they are at present.
3. Consequently, Section 3(1) and 3(3) of the PCMA 2006 should be amended to incorporate the changes outlined in paras (i) and (ii) above and will read as under:

Section 3(1) should be amended to read as under:-

(i) Any marriage of a child below 16 years of age solemnized after the commencement of this Act will be null and void and may, on a petition be presented by either party thereto against the other party be so declared by a decree of nullity.

(ii) Every marriage of a child between the ages of 16 and 18, whether solemnized before or after the commencement of this Act, shall be voidable at the option of the contracting party who was a child at the time of the marriage.

Section 3(3) should be amended to read as under:-

“The petition under Section 3(1) (ii) may be filed at any time till the person contracting a child marriage attains 20 years of age.”

4. That the exception to rape in Section 375 of the Indian Penal Code (rape cannot currently occur within a marriage) be deleted. This would ensure that the age of consent for sexual intercourse for all girls, whether married or not, is 16. The 172nd Report of the Law Commission had recommended increasing the age of consent for all girls to 16.
5. Registration of marriages within a stipulated period, of all the communities, viz. Hindu, Muslim, Christian, etc. should be made mandatory by the Government.

6. The age of marriage for both boys and girls should be 18 years, as there is no scientific reason why this should be different.
7. Consequently the present Section 2(a) of the PCMA should be deleted and replaced by the following Section 2(a):-  
  
    “(a) 'child' means a person who has not completed 18 years of age.”
8. Other acts like the Hindu Marriage Act should also be amended to ensure that the provisions in the said acts are the same as and do not contradict the Prohibition of Child Marriage Act, 2

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## ANNEXURES

### FINDINGS FROM THE FIELD DATA



*SLIC, along with a team of activists and lawyers from the states, surveyed and carried out fact findings in Chhattisgarh, Uttarakhand, Bihar, Haryana, Assam and Odisha from January 2015-July 2016. The objective of the research conducted was to document case studies of child marriage, and examine the gaps in the implementation of the PCMA that has been established to prevent child marriages.*

*The team interviewed child brides, CMPOs, and various government stakeholders during the visit. The findings below are based on primary sources of information (collected through interviews) and secondary data (by analyzing reports and articles).*



### CHHATTISGARH

**Date of Visit:** January 2016

**Villages Visited:** Kawardha, Bilaspur and Dantewada

**Key Respondents:** 20 young married girls and women, local NGOs, Police, Accredited Social Health Activists (ASHAs).

*'In Chhattisgarh, more males are subjected to child marriage'* (Anuja Jaiswal, senior official in the Women and Child Welfare Department, 2014).

#### **Key Findings:**

The 2011-2012 Annual Health Survey (AHS) states that within Chhattisgarh, 34.7% of women aged 20-24 were married before 18 years, and 31.9% of men aged 25-29 were married before 21 years. On the other hand, according to the National Family Health Survey-3 (NFHS-3), 55% of women aged 20-24 years got

married before the legal minimum age of 18, and 45% of men aged 25-29 years got married before the legal minimum age of 21.<sup>31</sup>

When taking into account all men and women in Chattisgarh, as opposed to those just within the specified age bracket above, more males are subjected to child marriage. According to the AHS Report (2011-2012), when it comes to child marriage, males outnumber women in Chhattisgarh. 10.4% of males marry before attaining 21 years, the legal age for marriage, as compared to 4.7% of females.<sup>32</sup> Thus the data above indicating higher rates for women between 20-24 years could potentially indicate that men marrying as children is declining whilst women marrying as children is either increasing or staying the same.

The AHS Report stated that 16 districts surveyed in Chhattisgarh, including tribal dominated areas, recorded a higher number of male child marriages vis-a-vis females. The following table highlights 5 such districts:

District Name	Male Child Marriages	Female Child Marriages
Kawardha	27.1%	8.7%
Sarguja	21%	9.3%
Koriya	18.1%	9%
Dantewada	15.1%	5.1%
Jashpur	14.2%	9.4%

