



Child Marriages and the Law in India

EDITORS: • APARNA BHAT • AATREYEE SEN • UMA PRADHAN

HUMAN RIGHTS LAW NETWORK

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Thank you

Editors

April 2005

FOREWORD

Without consulting any of the NGOs currently campaigning against child marriages, the UPA government has clandestinely drafted 'The Prevention of Child Marriage Bill 2004' which repeals 'The Child Marriage Restraint Act, 1929'.

The 1929 Act was a queer piece of legislation rendering all child marriages illegal but not void. Child marriage remained valid in the eyes of the law. As a result, child marriages continue unabated even today. Thousands of child marriages are solemnized during the Akshaya Tritiya, Akha Teej, Ram Navami, Basant Panchami and Karma Jayanti festivals. Tribals and minorities also have adopted similar customs.

Instead of plugging the loophole in the law, Section 3 of the Bill lays down that a child marriage will be rendered void only if the children file legal proceedings for this purpose. However, given the social pressure surrounding such marriages, it is unlikely that any such case will be filed.

The 1929 Act was a non-starter. A UNICEF study published in 2001 found that the number of prosecutions under the Act did not exceed 89 in any year. How many of these ended in convictions and

what was the sentence imposed, is not known. The fact is that thousands of child marriages are "celebrated" openly with ministers, senior policemen, district magistrates and collectors attending to "bless" the couples.

A provision for the punishment of officials when child marriages are openly solemnized in their areas, is conspicuously absent in the Bill. At a national consultation held in 2004, NGO's recommended punishment to the Superintendent of Police, the Chief Executive Officer, the gram panchayat pradhan, the pujari, the patwari of that area and all attending public functionaries including MP's and MLA's.

Lack of accountability has caused a boom in child marriages. The National Family Health Survey of 1998 – 99 found 65% of girls are married by the time they are 18. A 1993 survey of women in Rajasthan found 17% of all girls were married before they were 10 and 3% were married before they were 5 years old!

As a result, the pioneering work done by the Brahma Samaj and the Arya Samaj in the 1860s has come to a nought. Behramji Malbari, Harvilas Sharda, Dayanand Saraswati and Mahatma Gandhi raised

their voices against this evil practice nearly one and a half centuries ago. If Ishwar Chandra Vidya-sagar or Raja Ram Mohan Roy were alive today, they would hang their heads in shame.

Child marriages are wrongly understood as merely being formal. It is thought that the consummation takes place much later after “*Gauna*” i.e. after puberty. In reality, this tradition is rarely observed. The little girl is sent to her husband’s home almost immediately. There she becomes not only a slave but also a sexual plaything to be enjoyed by the males of the family. According to a survey conducted by the Social Welfare Department of Bihar in 2002, 57% of all child brides become mothers within the first three years of their marriage. They suffer profound psychological disorders. Their bodies, too tender for sexual activity or the bearing of children, are battered again and again. Pregnancy related deaths are the leading cause of mortality for 15 – 19 year old girls in India.

In contrast, Sri Lanka has managed to raise the age of marriage significantly to 25 years, partly through legislative reforms requiring that all marriages be registered. The Sri Lankan courts have also taken a different approach, ruling that marriages arranged by parents on behalf of

their children are invalid. The legislative changes supported by social policies on health and education created an environment in which the practice of early marriage is in steep decline.

However, legislation by itself is not an answer. In Sushila Gothala’s case, Rajasthan High Court held that “the social evil of child marriages can be eradicated only if the people revolt against this custom.”

While recognizing that child marriages can continue to remain valid, though illegal, Government of India is in breach of Article 16(2) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which lays down that “the marriage of a child shall have no legal effect.” It is also in breach of Article 19 and 34 of the Convention on the Rights of the Child (CRC) requiring the child to be “protected from all forms of physical or mental violence” and all forms of “sexual exploitation and abuse”. India is also in breach of Article 16 of the Universal Declaration of Human Rights, which requires that “marriages shall be entered into only with the free and full consent of the intending parties”.

The Bill is silent on the aspect of registration of marriages. The

national consultation of NGOs recommended that all adult marriages be registered and certificates given, while all child marriages be recorded without the issuing of certificates. This is to prevent the certificate being taken as proof of a legal marriage. No doubt, registration has its own problems. But surely a national debate was called for before such a half-baked Bill was drafted.

In the present bill, no notice was taken of the state legislations in force. Karnataka has a Marriages (Registration and Miscellaneous Provisions) Act 1976, making registration of all marriages compulsory. The procedure is so simple that registration can be sought by post. Maharashtra has enacted the 'Maharashtra Regulation of Marriage Bureaus and Registration of Marriages Act, 1998', making gram sevak the Registrar. Rajasthan has in the pipeline, a 'Rajasthan Compulsory Registration of Marriages Bill, 2002'. The 'Tripura Recording of Marriage Bill, 2003' was passed in the legislative assembly and is awaiting the assent of the Governor. Under the laws of marriage in Goa, a civil registration is mandatory and only registered marriages are considered valid. Child marriages are refused registration.

Should a new law insist that all illegal marriages would also be

invalid, it would be necessary by statute to introduce protection, particularly for the child bride, so that her right to maintenance and her right to a household are not undermined.

No doubt the Bill contains certain welcome provisions. The Bill provides for the intervention of courts to prevent child marriages through stay orders. It provides for the appointment of government officials as Child Marriage Prevention Officers. The consultation of NGOs, on the contrary, came to the conclusion that not only officials but also NGOs be authorized to carry out inspections and make complaints.

The NGO consultation overall concluded, that a carrot and stick approach ought to be taken: a carrot for the poor who are often forced by poverty into marrying their children at a very tender age often to reduce the burden of dowry, and a stick for government officials who disobey the mandate of the law. Poor communities traditionally engaging in child marriages ought to be given incentives to avoid this practice and officials ought to be severely punished for allowing the practice to flourish. Neither of these two measures are found in the present Bill.

— *Colin Gonsalves*
June 2005

CHAPTER I

INTRODUCTION

INTRODUCTION

Child marriage is a marriage of individuals before they attain the age of adulthood. The Indian law recognizes 18 years for girls and 21 years for boys as the age of adulthood for the purpose of marriage. Any marriage before this minimum valid age is termed as child marriage.

Child Marriage is a violation of the Rights of the Child. Here, adults take the decision and children are forced into marriage, without proper understanding or knowledge. Once married, s/he is expected to carry out different obligations arising out of marriage, including responsibilities towards the spouse, the family and society. In a child marriage, the individuals involved are not yet physically, mentally and emotionally ready to handle the obligations attached to marriage. In child marriage, not only do the rights of the individuals involved get violated but their unpreparedness to protect against any violation makes them more vulnerable to further exploitation.

Child marriage leaves an impact on the health and general well being

of the children involved thus undermining the 'best interest of the child' stated in the Convention on the Rights of the Child and as enshrined in various articles in the Constitution of India. It takes a toll on further development of the child with physical, intellectual, psychological and emotional detriments. Indisputably, early marriage constitutes violation of individuals' right to personal freedom and growth, and specifically of their right to give full and free consent to marry.

HISTORICAL OVERVIEW

The ancient Indian literature indicates no prevalence of child-marriage at that time. The most popular form of marriage was the *Swayamvara* where grooms assembled at the bride's house and the bride selected her spouse. *Swayamvara* can be translated as self-selection of one's husband (*Swayam* = self, *Vara* = husband.) Instances of the *Swayamvara* ceremony are found in our national epics, the *Ramayana* and *Mahabharata*. Various types of marriages were then prevalent in

ancient India: *Gandharva Vivaha* (love marriage), *Asura Vivaha* (marriage by abduction) etc. but, among these *Bal-Vivaha* is conspicuous by its absence,¹ which refutes the argument that the custom of child marriage stemmed from tradition and religious practices.

The Vedic Mantras, such as the *Rigveda*, mentioned that a girl could be married only when she was fully developed – both physically and mentally – and that she should be fully developed physically, before leaving her father’s home. Men were advised to marry a girl with a fully developed body. One hymn mentions that a female should be married only “*when she is not a child*”.²

One of the schools of thought argues, that the practice of child marriage originated and strengthened its roots during the medieval ages. The invasions, war and expansion of territory trailed the trends of the times. The established structures and practices were being disturbed by the new rulers who brought in their own

ideas and rules. Law and order was not yet a universal phenomenon and arbitrary powers were concentrated in the hands of a few. The status of women deteriorated from bad to worse, as they were being exchanged as gifts, concubines and slaves. This slowly led to a downfall in the status of women, resulting in the practices like wearing of the veil and isolating women from the rest of society. During this time, customs like *Sati*, denigrating the birth of a female baby and female infanticide, were spawned.

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

The custom of child marriages, with the ‘bride’ and ‘groom’ still in their cradles, was a culmination

¹ Child Marriage, by Sudheer Bridkar, <http://www.vivaaha.org/child.htm>

² Child Marriage in Ancient India, <http://www.stormloader.com/munaypata/India.htm>

of this intention. In addition, it was also felt, that this would reduce the danger to a growing girl's virginity.