### ***a. Respondent Profile:***

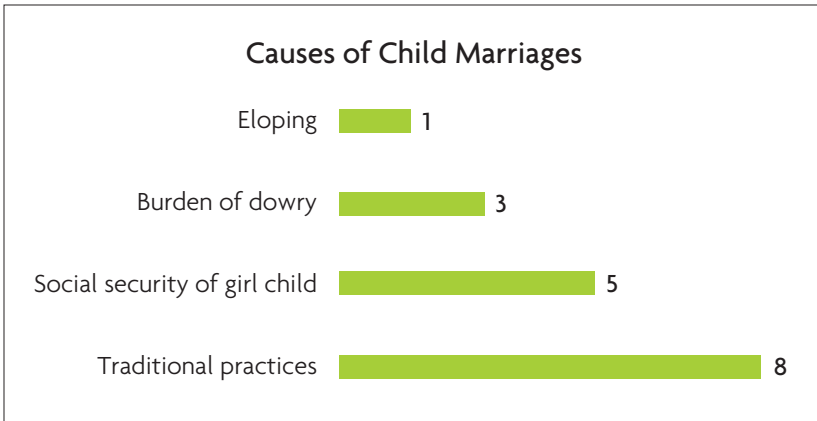
The team interviewed 20 women in the age group 20-25 years and found that 80% of the total interviewed women were married before 18 years. The interviewed women were all from socially and economically backward sections of society.

### ***b. Causes of Child Marriage:***

Below are some of the key reasons for child marriage that the respondents and other stakeholders shared:

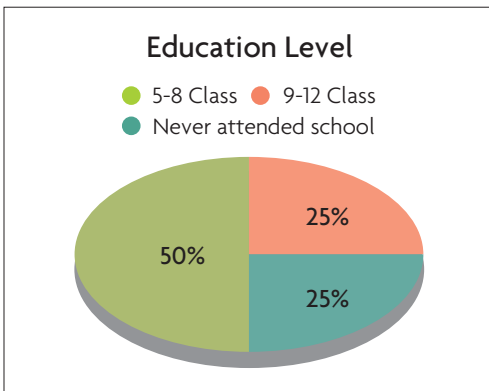
<sup>31</sup> State Fact Sheet – Chattisgarh, 2011-2012

<sup>32</sup> Annual Health Survey Report (2011-12), Ministry of Health and Family Welfare



Source: Primary data

A majority of the young girls and women said that in their community, girls marry young. Parents force their children to marry even before puberty sets in. There is also a fear of the girls' security and safety, which forces the parents to get their girl child married young. All the young women who had married below 18 had married men that were 7-10 years older.



Source: Primary data

Some of the reasons cited for not attending school were that there were no schools in their villages and parents did not want to send them to adjoining villages fearing for their lives as well as their safety.

However, on interviewing the stakeholders and school teachers, it was found that the latter were not aware that it was their responsibility to identify and follow up on the school dropouts and re-enroll them.

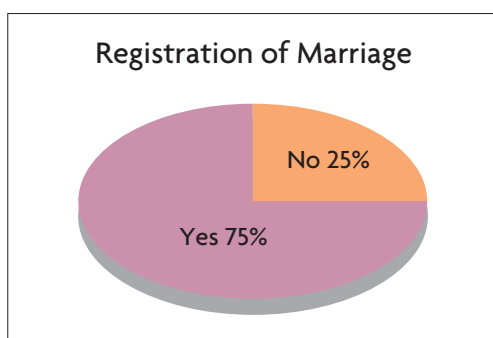


All the young women and girls interviewed talked about the pressure that they faced when they gave birth to a girl child. Societal preferences for sons is high, and 86% of those with two sons want no more children compared to 47% of those with two daughters.<sup>33</sup>

- None of the stakeholders that the team interviewed knew about the PCMA, 2006. In fact, the police, teachers and health care providers vociferously denied that child marriage was taking place in their district, although interviews with the young girls and women stated otherwise. The team also met with state authorities of the MoWCD who shared that in 2014-2015, 13 child marriages were prevented from taking place and in 2015-2016, 5 parents were stopped from getting their girl child married.
- Additionally, the fact finding team did not find any brochure or pamphlets related to child marriage, nor did any of the ASHAs, Anganwadi Workers (AWWs) or school teachers speak about prohibition of child marriage. Surprisingly, the ASHAs and AWWs interviewed had themselves married when they had just started puberty. Alarming, they spoke about the need to get girls married young. Furthermore, 75% of the respondents interviewed had a total lack of knowledge regarding the existing policies and laws on prohibition of child marriage.

### *c. Non-implementation of Compulsory Registration of Marriage, 2005*

The Central Government has enacted laws for the compulsory registration of marriages. This was one of the processes established to prevent child marriage and ensure minimum age of marriage. However, 25% of the married girls' and young women's marriages had not been registered. Whilst the remaining 75% claimed that their marriages had been registered, they were unable to provide any evidence



Source: Primary data

<sup>33</sup> Chhattisgarh Fact Sheet, Annual Health Survey, 2012-2013

## UTTARAKHAND

**Date of Visit:** January 2016

**Villages Visited:** Champavat, Pitthoragarh

**Key Respondents:** 20 young married girls and women, local NGOs, ASHAs.

‘The 2011-2012 AHS presents that within Uttarakhand, 22.7% of women 20-24 years are currently married and 41.6% of women 15-19 years are currently mothers or pregnant’.

### Key Findings:

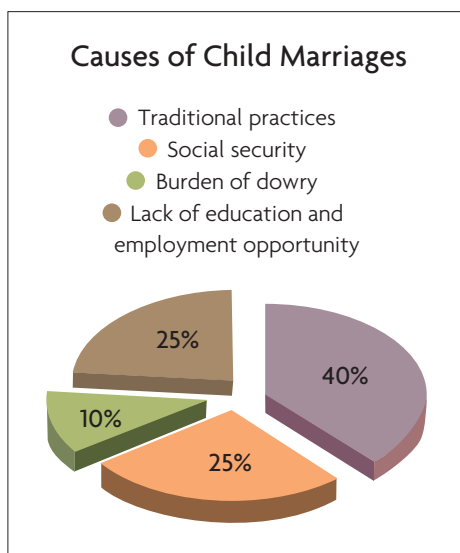
#### *a. Respondent Profile:*

The team interviewed 20 married young girls and women in the age group 17-25 years and found that 85% of the total interviewed women were married before 18 years, 70% had primary level of education and only 30% of them had completed high school. All the respondents were from socially and economically backward sections of the society.

#### *b. Causes of Child Marriage:*

Of the interviewed women 40% informed us that they were forced to get married at an early age because of social and traditional customs/practices. Additional causes of early marriage were the burden of dowry and a lack of educational and employment opportunities.

According to the NFHS-4 2015-16, the female population aged 6 years and above who have ever attended school is 80% for urban communities, and 68.9%

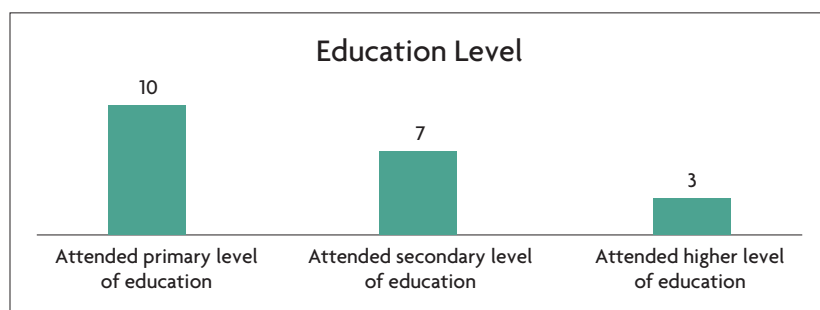
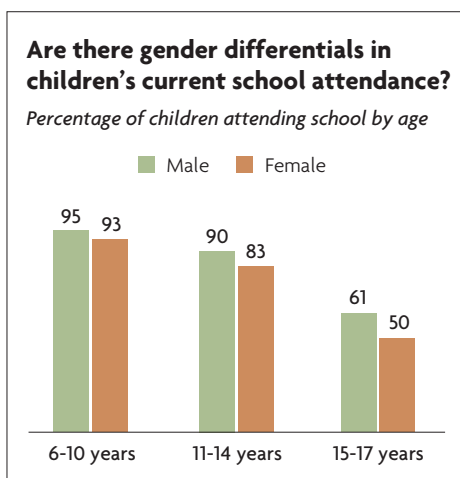


Source: Primary data

for rural communities. This shows a distinct lack of schooling opportunities and a clear disparity between rural and urban communities. Between the ages of 15-49, 76.5% of women are literate.<sup>34</sup> This is compared to men with 90.7% literacy – a significant gap.

This data demonstrates a clear gender disparity, with child marriage being a major cause of lower schooling among women. This disparity is apparent in the graph displayed here, which conveys clearly that males are more likely to remain in school than females.