Till the 1860's, girls were getting married below the ages of eight or nine years. 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 ill practices of marriage cannot be neglected. Late in the 1860's, some success was achieved when the Indian Penal Code made provision against child marriage.

The debate on the Age of Consent Bill, during the 1880's, brought this problem into the public arena. It was stirred up by the case of an eleven-year-old girl *Phulmani*, who died when her husband raped her. More than 500 women doctors sent a memorandum to the Viceroy requesting him to stop the marriage of girls below 14 years of age. The resulting bill compromised at 12 years.³ This was later revised to 15 years (Section 375 of IPC), before which the consummation

of marriage was considered rape and therefore a criminal offence.

HIGH PREVALENCE OF CHILD MARRIAGES

The practice of child marriage is highly prevalent in our society, in almost all communities, even today. In Rajasthan, a survey of more than 5000 women, conducted by the National Government in 1993 showed that 56 percent of girls were married before they were 15, of these three percent married before they were five and another 14 percent before they were 10. Barely 18 percent were literate and only three percent used any form of birth control other than sterilization.⁴

The United Nations Population Fund projection of 2003 shows, that more than 100 million girls will marry before their 18th birthday, over the next decade, of whom many are as young as eight or nine – most of them against their will. This, despite the fact, that most countries have outlawed child marriage and declared 18 to be the legal minimum age for marriage.

³ Child Marriage in Ancient India, <http://www.stormloader.com/munaypata/India.htm>

⁴ May 11, 1998 Child Marriages, Though Illegal, Persist in India: J.F. Burns, <http://www.ishipress.com/indiamar.htm>

According to the Rapid Household Survey conducted across the country, 58.9 percent of women in Bihar were married before the age of 18, 55.5 percent in Rajasthan, 54.9 percent in West Bengal, 53.8 percent in UP, 53.2 percent in Madhya Pradesh and 39.3 percent in Karnataka. Jammu and Kashmir has the lowest percentage of underage marriage, which is 3.4, followed by Himachal Pradesh (3.5) and Goa (4.1). Despite high female literacy, close to one-tenth of women in Kerala are married before attaining the legal age of 18.⁵

Though the current law prevents the practice of child marriage, the figures above prove that the practice is highly prevalent in different parts of the country. The practice of mass marriage, prevalent in many parts of our country, increases the tendency towards child marriage. This practice is also supported by various traditions and customs, under which children get married at an early age.

TRADITIONAL PRACTICES/ CUSTOMS

Added to child marriage, there are other exploitative customs, which add to the vulnerability of children.

For example, *Nata pratha* is a customary right, which exists in many communities of Rajasthan. This custom gives a woman the right to give up her marriage and associate with another man. However, the distorted version of this practice, prevails in a very exploitative form, presently. Today, *Nata* is attached to bride price, gained through a *Jhagda*. This results in a practice where the father and husband force the woman into *Nata* (ie. to remarry), for a huge bride price. This *Nata* System, primarily aimed at empowering a widow or a separated woman to remarry, is exploited by male relatives (mainly husband and father) to satisfy their own greed.

Another similar practice, adding to the incidence of child marriage is *Gauna*. This custom is highly prevalent in U.P. and Bihar. Here, girls are married before reaching menarche and customarily, *Gauna* is performed some time after the girl has reached menarche, in recognition of the fact that girls are not physically mature enough to consummate the marriage. However, the truth is that *Gauna* does not help to protect young girls, since only five to ten percent of

⁵ Child Marriage Means Child Labour For Daughters, by Sudha Ramachandran, <http://www.panos.org.uk/newsfeatures/featuredetails.asp?id=1002>

them consummate their marriage after the age of 20.⁶ In reality, child marriage takes place on the pretext of *Gauna*. This exposes young girls to the risk of teenage pregnancy and many other consequences.

Sati, self-immolation by a widow, is a practice followed by Hindus. However, there has been no reference in Hindu religious scriptures, which forces widows to commit *sati*. Today *sati* might not be as prevalent as it was before the *Roop Kanwar* incident in 1987; but the ideology of *sati* is still perpetuated, everyday. *Sati* comes with a certain notion: prescribing a widow to behave in a particular way and deny herself rights as a complete human being. The institution of *sati* still flourishes and is continuously being replicated in society. When a child marriage results in forced widowhood it infringes on the rights of the child.

However, the argument that it is a custom does not hold good since customs are never immutable and hence, it is a farce if we attribute child marriages only to customs. Marriage is only one among various events that are practiced in

the name of custom. When a custom becomes exploitative, it needs revision. Customs are ever-emerging concepts and can be changed to create a more just society.

CAUSES OF CHILD MARRIAGE

There is no single cause of child marriage. The reasons behind this continuing practice are manifold. Child marriages are deeply entrenched in the socio-economic context of backwardness, poverty, illiteracy, patriarchy and feudalism, falling sex-ratio, backward status of women in general, characterized by social malpractices like dowry, female foeticide and infanticide and also certain traditional/cultural/religious practices in each region. Some of the apparent causes of child marriage are discussed below.

Poverty

Poverty is one of the major factors underpinning child marriage. Poverty-stricken parents are often persuaded to marry their daughters in the hope of receiving money and sometimes with the prospect of saving money by getting several daughters married at the same time.

⁶ Pg 401, First Periodic Report, 2001 on Convention on the Rights of the Child, Department of Women and Child Welfare, Government of India.

The tradition of child marriage is also deeply embedded because it is regarded, by many, as the safest and most tested way of keeping property and money within the family. Before the children are capable of making their own decisions about marriage, parents ensure that they are married within a close and select circle. The practice is also perpetuated, especially among the economically weaker sections, by the consideration of keeping marriage expenses to a minimum. Many child marriages form the backdrop for trafficking of girls into prostitution when the parents, knowingly or unknowingly, agree to marry off their daughters in return for the huge sums of money offered to them.

Dowry

Dowry is paid by the bride's family to the groom's family, in cash or kind, at the time when the bride is 'given away' (Kanyadaan). The customary practice of *dowry*, which amounts to a huge amount of money, also forces the parents to marry their daughters as soon as possible. The equation for the parent is, that the lesser the age of a daughter during marriage the lesser the amount of dowry to be given.

Patriarchy

Child marriage stems from a complex set of power imbalances between women and men, reflected in widespread social norms. The practice of *patriarchy* places women in a position where they are unable to exercise a choice about their own sexual and reproductive health, in addition they have less freedom to move around, they are isolated from familiar social networks and are not permitted to make decisions regarding their life. This limited freedom to exercise personal choice also contributes to the practice of child marriage where other members of the family, for various reasons, take the decision regarding their marriage. It is interesting, that the father and other male elders make all the decisions regarding the time of marriage and the choice of spouse, which reveals the lower status of women in society.

Sexuality and Virginity

Sexuality of the girl is perceived a threat to social norms. Values like family honor and placing a premium on virginity play a strong role in fostering this practice. The overvalued importance of virginity increases the insecurity with regard to the grown up girl. The parents may feel that marrying a daughter

at a young age, saves them from unwanted social humiliation. In many regions of the world, where virginity is given a high social value, girls are married at a young age, often to men who are many years older. Marriage would also keep the girl “safe” from unwanted sexual advances – this ‘protection’ rationale is often voiced. It also rids the parents of their “burden” of marrying their daughters at the earliest opportunity. The parents also subsume to the belief that boys and girls would indulge in loose moral practices i.e. sexual acts, and therefore they should get them married before this mishap takes place.

Social Myths

Several myths surrounding child marriage contribute to its promotion. There are very strong beliefs that a man can be cured of certain diseases, mental disorders, and even AIDS by having a sexual relationship with a virgin. This practice is further encouraged by the notion that salvation can be attained by marrying at a young age.

Caste Hierarchy

Caste hierarchy perhaps, also had a role to play in perpetuating such a system. Based on birth and heredity, caste does not allow

marriages between members of different castes. But youngsters, whose emotions and passions can be ruled by other considerations, could violate this injunction. Thus, the hereditary caste system could have helped in nourishing the practice of child-marriage out of a necessity to preserve itself.

Poor Implementation of Law

Poor use and implementation of law is a very tangible reason for promoting this practice. Though, even in its present form the Act suffers from certain lacunae, it is capable of impact if it is actually utilized. However, the near nil conviction rate indicates, that this law has classically been observed more in breach, than in practice. In fact, it seems to be (mis) used by the police only to harass offenders and extract ransoms from them.

Political Patronage

Besides, the practice of child marriage is also sustained by the political patronage it receives. Important personalities from politics, the bureaucracy and police grace many occasions of child marriage thus fostering and endorsing it. These incidences of people in the echelons of power, participating in these marriages only prove the lack of political will in bringing existing legal provisions into

practice. Although these political personalities are not directly involved in marriage, their presence translates into their approval. This kind of political protection for the evil practice of child marriage makes the existing law redundant and institutionalizes it more. The authorities frequently ignore mass marriages of children. They are performed in public and in most cases, no attempt is made by the police or schools to stop the ceremonies from taking place.