The majority of women the team interviewed had attended at least primary school. The



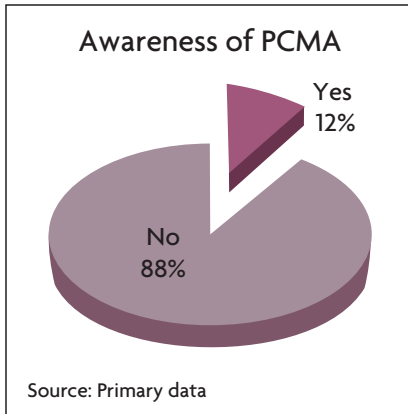
Source: Primary data

reasons cited for dropping out of school by the women were cultural and economic pressure. All the other women who were interviewed had dropped out at an early age, usually in order to get married.

### Cases Registered under PCMA, 2006

Both the police and the Child Rights Helpline staff were interviewed, and they stated that no cases of child marriage had been reported from the districts of

<sup>34</sup> Uttarakhand State Fact Sheet

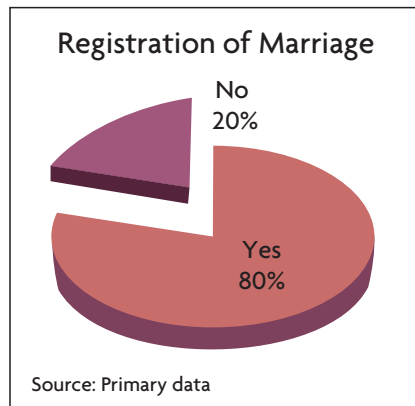


Champavat and Pitthoragarh. The research team found no awareness campaign; none of the grassroots functionaries had any training in child marriage, and no discussions had taken place regarding child marriage. However, the ASHAs and the AWWs did share information about girls who were married before puberty. These girls had been sent to their husbands' family once they attained puberty.

During the course of the fact finding, 88% of the young girls and women admitted not knowing about the legal provisions of PCMA.

### **Non-implementation of Compulsory Registration of Marriage 2005**

Similar to the research conducted in Chhattisgarh, 20% of the young girls and women admitted to not registering the marriage, and the reason they shared was that they had not yet reached the age of 18 at the time of their marriage, and as a result were scared of punishment. This further indicates a lack of awareness of the PMCA, as children themselves would not be punished under the Act.



## HARYANA

**Date of Visit:** October 2016

**Villages Visited:** Sonipat, Panipat, Hisar, Hind, and Sirsa

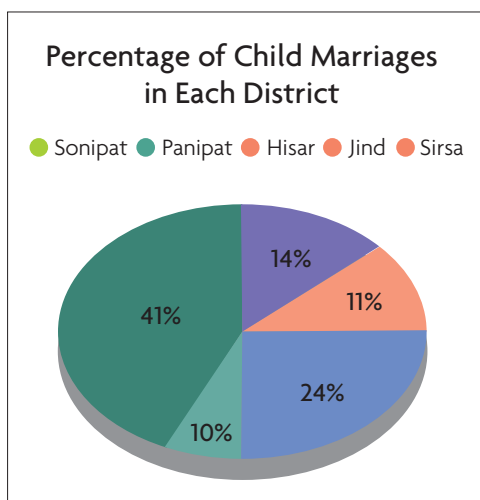
**Key Respondents:** 98 participants were interviewed, with 79 child marriages identified.

### Key Findings:

The total population of Haryana as per the 2011 Census is 25,351,462, of which males are 13,494,734 and females are 11,856,728. In 2001, the total population was 21,144,564 of which males were 11,363,953 and females were 9,780,611. The Census data shows that Haryana has a skewed sex ratio – alarmingly, the lowest sex ratio in the country – with 877 women per 1000 men. This results in increased number of girls being ‘trafficked’ from other parts of the country.

“Haryana in North India is already suffering due to skewed sex ratio which has forced many families to purchase brides from states like Bihar and West Bengal” (*More than Just Brides: Early Child Marriages in Haryana*). Besides this, Haryana is now also witnessing a rise in child marriages. Prohibition officers in Sonapat and Panipat have confirmed an increase in the prevalence of child marriages in these districts. There are many reasons for the prevalence of child marriage in the State, including poverty, unemployment, a lack of educational opportunities, and traditional and social customs.

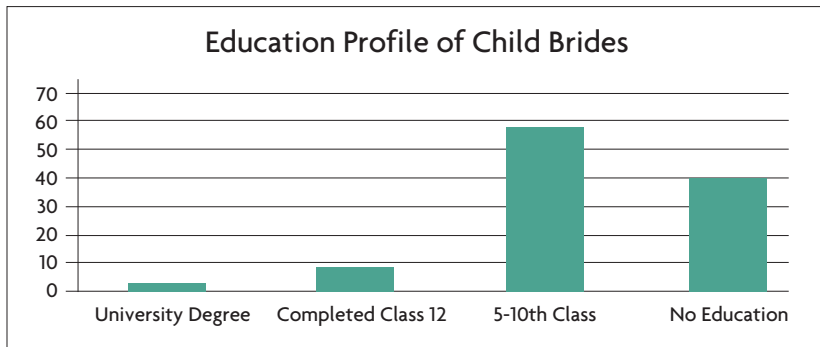
Out of a total of 98 participants interviewed from 5 districts in Haryana, 80.61% (79) of the participants were married as children. Overall, results



Source: Primary data

showed that 15.19% of children were found to be married by the age of 10, and 59.49% of children were married by the age of 15. Only 1.27% of those interviewed had attained university level education, 8.86% had completed 12th grade, 18.99% completed 9th grade, 39.24% completed 5th grade and 40.5% had no education whatsoever. The graph below demonstrates the percentage of those married as children by districts:

It was most common for those married as children to have had no education at all. The highest level of education stated was a Masters, and this was the least common. The following graph indicates the educational profile of the interviewed child brides:



Source: Primary data

In order to dismantle the patriarchal structures that drive child marriage, the government needs to enforce its legislation and policies meaningfully.<sup>35</sup> This means providing legislation and policy structures that are adequate, functional, and sufficiently focused to resolve the problem. Information regarding legislation on child marriage, what the laws are, and the penalties for breaking them should be easily accessible. In order to reach those who are illiterate and do not have access to the internet, verbal awareness-raising in relevant local languages and simple to understand flyers can be produced and distributed.

The two pieces of legislation relevant to child marriage in Haryana, the CMRA 2006 (India) and the Haryana Children Act 1974 (Haryana) Section 39,

<sup>35</sup> (Government of India: Law Commission of India, Proposal to Amend the Prohibition of Child Marriage Act 2006, and Other Allied Laws, 2008)

criminalize child marriage and cruelty to children. It is a lack of proper enforcement, reporting and resources that prevents this legislation from being properly implemented and which allows child marriage to persist at the high prevalence rates that are currently at play. This indicates a possible lack of will on the part of the administration to act.<sup>36</sup> From the fact finding visit, the research team found that there is no proper and strict legislation to generate public awareness of child marriages. Moreover, from the findings of the pilot study conducted by Participatory Research in Asia (PRIA) in Sonipat and Panipat, half of the interviewed girls were not aware of the PCMA and the legal age of marriage.

### **Gendered Violence/Violence Against Women**

*In Haryana, in 2015, there were 243 reported instances of dowry death and 3525 reported incidences of cruelty by a husband or his relatives.*<sup>37</sup>

It is well documented that physical abuse is often perpetrated against child brides by their husband and his family, where they consider the dowry insufficient.<sup>38</sup> This is both a cause of child marriage – as it means brides are married earlier when parents are more able to afford the cheaper dowry – as well as an effect, due to the fact that regardless of why physical violence occurs, it occurs as a result of the marriage in the form of intimate partner violence (IPV). Gendered harm occurs as a result of the physical and emotional toll of the domestic labour workload, pressure to demonstrate fertility (in particular to bear a son), and the caregiver role a young bride is expected to take on for her husband at far too early an age.<sup>39</sup> The findings of PRIA show that out of the total interviewed girls, 39% of child brides faced violence like verbal abuse, physical abuse and social isolation. The above graphs indicate the violence faced within marriage among girls (*More than Just Brides: Early*

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<sup>36</sup> (Government of India: Law Commission of India, Proposal to Amend the Prohibition of Child Marriage Act 2006, and Other Allied Laws, 2008)

<sup>37</sup> Crime in India (2015) National Crime Records Bureau

<sup>38</sup> Government of India: Law Commission of India, Proposal to Amend the Prohibition of Child Marriage Act 2006, and Other Allied Laws, 2008

<sup>39</sup> Centre for Reproductive Rights, Child Marriage in South Asia: International and Constitutional Legal Standards and Jurisprudence for Promoting Accountability and Change, 2013

## BIHAR

*Date of Visit:* August 2015

*Villages Visited:* Patna and Gaya

*Key Respondents:* 20 young married girls and women (including pregnant women), teachers, Block Development Officers, local NGOs, and ASHAs.