CHILD MARRIAGE AS A TOOL FOR EXPLOITATION

In many communities, it has been seen that child marriage is propagated to maintain the systematic exploitation of the lower sections of society. Studies have shown that the higher number of people involved in the practice of child marriage are from the backward castes and tribes. The backward castes serve the upper castes who desire to keep them in subservience, forever. There are many instances where, the village headman's daughter would be in school and unmarried, whereas other girls in the village had long been married off. The practice of child marriage thus facilitates the subjugation of the lower sections

of society, including women in general.

Various excuses are cited for defending child marriage – like custom, traditional practice, consummation of marriage after adulthood etc. However, the truth is that these are only excuses to perpetuate the practice. Child marriage has its roots deep in the social psychology of people. This practice reflects the inherently patriarchal nature of our society.

The practice of child marriage systemically engraves the exploitation and subjugation in society. A school of thought believes it to be a tool of exploitation used to suppress the weaker section of society. In this process, children form the most vulnerable group. Child marriage places the rights of children in severe peril, especially those of the girl child. The most apparent consequences are its effect on health – particularly, reproductive and sexual health. But the upshot of child marriage also takes a toll on other personal and social aspects like education, sense of autonomy, sexual and other forms of exploitation and the buying and selling of children. ■

CHAPTER II

EFFECT OF CHILD MARRIAGE

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EFFECT OF CHILD MARRIAGE

The effect of child marriage is multifarious. It is a direct violation of children's right to personal freedom and growth and specifically their right to decide their own marriage. The practice of child marriage takes a heavy toll on the physical, intellectual, psychological and emotional aspects of the children involved. Given the patriarchal nature of society, young girls suffer the most under this practice.

The young bride is prematurely pushed into domestic chores and drudgery, and in many cases, girls are victimized by their in-laws into slave-like conditions. It has been commonly seen, that most cases of domestic violence are perpetrated against wives less than 18 years of age. Further, in almost all cases, girls become prematurely pregnant and get exposed to all the obvious health risks, often with no access to health services of any kind. It is not surprising that pregnancy related deaths are the leading cause of mortality for girls between 15 and 19 years. While this is often linked to poor health care, risks are increased due to the physical immaturity of the girls. Teenage

girls are more susceptible than mature women, to sexually transmitted infections, including HIV/AIDS.

Child marriage continues the vicious circle of persistent poverty, high illiteracy, high incidence of infectious diseases – including HIV/AIDS, malnutrition, elevated child mortality rate, high birth rate, high maternal mortality rate, low life-expectancy of women, reinforcement of the subordinate status of women and most significantly, the inter-generational cycles of all of these.

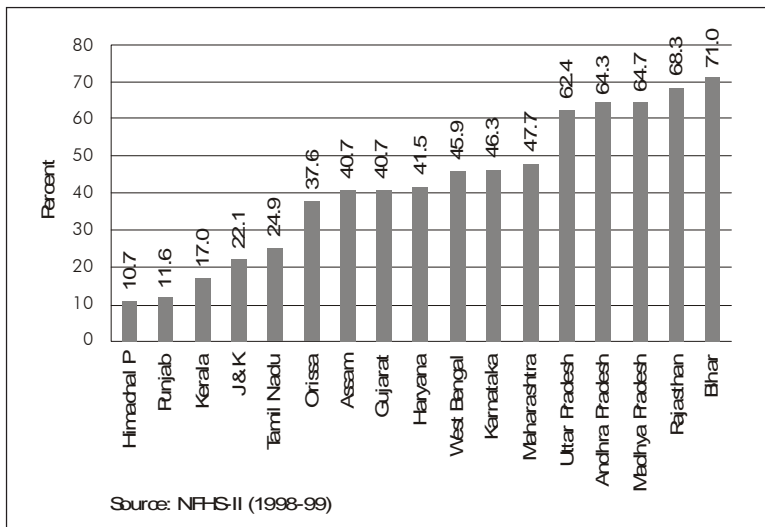
Some of the key effects of child marriages are high fertility rates (early marriage leads to increased span of child-bearing period), adolescent health determinants for pregnancy and its fallouts, low use of contraceptive services, accessibility to education and exposure to mass media, dropout rates in schools for both boys and girls, infant mortality and maternal mortality rates and so on. The problems are compounded by factors such as poverty and lack of access to medical care.

CHILD MARRIAGE AND HIGH FERTILITY RATE¹

High fertility rate is attributed to an early marriage i.e. child marriage. The earlier a woman marries the more likely she is to give birth to a larger number of children, consequently placing a high demand on her health. NFHS-2 findings suggest, that fertility for the age group 15-19 years is 19%

of the total fertility and 37% between the ages of 20-24 years. NFHS-2 data suggests that the median age for the marriage of girls in India is 16.4 years and the mean age at first birth is 19.2 years. When the girl child is burdened with reproductive responsibility at this early age, it certainly leaves a negative impact on her health particularly since she has little access to health care.

Fig.1 Women aged 20-24 years who married below age 18



The data presented in table 1 gives fertility levels for various states. There is a great diversity in fertility levels for different states. The southern and western states show near replacement levels of fertility

(2.1 children per woman) while a few of the most populous states (Bihar, M.P., U.P., Rajasthan), in the northern half of the country, have a skewed fertility rate on the whole, towards a higher side.

¹ NFHS-2 India: Main Report, Chapter 4

Table 1

NFHS-2 age-specific and total fertility rates (TFR) and crude birth rate for the three-year period preceding the survey and NFHS-1 TFR, according to residence and state, India.

State	NFHS-2 age-specific fertility rate							NFHS-1 TFR	NFHS-2 crude birth rate	
	15-19	20-24	25-29	30-34	35-39	40-44	45-49			
India	0.107	0.210	0.143	0.069	TOTAL 0.028	0.006	0.003	2.05	3.39	24.8
North										
Delhi	0.036	0.191	0.174	0.059	0.017	0.003	0.000	2.40	3.02	21.3
Haryana	0.092	0.240	0.150	0.062	0.015	0.009	0.007	2.88	3.99	23.3
Himachal Pradesh	0.029	0.203	0.130	0.045	0.015	0.006	0.000	2.14	2.97	19.9
Jammu & Kashmir	0.044	0.171	0.181	0.100	0.033	0.010	0.003	2.71	U	23.1
Punjab	0.040	0.178	0.158	0.051	0.012	0.003	0.000	2.21	2.92	19.1
Rajasthan	0.120	0.204	0.181	0.103	0.048	0.023	0.009	3.78	3.63	29.9
Central										
Madhya Pradesh	0.142	0.228	0.159	0.081	0.033	0.012	0.006	3.31	3.90	26.7
Uttar Pradesh	0.120	0.256	0.208	0.127	0.064	0.018	0.006	3.99	4.82	31.1
East										
Bihar	0.113	0.223	0.180	0.112	0.050	0.018	0.002	3.49	4.00	28.1
Orissa	0.079	0.174	0.138	0.071	0.023	0.008	0.001	2.46	2.92	22.1
West Bengal	0.107	0.173	0.110	0.047	0.015	0.003	0.004	2.29	2.92	20.8

State	NFHS-2 age-specific fertility rate						NFHS-2 TFR	NFHS-1 TFR	NFHS-2 crude birth rate
	15-19	20-24	25-29	30-34	35-39	40-44			
TOTAL									
Northeast									
Arunachal Pradesh	0.066	0.160	0.129	0.068	0.043	(0.013)	2.52	4.25	22.6
Assam	0.089	0.149	0.116	0.070	0.031	0.007	2.31	3.53	21.8
Manipur	0.042	0.132	0.173	0.153	0.068	0.026	3.04	2.76	25.8
Meghalaya	0.086	0.211	0.232	0.184	0.105	0.080	(0.014)	4.57	35.7
Mizoram	0.054	0.188	0.167	0.110	0.048	0.009	2.89	2.30	25.7
Nagaland	0.056	0.224	0.203	0.102	0.076	0.023	3.77	3.26	30.4
Sikkim	0.065	0.171	0.141	0.078	0.053	0.032	2.75	U	24.5
West									
Goa	0.021	0.039	0.122	0.090	0.026	0.007	1.77	1.90	16.6
Gujarat	0.087	0.230	0.148	0.052	0.018	0.005	2.72	2.99	24.3
Maharashtra	0.129	0.223	0.106	0.034	0.012	0.000	2.52	2.86	23.0
South									
Andhra Pradesh	0.132	0.155	0.087	0.029	0.012	0.003	2.25	2.59	21.4
Karnataka	0.112	0.172	0.090	0.037	0.009	0.003	2.13	2.85	20.4
Kerala	0.039	0.166	0.120	0.040	0.016	0.003	1.96	2.00	18.8
Tamil Nadu	0.083	0.189	0.121	0.032	0.010	0.003	2.19	2.48	21.4

NC. Not calculated because there are too few women

U. Not available

I) Rate based on 125-249 woman-years of exposure

* Rate not shown based on fewer than 125 woman-years of exposure

Almost two thirds of the states i.e. 16 out of 25 (*source NFHS 2*) fall below the national mean of 2.85 children per woman. Hence, these states would have a predominance of problems related to child marriages as compared to those where the fertility rate for the age group 15-19 years is lower, thus indicating more problems with regard to reproductive health issues.