*According to DLHS 3, Bihar itself has the highest child marriage incidence in India, at 68.2%, well above the national average of 42.9%*

### **Key Findings:**

From August 8-14, 2015, a team of social activists from Delhi travelled to Patna and Gaya districts in Bihar to investigate the incidence, causes and effects of child marriage. According to the third District Level Household Survey (DLHS-3), Gaya district has one of the highest rates of child marriage in Bihar, with 83.8% of women marrying before the legal age of 18.

Through conversations with teachers, students, village women, ASHAs, AWWs, government medical staff and local officials, the team tried to understand who is getting married, at what age, why, and with what consequences. The answers to these questions highlight gaps in implementation of the PCMA 2006.

To summarize the findings, the team identified the following fundamental rights violations and State failures:

### **Prohibition of Child Marriage Act, 2006**

- There is a serious information gap between the various government bodies, which leads to confusion over who is responsible for implementation. The end result is that no one assumes responsibility for implementing the Act.
- There is also a serious lack of accountability or monitoring mechanisms written into the Act. The people responsible for implementation are under no pressure to actually enforce the law.



- Compared to other parts of India, such as Rajasthan, there is extremely low awareness of the Act, demonstrating that outreach and awareness activities, as required under Section 3 (d) of the Act, have not been sufficiently implemented.
- Every respondent that the team spoke to stated that currently there are no cases coming forward under the Act, and no one is being punished; meaning neither the communities, the police, nor the mukhiyas, take the Act seriously.

### **Right to the Education Act, 2009**

- Government schemes to encourage girls to study until 10th class appear to be successful in keeping girls in school in the areas where they are successfully implemented. However, a major challenge is that in many villages, the schemes are not implemented at all – in fact some villages do not even know of their existence. This is especially true for lower income, more remote or lower caste villages.
- Even when these schemes benefit girls, they still tend to drop out of school after 10th class because due to the increasing pressure on families to marry them, and also because there are not enough seats for them to continue studying. Therefore, a huge number of girls get married around the age of 16 years, which is still in violation of the PCMA by being 2 years under the legal age of marriage.
- Girls face many challenges while attending school, encouraging families to either stop their schooling or marry them off early. Most students have to travel long distances – especially to middle and high schools – on terrible roads, the cost of which is often quite high for very poor families. In addition, the overcrowded classrooms and poor quality of teaching give families little incentive to make the time and financial sacrifices to send their girls to school.
- Marginalized castes like *manjhis* are far less likely to attend school, especially middle and high schools. For example, Kati Vidhayalaya had only 30% Scheduled Caste (SC) students which shows that education access and outreach to the poorest areas and communities is still greatly lacking. When teachers state that most girls are finishing 10th standard, they are

referring to those girls who go to school at all, thus deflecting from the true, dismal state of education for girls in Bihar

### **Dowry Prohibition Act, 1961**

- The greatest reason families cite for marrying their daughters early is that dowry payments increase exponentially every year that a girl gets older. Payment of dowry, an age-old custom in India, has been illegal for over half a century now, yet it is hardly enforced and the custom is still uniformly practiced in the study area.

### **Anti-poverty Welfare Laws and Schemes**

- This areas surveyed of Bihar are some of the most impoverished in the country. Many families are forced into debt and enter into oppressive labour regimes in brick kilns. A huge number of women and children suffer from malnourishment. Therefore, a combination of dowry pressure, hunger, and poverty force parents to marry their daughters early. These problems would be lessened if the communities were not being denied their rights and entitlements to work and food under the National Rural Employment Guarantee Act, 2005 and the National Food Security Act, 2013 as well as other welfare and anti-poverty schemes.

## ODISHA

**Date of Visit:** October 2015

**Villages Visited:** Ganjam and Khordha

**Key Respondents:** 20 young married girls and women (including pregnant women), teachers, Block Development Officers, local NGOs, and ASHAs.

### **Key Findings:**

According to the DLHS, the mean age of marriage for boys in Odisha is 25.3 and 20.5 for girls. 13.4% of boys are married under 21 years, and 19.1% of girls are married under 18 years. Out of currently married women aged 20-24, 37.5% were married before 18 years. The percentage of girls married under the age of 18 in Odisha ranges from 51.7% in Malkangiri to 1.6% in Kendrapara. Of 28 districts, 11 had rates of married girls under 18 at over 30%.