It is extremely critical to understand the damage caused by child marriages to the girl child, in particular, who is not physically or mentally capable of handling married life. What is even worse is, that if she becomes pregnant at such an early age, her physical incapacity to bear children often leads to health complications and even death. When fertility levels are high – a result of child marriages – the consequences result in increased health and other problems for the girl child, who is not ready to take on the role of a married woman and a mother, at such an early age.

The data presented in table 2 shows fertility differentials and trends according to various background characteristics. These factors play an important part in furthering the

institution of child marriage. The table shows that Total Fertility Rate (TFR) is 1.5 children higher for illiterate women as compared to women with at least a high school education. The TFR is 0.8 children higher for Muslims than for Hindus and both the communities have TFR's higher than any other religious community. By caste/tribe, the TFR is 0.5 children higher for scheduled-caste women, 0.4 children higher for scheduled-tribe women, and 0.2 children higher for OBC women than for women who do not belong to any of these groups. The TFR is 1.3 children higher for women living in households with a low standard of living and 0.8 children higher for women living in households with a medium standard of living than for women living in households with a high standard of living. The table shows that socio-economic factors contribute to the continuation of child marriages and in turn worsen socio-economic conditions even more.

CHILD MARRIAGE AND EDUCATION

The level of educational attainment also has a bearing on the marriage age. The NFHS 2² findings show,

² NFHS-2 India: Main Report, Chapter 4

Table 2: Fertility by Background Characteristics

Total fertility rate for the three years preceding the survey, percentage of all women age 15-49 currently pregnant and mean number of children ever born to ever-married women age 40-49 by selected background characteristics, India, 1998-99.

Background characteristic	Total fertility rate ¹	Percentage currently pregnant ²	Mean number of children ever born to ever-married women age 40-49 years
Residence			
Urban	2.27	4.4	3.78
Rural	3.07	6.1	4.73
Education			
Illiterate	3.47	6.2	4.95
Literate, < middle school complete	2.64	5.4	4.06
Middle school complete	2.26	5.1	3.41
High school complete and above	1.99	4.7	2.66

EFFECT OF CHILD MARRIAGE

Background characteristic	Total fertility rate ¹	Percentage currently pregnant ²	Mean number of children ever born to ever-married women age 40-49 years
Religion			
Hindu	2.78	5.5	4.34
Muslim	3.59	6.9	5.72
Christian	2.44	4.3	3.47
Sikh	2.26	4.8	3.59
Jain	1.90	-	3.32
Buddhist/Neo-Buddhist	2.13	3.7	4.05
Other	2.33	5.0	4.33
No religion	3.91	-	(6.62)
Caste/Tribe			
Scheduled Caste	3.15	6.1	4.85
Scheduled Tribe	3.06	6.8	4.74
Other backward class	2.83	5.6	4.43
Other	2.66	5.1	4.20

Background characteristic	Total fertility rate ¹	Percentage currently pregnant ²	Mean number of children ever born to ever-married women age 40-49 years
Standard of living index			
Low	3.37	6.4	4.81
Medium	2.85	5.8	4.67
High	2.10	4.1	3.61
Total	2.85	5.6	4.45

Note: Total includes women with missing information on education, religion, caste/ tribe, and the standard of living index, who are not shown separately.

() Based on 25-49 unweighted cases

* Percentage not shown; based on fewer than 25 unweighted cases

¹ Rate for women age 15-49 years

² For this calculation, it is assumed that women who are never married, widowed, divorced, separated, or deserted are not currently pregnant.

that the majority of ever-married women in the age bracket 15-19 years, are illiterate, the figure standing at 59%. Table 3 presents the percent distribution of married women between 15 and 49 years, by the highest level of education attained, according to age, religion, caste/tribe, and husband's education. Illiteracy declines with declining age, from 65 percent for women between 45-49 years to 52 percent for women between 20-24 years, but rises to 59 percent for women between 15-19 years (because illiterate women are more likely to marry at a young age than literate women). Even though the average figures on illiteracy are declining, more than half of even the youngest ever-married women continue to be illiterate.

A similar proportion of Hindu (59 percent) and Muslim (61 percent) women are illiterate but it is very low among Jain women (only 7 percent). Jain women are also more likely to have completed at least high school (54 percent) unlike women from other sects. Christian and Sikh women also have substantially higher literacy and educational levels than Hindu and Muslim women. Women's educational attainment varies widely by their caste/tribe. While 44 percent of women, not belonging to any scheduled caste,

scheduled tribe, or other backward class are illiterate, much larger proportions are illiterate among women belonging to scheduled tribes (79 percent), scheduled castes (73 percent), and other backward classes (61 percent). Scheduled-tribe women, followed by scheduled-caste women, are less likely than others to have completed primary school, middle school or high school.

Ninety percent of women with illiterate husbands have not been educated themselves. Notably, 35 percent of women whose husbands have completed high school (but not higher secondary school) and 16 percent of women whose husbands have completed higher secondary school, are illiterate. These results show, that husbands at each level of education are more likely to have wives with a lower level of education rather than an equal or a higher level of education. Among women with literate husbands, women whose husbands have completed higher secondary school are most likely to have an equal or higher education than their husbands (35 percent). Table 3 gives state-wise data. It shows state differentials in literacy and educational attainment for ever-married women between 15-49 years. The literacy rate for ever-married women is the highest in Mizoram (90 percent), closely

Table 3: Respondents Level of Education by State

Percent distribution of ever-married women age 15-49 by highest level of education attained, according to state, India

State	Respondents level of education							Total percent
	Illiterate	Literate, < primary school complete	Primary school complete	Middle school complete	High school complete	Higher secondary complete and above	Missing	
India	58.2	5.9	13.4	8.2	7.4	6.8	0.0	100.0
North								
Delhi	29.1	2.7	12.5	11.5	15.4	28.7	0.0	100.0
Haryana	55.2	2.4	14.3	8.1	10.8	9.2	0.0	100.0
Himachal Pradesh	36.3	4.3	23.6	12.6	15.6	7.6	0.0	100.0
Jammu & Kashmir	69.8	1.5	7.9	8.9	6.5	5.4	0.0	100.0
Punjab	36.8	2.9	18.3	10.5	16.8	12.7	0.0	100.0
Rajasthan	75.5	2.8	8.6	5.9	3.7	3.5	0.0	100.0
Central								
Madhya Pradesh	68.5	5.3	11.0	5.7	3.5	5.9	0.0	100.0
Uttar Pradesh	70.2	2.7	9.1	6.8	4.3	6.9	0.0	100.0
East								
Bihar	76.6	3.0	8.1	3.8	5.7	2.7	0.0	100.0
Orissa	59.5	9.6	16.5	6.9	4.4	3.1	0.0	100.0
West Bengal	50.0	14.4	14.9	10.1	5.1	5.5	0.1	100.0

State	Respondents level of education							Total percent
	Illiterate	Literate, < primary school complete	Primary school complete	Middle school complete	High school complete	Higher secondary complete and above	Missing	
Northeast								
Arunachal Pradesh	52.7	9.4	14.5	13.8	5.5	4.1	0.0	100.0
Assam	53.9	11.9	10.5	14.1	5.4	4.2	0.0	100.0
Manipur	42.9	7.6	9.3	17.1	8.6	14.5	0.0	100.0
Meghalaya	38.1	28.4	12.6	11.6	4.6	4.6	0.0	100.0
Mizoram	10.1	25.7	25.4	22.8	10.3	5.8	0.0	100.0
Nagaland	39.8	11.3	22.2	15.1	6.8	4.7	0.1	100.0
Sikkim	49.4	11.8	15.8	11.2	6.5	5.2	0.1	100.0
West								
Goa	28.6	10.9	16.3	12.5	15.4	16.3	0.0	100.0
Gujarat	50.3	6.1	14.7	8.7	9.2	11.0	0.0	100.0
Maharashtra	44.6	8.8	18.1	10.8	9.8	7.9	0.0	100.0
South								
Andhra Pradesh	63.8	5.2	15.4	4.8	6.8	4.0	0.0	100.0
Karnataka	55.2	4.4	14.3	6.6	11.0	8.5	0.0	100.0
Kerala	12.6	9.3	20.9	17.1	24.6	15.6	0.0	100.0
Tamil Nadu	47.5	4.5	18.7	13.4	8.2	7.6	0.0	100.0

followed by Kerala (87 percent), and is lowest in Bihar (23 percent), Rajasthan (25 percent), and Uttar Pradesh (30 percent). The percentage of respondents who have completed high school, ranges from only 7 percent in Rajasthan to 44 percent in Delhi. Other states where the percentage of respondents who have completed high school is relatively high (30 percent or higher), are Kerala, Goa, and Punjab. States other than Rajasthan, where less than 10 percent of women have completed high school, are Orissa, Bihar, Meghalaya, Madhya Pradesh, Arunachal Pradesh, and Assam. The literacy rate increased rapidly in the northeastern states of Arunachal Pradesh and Meghalaya, and in the northern states of Himachal Pradesh and Punjab. Bihar and Rajasthan continue to have very low literacy among ever-married women. Both states that have been ranked last in India, in female literacy, in both NFHS-1 and NFHS-2.