In Ganjam District, the mean age of marriage for boys is 26 and 18.9 for girls. 8.1% of boys under 21 years, and 34.5% of girls under 18 years, are married. Out of currently married women aged 20-24 years, 51.5% were married before 18. In Khordha District, the mean age at marriage for boys is 27.1 and 21.3 for girls. 4.4% of boys under 21 years, and 13.2% of girls under 18 years, are married. Out of currently married women aged 20-24 years, 31.1% were married before 18.

The average age of marriage for boys is 18 years and that of girls is 14-15 years. The maximum age of pregnancy for girls is 17.

The community has not been visited by any government official, such as the CMPOs, District Officer or CDPOs. This was the first time anyone, including activists or NGOs, had ever visited the area in regard to child marriage. Most people in the community do not know about the laws on child marriage. There are a few members who are aware of the law, but it is not discussed throughout the community. Parents choose to marry off girls early because they fear they will get pregnant outside of marriage, or choose someone for love without their parents' consent. This would cause severe social stigma for the family. The tradition of the community is that when the girl is married, she is expected to drop out of school and move to her in-laws' house in order to cook and clean for her new family. She is also expected to get pregnant immediately.

## ASSAM

*Date of Visit:* November 2015

*Villages Visited:* Bhuvan Valley, Kalain (First Referral Unit, Jalalpur Primary Health Centre), Rajpur Tea Estate, Lakhipur (Block Primary Health Centre), Sonai (Primary Health Centre)

*Key Respondents:* 20 young married girls and women (including pregnant women), local NGOs, and ASHAs

### **Key Findings:**

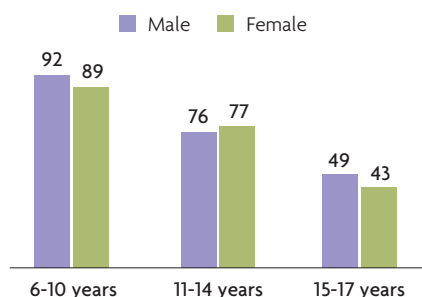
In Assam, like in many other states of India, there is rampant child marriage taking place. According to the AHS report of 2010-11, 10 districts in Assam have underage marriage rates higher than the State and National averages, which stand at 21% and 22%, respectively. Besides, among the married women in the age group of 20-24, the State average of those who were married before they were 18 is as high as 39.4%.

Poverty and lack of access to quality education are major causes of child marriage in Assam. For girls working in tea gardens, employment at the tea garden is more accessible than quality education. Education and the accompanying fees can be costly for poor families. Therefore, families may pressure girls to drop out and work at the tea garden so that they can contribute to household earnings. Girls that drop out of school often elope once they begin working. Girls from minority-dominated districts, in which families traditionally arrange their marriage, may face additional social pressure to marry early.

Dowry concerns also contribute to child marriage. Although dowry is not traditionally practiced in Assam, it has become more common for a groom's family to demand dowry after marriage. Poorer families from tea garden areas reported that the dowry price of older girls is higher than that for a younger girl because the latter has more strength and life left to work for the husband's family once she is married. Furthermore, families feel that it is expensive to continue to feed their daughters and cheaper to marry them off younger. Other residents of the tea gardens stated that it is a general cultural practice to marry girls off around 14 to 15 years of age and expressed fear that if a family

### Are there gender differentials in children's current school attendance?

Percentage of children attending school by age



waits too long to marry a girl off, no one may want to marry her.

### Education Level

A majority of respondents from this fact finding shared that they had been to primary school. Only a small percentage of girls and women had never been to school. The reasons cited for dropping out of school by the

married young girls and women in Cachar district were ease of access to employment at the tea garden, and pressure to contribute to family earnings. Of the women who attended high school, some of them had to drop out as their marriage had been fixed by their parents. The above chart shows that 89% females in the age group of 6-10 years attended school. This drops to 77% in the 11-14 age group and then further declines to 43% for the 15-17 age group.

One of the reasons for such dropouts among the girl child, i.e. 89%-43% is due to prevalence of child marriage in the State. In addition to this, we can witness gender disparity among children who are attending schools. The following table shows the number of school dropouts for the year 2011-2014:

### School Dropouts for the year 2011-2014:

Year	Boys	Girls	Total
2011-2012	12.7	10.93	23.00
2012-2013	9.67	8.00	17.67
2013-2014	5.46	7.02	12.48

Source: Lok Sabha Unstarred Question No. 281, dated on 22.07.2015

Thus, from the above table it is clear that though there is a decreasing trend from 23% to 12.48% for the years 2011-2014, dropout rates amongst girls are higher at 7.02% as compared to 5.46% among boys. It can therefore be deduced that one of the reasons for a higher levels of girls dropping out of

school that boys is due to high prevalence of child marriage in the State. From the fact finding visit the team found that there is a gap in the implementation of PCMA in the State. Out of the total interviewed girls who were married, 17 girls were dropouts because of child marriage. This shows the failure of the school authority to monitor the school dropouts in order to prevent child marriage in the area and violation of the provision of PCMA in the State. Consequently, the fundamental right to education, Article 21(A), is violated by child marriage.