The dropout rates in schools for both boys and girls, which when correlated with the above, help understand the relationship between child marriages and illiteracy/low levels of education,

in underage spouses. Table 4³ gives state-wise information about the dropout rates amongst girls. A trend emerges from the study of both tables, which shows that the majority of girls' drop out by the time they reach the 9th or 10th standard. The steady decline in the numbers shows a very early marriage. The lack of proper and complete education renders these women incapable of acquiring any skill that could ensure them permanent employment. Needless to say, the lack of education also affects reproductive behavior, use of contraceptives, health of the newborn child and proper care and hygienic practices.

CHILD MARRIAGE AND REPRODUCTIVE AND SEXUAL HEALTH

As a result of child marriage, the girl child's reproductive and sexual health are affected the most. These girls suffer from high rates of obstetric complications, intrauterine growth retardation, pregnancy induced hypertension, premature delivery, higher maternity mortality rates, high incidence of RTIs and STIs, and fetal wastage (miscarriages or still births). The neonatal and infant mortality rates are also high along

³ <http://www.azimpremjifoundation.org/downloads/dropoutrates.xls>

Table 4: State/Stage-wise Dropout Rate Among Girls in India (2000-2001)

State/UTs	Dropout Rate Among Girls at Various Stages		
	Primary (I-V Classes)	Elementary (I-VIII Classes)	Secondary (I-X Classes)
Andhra Pradesh	42.22	68.23	77.58
Arunachal Pradesh	50.39	58.87	78.89
Assam	41.4	71.88	75.82
Bihar	62.21	80.31	86.69
Goa	9.94	12.99	43.46
Gujarat	24.36	58.02	74.6
Haryana	19.68	22.48	42.65
Himachal Pradesh	23.99	20.5	37.97
Jammu & Kashmir	31.67	22.15	53.93
Karnataka	18.45	53.55	65.34
Kerala **	-5.98	-9.7	14.29
Madhya Pradesh	27.01	57.3	77.00
Maharashtra	18.75	41.45	59.04
Manipur	22.22	47.82	54.52
Meghalaya	56.96	77.23	85.59
Mizoram	60.56	62.66	68.58
Nagaland	63.07	40.75	65.36
Orissa	42.82	64.75	74.59
Punjab	18.53	37.44	38.84
Rajasthan	65.34	60.93	81.08
Sikkim	58.03	47.88	84.83
Tamil Nadu	31.72	32.41	58.89
Tripura	50.08	67.11	9.55
Uttar Pradesh	62.11	68.54	73.17
West Bangal	56.95	70.17	86.14
Andaman & Nickobar	3.64	30.9	48.26
Chandigarh **	-10.89	2.36	2.09
Dadra & Nager Haveli	40.51	62.59	74.17
Daman & Diu	5.97	24.86	36.54
Delhi	37.69	52.44	70.16
Lakshadweep	1.23	16.36	49.51
Pondicherry **	-4.1	2.01	32.66
India	41.9	57.95	71.51

with incidences of premature delivery and low birth weight of the newborn child.

Maternal Mortality/Morbidity Rate (MMR)

Adolescent mothers are twice as likely to die of complications arising out of pregnancy compared to women 20 years or older. The factors that contribute to a high rate of maternal mortality are frequent pregnancies, malnutrition and infections. An estimated 407 maternal deaths occur per 100,000 live births, and indicate a lack of access to proper health and nutrition services.⁴ NFHS 2 found that 56% of adolescent girls in India are anemic in the age group 15-19⁵ years.

Infant Mortality/Morbidity Rate (IMR)

The risks of early marriage are not just limited to the girl child alone, but also to the child that is born to her as a result of an early pregnancy. One in 15 children in India die before their first birthday as compared to 1 in 200 across the industrialized world⁶. The IMR is 40% higher for adolescent mothers than for adult mothers (107.3 and 78.5 per 1000 live births respectively)⁷. Premature birth, a major concern in case of an early pregnancy, leads to lack of nutritional requirements in the new born child usually characterized by low birth weight and poor growth in the later years.

High Infant and Child Mortality in Young Mothers (<20 yrs. 20 – 29 yrs)	
Neonatal Mortality	63.140.7
Post-neonatal Mortality	29.722.6
Infant Mortality	92.763.3
Child Mortality	31.028.7
Under Five Mortality	120.890
<i>Source: NFHS 2</i>	

⁴ <http://www.populationfirst.org/Index.html?url=http://www.populationfirst.org/Basics/NPP2000.html>, Gender Inequalities and Reproductive Health.

⁵ *Infra n.9*

⁶ 'The State of the World's Children 2003', published by United Nations Children's Fund [UNICEF]; <http://www.populationfirst.org/Index.html?url=http://www.populationfirst.org/Basics/NPP2000.html>

⁷ Agarwal, Deepti & Mehra, Sunil, 'Adolescent Health Determinants for Pregnancy and Child Health Outcomes Among the Urban Poor, cf: Indian Pediatrics-Environmental Health Project, Special Article Series, Volume 41, February, 2004.

Family Planning and Contraceptive Use

Generally, family planning and contraceptive use is limited to the well-off sections of society and mostly in the urban areas. It has also been observed, that contraceptive use is very limited in the case of adolescent mothers, which again results in early pregnancies/ frequent births and the consequent problems related to them. One source shows that only 7% of married women in the age 15-19 years were using contraceptives⁸. NFHS 2 data for married women in the age bracket 15-19 years, who have ever used any method of contraception, is 13% in the rural areas and 15.8%⁹ for urban women. NFHS 2 shows current use of contraception at 8% and the unmet need for contraception at 27%, which is the highest among women below 20 years of age. 15% of births are unplanned. Young people also agree to illegal and unsafe abortions, which may give rise to complications. Besides, adolescent women also face riskier and unprotected sexual exposure within their marriage. This is a direct fallout of the lack of education and exposure to any form of mass media.

CHILD MARRIAGE AND SOCIAL EFFECTS

Child Marriage affects the individual and social well being of children in diverse ways. But the effects are much worse for the child bride. These girls deal with lesser autonomy, less exposure and are highly susceptible to violence and sexual exploitation.

Lesser Autonomy

Our society does not allow women much freedom to use their informed choice over matters pertaining to their health, household or income. They also have lesser mobility. Their control over relative fertility and contraceptive use and their ability to secure health care for themselves and their children is greatly curtailed, even more so for married adolescents. They are also less likely to receive advice on family planning methods. NFHS 2 suggests that 24% of women in the age group 15-19 years do not participate in any decision-making as compared to women more than 30 years of age. Women's empowerment through education and exposure to mass media is the key to resolving this problem.

⁸ The World's Youth, 1996, Population Reference Bureau; <http://gendwaar.gen.in/sawsg/text/articles/Other/Ot32.htm>

⁹ NFHS 2 India: Main Report , Ch 5.

Lack of Exposure

Women married in childhood are less likely to have a wide exposure. This results in their being ill informed about many issues related to their life. The most significant information they lack is on methods of contraception, reproductive health and care. NFHS 2 data shows, that 45%¹⁰ of married women, in the age group 15-19 years, are not exposed to any form of media, regularly. Women in rural areas have less access to any form of mass media than women in urban areas.

High Susceptibility to Gender Based Violence

The patriarchal nature of society makes women, especially in the age group 15-19 years, highly susceptible to gender based violence. Hence, they are often subjected to physical or sexual abuse. They are also most likely to justify physical mistreatment for reasons ranging from moral character to bad cooking. Of the women surveyed under NFHS 2, in the age group 15-19 years, a large number – 61.1% – justified at least one reason for wife beating. 15.4% reported that they had been

physically mistreated since the age of 15. However, their numbers, as compared to those of older women are likely to be lower since they have been exposed to violence for a lesser number of years. However, this does not make them less susceptible, since the NFHS 2 survey reveals, that in the last 12 months, the percentage (11.5%) of women in the age group 15-19 years, who were beaten or physically mistreated was comparable to that for older women¹¹.

Data suggests, that women tend to accept mistreatment because they feel powerless against it. This acceptance without questioning and the experience of violence itself greatly hampers any efforts to empower women thus creating a barrier to health and demographic goals.

Sexual Exploitation

The young married brides also face sexual exploitation by the elders in her marital home. She is also burdened by the responsibilities of the entire family at this very young age and her education takes a backseat. The victims (girls) of Child Marriage are emotionally

¹⁰ Ibid.

¹¹ NFHS 2 India: Main Report, Chapter 3

tormented since the boys who are married early often marry four to five times. Cases of wife beating and sexual abuse are also very high. A child bride faces greater health risks and physical violation and trauma as her young body is forced to deal with early sexual activity and the strains of pregnancy and childbirth.

Child Trafficking

Child marriage is also responsible for the rise in trafficking of women. Studies in child trafficking have shown that child marriage is used as a legal instrument for achieving illegal trafficking. Children are married for a day or two and then trafficked and sold for various purposes, including sexual exploitation and prostitution. This establishes an inextricable link between child trafficking and child marriage. It has been revealed that Child Marriage is used as a mode to increase trafficking, prostitution and bonded labor.

Young girls are being trafficked from states like West Bengal, Assam, Andhra Pradesh and Chattis- garh where they are married young, and called *Paru*. The women in this situation are sold for large amounts of money. A study conducted by HAQ, showed that girls from West Bengal

were trafficked to remote regions such as Kashmir. A large number of girls were being trafficked from Bengal to J&K mainly for the purpose of marrying them to older men or forcing them into prostitution after marriage. Similarly, in South India the entire tradition of *Devdasi* is being used as a tool for the trafficking women.

A study undertaken in Bihar estimates, that more than 25,000 girls have been trafficked in Kosi Mahananda Region for marriage. In the State of Haryana, due to the imbalance in the sex ratio, there is a shortage of women in many villages. So to ensure that men get married, the practice of buying girls, at a cheaper rate from outside the village, is gaining popularity. The Tribune, 8 April 2004, states, that 'a number of illegally bought and sold girls in the Mewat area of Haryana is estimated at 5000, in the past few years'.

Child marriages, further resulting in child trafficking are used as methods of selling women as cheap labor. Children are married, trafficked and sent to work in places like Delhi, Haryana, U.P. and Calcutta. Similar practices are also rampant in the Badyar district of Orissa, especially the tribal areas where child marriage results in child trafficking and the children are then exchanged for money. ■

CHAPTER III

INADEQUACIES IN THE LAW
AND THE LEGAL SYSTEM

CHAPTER III

INADEQUACIES IN THE LAW AND THE LEGAL SYSTEM

The Child Marriage Restraint Act was brought into force to stop the customary practice of child marriage. The Act was first introduced in 1929 and has undergone various changes largely in the form of increasing the age of marriage. The object is to eliminate this evil practice, which has the potential of endangering the life and health of a female child – unable to withstand the stress and strains of married life – and to avoid the early deaths of these minor mothers.

The salient features of this Act are:

- Section 2 of this Act deals with definitions. “Child” means a person who, if male, is under 21 years of age and if a female, is less than 18 years of age. “Child Marriage” means a marriage to which either of the contracting parties is a child. “Minor” means person of either sex who is under 18 years of age. The penal provisions do not invalidate the fact of marriage nor do the penal provisions apply to a child.

- Section 3 of this Act provides, that whoever, being a male above 18 years of age and below 21 years, contracts a child marriage, shall be punished with simple imprisonment, which may

extend to 15 days or with a fine which may extend to one thousand rupees, or with both.

A male above 21 years of age contracting a child marriage shall be punished with simple imprisonment, which may extend to 3 months and shall also be liable to fine.

- Section 5 provides that any person, who conducts or directs a child marriage, unless proven that he had reasons to believe the marriage was not a child marriage, will be punished with imprisonment, which may extend up to three months and shall be liable to fine.

If a minor contracts a child marriage any person whether parent or guardian who is in

charge of the minor, who does any act to promote such marriage or negligently fails to prevent it from being solemnized, shall be punished with simple imprisonment which may extend to three months and shall also be liable to pay a fine (Section 6) provided that no woman shall be punishable with imprisonment.

It is noteworthy that a contravention of the provisions of the Act does not render the marriage invalid as the validity of the marriage is a subject beyond the scope of the Act.

- Section 7 of the Act provides that the Code of Criminal Procedure, 1973, shall apply to offences under the Act as if they were cognizable offences for the purpose of investigation.

No court can take cognizance of any offence under this Act, after the expiry of one year from the date on which the offence is alleged to have been committed.

- Section 12 empowers the Magistrate to issue an injunction prohibiting

marriage in contravention of this Act. The Court may issue an injunction against any of the persons mentioned in Section 3, 4, 5 and 6 of this Act, prohibiting such a marriage.

This injunction shall not be issued against any person, unless the court has previously given notice thereof to the person concerned and has afforded him an opportunity to show cause against the issue of the injunction.

The courts may either of its own motion or on the application of any person aggrieved, rescind or alter any order made under sub-section (1). When such an application is received, the court shall afford the applicant an early opportunity of appearing before it, either in person or by pleader; and if the court rejects the application wholly or in part, it shall record in writing its reasons for so doing.

GAPS AND DISCUSSIONS

The Act, though a good legislation with good intents, does not address the problem holistically. It does not take into account the diverse personal laws and customary practices which permit child

marriages. The Act also does not address the sexual and reproductive aspects of the girl child, which has an enormous impact on her health.

One of the serious problems with the Act is, that it does not authorize an individual to make a complaint to the police and does not empower the police to stop child marriages if it comes to their knowledge. While the police may not readily be willing to stop child marriages on receipt of private complaints, the very fact that such a provision is missing from the Act itself, makes the Act a non-starter. It is known, that by the time a complaint is filed and an injunction is issued under section 12 of the Act, the marriage would have already taken place.

Another serious problem with the Act is its total non-application to situations of trafficking, effects on the health of the persons involved, maternal mortality etc. It has been documented, that in many places (Andhra Pradesh), child marriage is a facade for trafficking for prostitution. Though these are brought to the notice of the police or other government officers, complaints are rarely registered under the CMRA.

Lastly, the punishment prescribed under the Act is very minimal. The maximum punishment

prescribed is three months imprisonment. The Act, therefore, does not even have a deterrent effect on any persons getting their children married. Another aspect, which the Act does not address, is about making any government officials accountable when child marriages take place in their jurisdiction.

There is a serious need to look at the content as well as the working, of the Act, if law has to be of any redressal for addressing child marriages.

INTERPRETATION OF CHILD MARRIAGES AND THE CMRA

The CMRA is silent about the effect of child marriages. It does not explicitly state whether these marriages are “illegal” or “voidable”. Therefore, besides prescribing punishments, the Act does not address the rights of persons who have been married. However, different courts have interpreted these sections differently.

In the case on page 37, while looking at the validity of a sale deed and the proposed child marriage, the Court held that, as the person had nearly reached the age of marriage, the transaction was valid.

Rulia and Ors. Vs. Jagdish and Anr.

In the High Court of Punjab and Haryana
MANU/PH/0138/1973

In this case, a sale was effected 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" 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 v. Mt. Amri, AIR 1951 Punj 421 and Ghulam Bhik v. 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 alienor 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.

Probably, the consideration at the time of the enactment of the Act was to ensure that young girls who get married do not get abandoned because the marriage becomes invalid. However, this has only ensured that the practice of child marriage continues. Another aspect that contributes to this process is the fact that the Indian Penal Code, 1860 recognizes child marriage. Under the section, which defines rape, it is not an offence if a man has sexual intercourse with his wife who is 15 years old or above. (Exception to Section 375, IPC, 1860). In view of these legislations, there is legal sanction for child marriages in the country.

Under this Act, there are very few cases, which have resulted in actual punishment. Again, the range of persons facilitating child marriage, are completely left out from the process. Two cases summarized below, illustrate the manner in which CMRA cases are prosecuted.

Radha Krishan and Ors. Vs.
Ellamma Reddy

IN THE HIGH COURT OF
MADRAS
MANU/TN/00261983

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 the Act only prohibited 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.

Mahendra Shyamsunder Purohit
Vs. State of Gujarat

IN THE HIGH COURT 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 vs. 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 sessions court to send a report to the High Court detailing the situation, so that the High Court in its inherent or revisional powers directs 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.

Taking technical approaches to the problem without realizing the larger ambit and purport of the Act also hinders implementation of the CMRA. For instance, one of the basic problems with the Act is, that it does not allow police to directly intervene in the case. The Complaint has to be filed before the Magistrate and there is a strict limitation. The Supreme Court

while looking at this aspect has held that.¹

In this case, the appellant challenged the continuance of prosecution, by filing an application under S. 482 of the Cr.P.C. before the High Court contending, *inter alia*, that cognizance was barred under S.9 of the CMRA. That having not been entertained was brought to the court by special leave.

S. 9 of the Act states, “No court shall take cognizance of any offence under this Act after the expiry of one year from the date of which the offence is alleged to have been committed”. The court took cognizance more than a year after the offence was committed. The counsel for the respondents stated, that since the complaint had been filed within a year from the commission of the offence, it must be taken that the court had taken cognizance from the date of filing the complaint. Then there would be no limitation.

The court referred to the case of A. R. Antulay vs. Ramdas Srinivas Nayak, at p.530 (Para 31) and decided that filing of a complaint in a court, was not taking

¹ Krishna Pillai vs. T.A. Rajendran and Anr. The text of this judgment is in chapter 5

cognizance and what exactly constituted taking cognizance was different from filing a complaint. Since, in this case the magisterial action had been after a period of one year from the date of commission of the offence, the Magistrate was not competent to take cognizance as under the bar of S.9.