### **Domestic Violence**

Child marriage leaves girls vulnerable to domestic violence and sexual exploitation throughout their lives. According to NFHS-3, Assam State Fact Sheet, among women currently married between the ages of 15 and 19, some 48% agree that a husband is justified in beating his wife for at least one specified reason; only 38% of married women agree that a wife is justified in refusing to have sex with her husband; and 31% have experienced some form of emotional, physical or sexual violence committed by their husbands.

This demonstrates levels of internalized misogyny, a lack of awareness regarding laws relating to gender violence, and a lack of autonomy for women in the state.

### **Maternal Health**

Assam has one of the country's highest maternal mortality rates (328 deaths per 100,000 live births, far greater than the national average of 167 deaths per 100,000 births). According to the latest AHS (2012-2013), 41% of young women in Cachar district aged 15-19 years had already begun childbearing. This exposes girls to many reproductive health risks. Thus, early child bearing is one of the factors responsible for increasing rate of maternal morbidity in India. From the fact finding the research team found that a woman, named Laxmi, had died due to malnourishment and factors resulting from child marriage. Laxmi was 16 years old when she got married, and by the time she was 19 years old was pregnant with her second child. It is quite clear that since she was suffering from malnourishment, she could not take the burden of multiple pregnancies at such a young age, and finally, seven days after the birth of her child she died. Like Laxmi, there are many young girls who die during their delivery. It is clear from such cases that state institutions failed to prevent consequences of child

marriage.

### **Non-implementation of Compulsory Registration of Marriage, 2005**

The Central Government made it compulsory to register marriages so as to prevent child marriages and ensure a minimum age of marriage.

### **Cases Registered Under PCMA**

The following table represents the number of cases registered under PCMA in Assam:

<b>Year</b>	<b>Cases Registered</b>	<b>Person Convicted</b>
2006	–	–
2007	1	–
2008	1	–
2009	0	0
2010	9	0
2011	5	9
2012	9	0
2013	0	1

*Source: Lok Sabha Unstarred Question, 2014*

The above table shows that very few cases of child marriage are registered under PCMA, 2006 in the State. There has been a failure of the government to implement the PCMA, 2006 in Assam. 80% of the women interviewed were not aware of the fact that the State has laws against child marriage. In a depressing confirmation of the vicious cycle of child marriage that inevitably spans generations, all twenty young girls and women interviewed stated that they would also get their girls married young.

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Due to the social effects of child marriage on young children, especially girls, child marriage was formally abolished in 1929, with the enactment of the Child Marriage Restraint Act (CMRA). However, as a result of the CMRA's ineffectiveness, new legislation was enacted 77 years later, in the form of the Prohibition of Child Marriage Act, 2006 (PCMA, 2006).

The PCMA, 2006 defines a child to mean a male below 21 years and female below 18 years. This 'marriageable age' is derived from traditions where women were married off to older men. Despite existing laws, child marriage continues to be practiced openly across India and the world to date, with thousands of young girls and boys getting married with complete support of the family and society.

'Child marriage is a truly global problem that cuts across countries, cultures, religions and ethnicities. Child brides can be found in every region in the world, from the Middle East to Latin America, South Asia to Europe.'

The 2011 Census of India estimates that 33% of women are married before their 18th birthday, despite the existence of the PMCA. There are higher percentages of child marriages within rural areas than in urban areas. This indicates isolation, lack of education, and economic instability as contributing factors to the prevalence of child marriage. The causes of child marriage become an interrelated web of societal issues, including economic struggles, traditional and gender norms, and ineffective enforcement of legislation. It is an ingrained expectation in many rural communities that children, especially girls, should be married young. 'Child marriage remains a widely ignored violation of the health and development rights of girls and young women.'

**This publication is the third volume in the series 'Claiming Dignity', through which Human Rights Law Network addresses a spectrum of violations and violent acts that have been taking place within the issue of reproductive health and rights.**

All photographs have been taken with consent from the participants.



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