Hence, the appeal was allowed and the prosecution was quashed.

The problem with the vagueness of the Act has added to the problem of the rights of the girl child.

In **Indira vs. Balbir Singh** (High Court of Punjab and Haryana) 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.

A perusal of the cases above makes it clear, that the welfare of the children involved in child marriage, was a concern in only a few of these cases. While these cases are only illustrative and do not reflect all the cases that may have been filed under the Act, it does demonstrate that rights of the persons married have not been the concern of the Courts.

It is interesting, however, to look at the amendments and practices in some States. In Maharashtra for instance, child marriages can be registered under the Maharashtra Regulation of Marriage Bureaus and Registration of Marriage Act, 1998.

In Rajasthan, the High Court directed the State Government to appoint Child Marriage Prevention Officers for implementation of the Act.

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

MANU/0029/1995

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 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.

It is interesting to look at the legislation in Karnataka and the practice in West Bengal. Registration of marriages was made compulsory in Karnataka, as a way of preventing dowry.² In West Bengal, a system was introduced whereby, child marriages, though not registered, had to be recorded. This ensured that the whole process became

transparent and open to action, including prosecution. In Maharashtra, the onus of registering the marriage is on the male.

All these diverse practices, and the fact that child marriages continue to exist, today – and are increasing – makes it imperative that the law is looked at critically and suitable changes made.

² See annexure for the text of the entire Act.

Meharunissa Khan Vs. Kamlesh Naik and Anr.

In the High Court of Bombay

MANU/MH/0927/1993, (Cr.P.C-S.98; IPC-S. 361³)

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

³ Cr.P.C- S.98 states, "Power to compel restoration of abducted females – upon complaint made on oath of the abduction or unlawful detention of a woman, or a female child under the age of eighteen years, for any unlawful purpose, a District Magistrate, Sub-Divisional Magistrate or a Magistrate of the first class may make an order for immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian, or other person having lawful charge of such child, and may compel compliance with such order, using such force as may be necessary."

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".

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 Gujrat, (1973) 2 SCC 413, in which the Apex Court had held that the word 'takes' did not necessarily connote 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.

THE PREVENTION OF CHILD MARRIAGE BILL, 2004

While the Supreme Court is hearing the petition and this entire debate is in progress, the Government of India is proposing to introduce a new legislation: "The Prevention of Child Marriage Bill, 2004", to replace the current Child Marriage Restraint Act, 1929. Though the new Bill, will make a large number of changes, it does not address the basic aspects of registration of marriages, making government officials accountable and monitoring the recording of child marriages.

A bill has been approved by the cabinet, to repeal the Child Marriage Restraint Act, 1929.

While this was a welcome change, a close look at the bill reveals that there has not been much thought behind the revised legislation.

The callousness of the Act is evident right from the preamble of the Act, which states: "a bill to provide for the prevention of solemnization of child marriages and for matters connected therewith or incidental thereto".

The Act does not address the problems faced by the current legislation, it does not take into account diverse State legislations which have been introduced in various States with their positive and negative aspects, and it does not attempt to assimilate these legislations or address the health aspects of the girl child, which is a serious cause for concern.

One of the serious problems with the bill starts with the fact that there is a different definition of the “child” again. For years now, NGOs and activists have been demanding that there should be uniform definition of a “child”. This bill does not take that into consideration. Likewise, the bill does not address marriages performed under the garb of customary practices. Under the personal laws systems existing in India, customary laws have an independent status. Considering the fact that in the last 50 or more years, even though child marriages have been made illegal, customary child marriages do take place in a large scale, this aspect should have been addressed specifically. Another serious lacuna in the bill (section 3) is that it gives the option of making the marriage voidable to both the parties. Studies indicate that there are more women abandoned than men after being married as children. By giving both parties the option of declaring the

marriage void, and also giving powers to the court to return jewellery and other gifts, the bill is inviting serious trouble for women who are likely to be abandoned after having been married for some time. Although there is a provision for maintenance (section 4) to a woman until her remarriage, it only makes it more complicated for a woman, as she will have to litigate. It also does not address the issue of shelter.

One of the serious problems with the previous Act was that it did not give the police any power to register complaints directly. The current bill also does not address the problem fully. It does not clearly lay down the principles under which a complaint can be filed, and the powers of the police. A long-standing demand has been that implementing officers should be made personally accountable for their inaction. This bill does not address this aspect as well.

Nevertheless, the following can be seen as key improvements:

- a. *There is a creation of “ child marriage prevention officers” under section 2(d);*
- b. *The District court under the previous Act, has been replaced with “Family Courts”*
- c. *Child marriages are voidable at the option of either of the parties and the said application can be made within 2 years from the date majority is attained;*

- d. There is a provision for granting maintenance to the girl till she re-marries, in case a decree of nullity has been made;*
- e. There is also a provision for granting the girl residence in case an application for nullification is made by her;*
- f. There are elaborate provisions on custody of the child;*
- g. The punishments have been increased substantially from a mere three months under the current legislation to two years imprisonment and a fine which can go upto Rs. 1,00,000;*
- h. Sale of children for the purposes of marriage, has been recognized and these marriages are made null and void;*
- i. NGOs have been recognized as parties who can make complaints;*
- j. The offence is made non-bailable.*

CHAPTER IV
JURISPRUDENCE

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JURISPRUDENCE

THE CHILD MARRIAGE RESTRAINT ACT, 1929

IN THE HIGH COURT OF
BOMBAY

Rambhau Ganjaram Vs. Rajaram
Laxman and Ors.

Decided on 06.10.1955

1. One Laxman died in the year 1938 leaving him 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.

2. 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.

3. 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.

IN THE HIGH COURT OF
RAJASTHAN¹

Mst. Jati Vs. Daljit Singh

Decided on 30.11.1956

1. This is a reference by the sessions judge, Pali, in a proceeding under section 12 of the Child Marriage Restraint Act of 1929, and arises under the following circumstances.

2. On 15.6.1956, one Daljit Singh filed a complaint against Panna and Mst. Jati who is a petitioner before me to the effect that Panna and Mst. 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

¹ Please see Case No. 10 also as it falls under the purview of Ss. 4, 5 and 6 of the CMRA, infra p.12

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 Mst. Jati did not. The application filed by Ms. Jati before the magistrate for exemption from attendance in Court under section 205 of CrPC was rejected. She thus went in revising application before the learned sessions judge and thus the present reference has arisen.

3. 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.

4. 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.

5. 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 Mst. 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.

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 ejectment. 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.

Validity of Child Marriages

IN THE HIGH COURT OF
MADRAS

B. Sivanandy Vs. Respondent:
P. Bhagavathy Amma

Decided on 07.06.1961

1. 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.

2. 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.

3. 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.

(4 to 7). 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.

8. 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.

9. 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.

Repudiation of Child Marriages

IN THE HIGH COURT OF
KERALA

A. 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.

**Debt taken for Child
Marriages whether Lawful
or not**

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 Gha-nshyam. 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.

IN THE HIGH COURT OF
PUNJAB AND HARYANA

Rulia and Ors. Vs. Jagdish and
Anr.

Decided on 28.08.1972

CMRA, 1929 – Sec.2

In this case, a sale was effected 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 alienor 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.

Punishment

IN THE HIGH COURT OF
MADRAS

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.

Cognizance under CMRA

IN THE SUPREME COURT OF
INDIA

A. R. Antulay Vs. Ramdas
Srinivas Nayak
(1984) 2 SCC 500

Decided on 16.02.1984

Section 9 of Child Marriage Restraint Act, 1929 states:

“No court shall take cognizance of any offence under this act after the expiry of one year from the date of which the offence is alleged to have been committed.”

Appellant, who was one of the accused in the case before the learned magistrate who has taken cognizance of the offence, challenged the continuance of the prosecution by filing an application under Section 482 of Cr.P.C before the High Court contending that cognizance was barred under Section 9 of the Act. That having not been entertained this court has been moved in appeal by special leave. The argument advanced by the counsel for the respondent was that as the complaint was filed within a year from the commission of the offence it must be taken that the court has taken cognizance on that date. However, the apex court stated that filing a complaint in court is not taking cognizance and what exactly constitutes cognizance is different from filing a complaint.

Thus, the appeal was allowed.

Trafficking of Women

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 Dhangri woman (plaintiff) arranged for a mistress for her son aged 24 years and paid the defendant Rs.4,000. According to the Dhangri 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 Dhangri 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.

IN THE SUPREME COURT OF
INDIA

Krishna Pillai Vs.
T. A. Rajendran and Anr.

Decided on 16.11.1989
CMRA—Section 9

In this case, the appellant challenged the continuance of prosecution by filing an application under S. 482 of the Cr.P.C. before the High Court contending, inter alia, that cognizance was barred under S.9 of the CMRA. That having not been entertained was brought to the court by special leave.

S. 9 of the Act states, “No court shall take cognizance of any offence under this Act after the expiry of one year from the date of which the offence is alleged to have been committed”. The court took cognizance more than a year after the offence was committed. The counsel for the respondents stated that since the complaint had been filed within a year from the commission of the offence, it must be taken that the court had taken cognizance from the date of filing the complaint. Then there would be no limitation.

The court referred to the case of A.R. Antulay vs. Ramdas Srinivas

Nayak, at p.530 (Para 31) and decided that filing of a complaint in a court was not taking cognizance and what exactly constituted taking cognizance was different from filing a complaint. Since in this case the magisterial action had been after a period of one year from the date of commission of the offence, the Magistrate was not competent to take cognizance as under the bar of S.9.

Hence, the appeal was allowed and the prosecution was quashed.

INDIAN PENAL CODE, 1860

**Child Marriage performed
after Abduction**

IN THE HIGH COURT OF
BOMBAY

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 Gujrat*, (1973) 2 SCC 413, in which the Apex Court had held that the word 'takes' did not necessarily connote 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.

Appointment of Marriage Prevention Officers

IN THE HIGH COURT OF
RAJASTHAN (JAIPUR
BENCH)

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.

IN THE HIGH COURT OF
PUNJAB AND HARYANA

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.

IN THE HIGH COURT OF
MADRAS

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.

a different conclusion if such had been warranted.

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.

Hence, the court upheld the acquittal of the accused.

IN THE HIGH COURT OF
MADRAS

A. Premchand Vs. Padmapriya

Decided on 01.11.1996

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.

1. 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.

2. The case of the appellant is briefly stated hereunder:—

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

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 mis-representing 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....

5. 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.1 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.

6. 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.”
(Emphasis supplied).

12. 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 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. Since the Division Bench has considered various decisions of other High Courts, we are extracting some of the relevant paragraphs hereunder:

11. 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.

15. 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.

IN THE HIGH COURT OF
GUJARAT

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 plaintiffs 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 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 while 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. Section 3 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 clearly goes to show that there is no statutory declaration of affecting marriage against the marriages solemnized between the persons defined as child under the Act by itself to proscribe such a child marriage to be solemnized and injunction of the court is envisaged rather than statutory prohibition against the Act itself.

4. 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 intio 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.

5. 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 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 adult at the time. Nor was his consent obtained by keeping back any information about the age of his wife.

6. In the present case, marriage if at all 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 husband. As a matter of fact it was known at the time of marriage itself to the appellant that the girl is minor and no fraud about the nature of ceremony has been proved. Thus, in no circumstances, 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 but under the provisions of Section 12 (1) (c) of Hindu Marriage Act.

7. 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 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.

8. 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 Hindu Marriage Act.

9. 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.

Custody of Minor Girl

IN THE HIGH COURT OF
GUJARAT AT AHMEDABAD

Patel Verabhai Kalidas Vs. State
of Gujrat

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 – first, concerning the age of the girl. Second, custody of the girl. Third, 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 questions 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.

IN THE HIGH COURT OF
GUJARAT

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.

IN THE HIGH COURT OF
RAJASTHAN

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. Gadhmull, 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.

Preliminary Inquiries into Offences

Section 10 of the Child Marriage Restraint Act, 1929 states:

Any Court, on receipt of a complaint of an offence of which it is authorized to take cognizance, shall, unless it dismisses the complaint under Section 203 of the Code of Criminal Procedure, 1973, either itself make an enquiry under Section 202 of that Code or direct a Magistrate subordinate to it to make such enquiry.

IN THE SUPREME COURT OF
INDIA

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 Hyera- bad. 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 appellants filed petition under section 482 of the Criminal Procedure Code challenging the issuance of summons on the ground that no case was made out against the appellants. The appellants alleged that no case was conducted by the magistrate as contemplated under section 10 of the CMRA read with section 202 CrPC. The plea raised by the appellants was not accepted by the high court and the petition was dismissed.

3. Heard the learned counsel.

4. The allegation against A-8 and A-9 in the complaint is that they were witnesses to the marriage agreement allegedly executed between the parties. A-9 being no more proceedings against him lapsed.

5. The remaining accused i.e., A-1 to A-6 are stated to be dead. During the relevant period, the bride was allegedly staying with the 4th accused and A-5, the biological mother of the bride was staying elsewhere. Since nothing is sanctioned in the complaint against the role played by A-7, the proceedings against A-5 and A-8 are liable to be quashed.

6. Section 10 of the Act specifically provides that there should be an

enquiry under section 202 CrPC. From the sworn statement of the complainant and the records which were produced by the complaint, we are not satisfied that proper inquiry was conducted by the magistrate.

7. In the absence of a proper enquiry, issuance of summons by the magistrate to the accused was not legal. The matter is remitted back to the magistrate for the said purpose. Proceedings against A-5, A-7 and A-8 are quashed. The appeal is disposed of accordingly.

IN THE HIGH COURT OF
MADRAS

Vijayalakshmi and Ors. Vs.
State through the Sub-Inspector

Decided on 17.04.2004

2. Devraj, the de facto complainant in crime no.63 of 2001 on the file of the Thirupparankundram Police Station, filed a complaint before the learned magistrate alleging that his wife, who is living separately, had given their daughter, who was 13 years old, in marriage to her brother and therefore she had committed offences punishable under Sections 4, 5 and 6 of the Child Marriage Restraint Act, 1929.

3. 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.

4. 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.

5. Heard the public prosecutor.

6. 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.?”

7. 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.

8. 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.

9. 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.

10. 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 closed. ■

CHAPTER V

PETITION FILED IN THE
SUPREME COURT OF INDIA
AND STATE RESPONSES

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AND STATE RESPONSES

A petition was filed in the Supreme Court challenging the fact that child marriages continued despite there being a legislation in force which prohibited child marriages. The Petitioner is 'Forum for Fact Finding, Documentation and Advocacy', which is (hereinafter referred to as "FFDA") a registered society and a 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 discriminations against untouchables. FFDA has conducted research, documentation, awareness and training programmes to ensure the rights of the above target groups, in Chattisgarh and Orissa. 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 to 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 marriages 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 of March 2001 examines the extent of early marriage before 18 years, its context, causes and impact on every aspect of the lives of those affected, particularly young girls, and the wider impact on society. According to the UNICEF report, there were various effects of child marriages. For instance:

a. *Psychosocial disadvantage* – the loss of adolescence, forced sexual relations, denial of freedom and personal development attendant on child marriages has a profound psychosocial, 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.

b. 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 relations and the right to exercise control over reproduction may both be violated by early marriage.

c. Pregnancy and child birth – The risks involved in early conception are death, premature labour, reproductive morbidity, infertility, low weight at birth, pelvic inflammatory diseases, complications 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 year old girls in Chattisgarh. The main causes of death during childbirth are haemorrhage, sepsis, pre-eclampsia, eclampsia and obstructed labour.

d. Infant and early childhood care – Evidence shows that infant mortality is higher in the cases 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.

e. 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 17 & 18 March 2002, FFDA conducted the first phase of its surveys and found that 67 child marriages were solemnized in a fortnight between 03.03.02 and 18.03.02, in seven villages of Badoura, Pipria, Siraha, Bakoula, Bainsadabra, Teliapani and Chian-dad in Kawardha District, among the 'Baiga' tribes (one of the most primitive tribes of India). On being questioned by the Petitioner, the

tribals reported, that they had been instructed by the ‘Sarkari Babus’ to give their ages as 18 (female) and 21 (males), 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 17.03.02 and 18.03.02. 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 arranged to take place on 21.04.02, 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 Pand- haria block consists of 287 villages. The children were in the age group of 4 to 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 Petitioners came across 15,000 child marriages solemnized in the whole of Chattisgarh. The Petitioners visited Abhanpur, Bilaigarh, Simga, Gariyabandh, Kurud blocks of Raipur district where 1,200 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:

On 05.02.03, the Petitioner found in their fifth and last survey, over 1,000 child marriages solemnized in Surguja district of Chattisgarh, where the age group of the children getting married was 9-17 years.

Name of District	No. of Child Marriages Solemnised*
Rajnandgaon	2778
Kawardha	9000
Raipur	1200
Durg	900
Bilaspur	800
Dhamtari	200
Total	14878
* period between 21.04.02 to 15.05.02	

The states of Rajasthan, Madhya Pradesh and Chattisgarh are still gripped by a number of superstitions and low literacy rates as the laws 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, en masse.

There is a high prevalence of these mass child marriages among the thick forests and hill tribes like the Marrar, Kunwar and Baiga tribes. The Marrar tribe falls under the classification of Other Backward Classes (OBC) and comprises around 15 percent of the entire population of Kawardha district in Chattisgarh state. More than 50 percent 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 Chattisgarh, based on a 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 rates and high mortality rate among married women, only a few people have lived to the age 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:

- a. The indifference of the administration and indeed the encouragement given to child marriage, is in breach of the Child Marriage Restraint Act 1929.
- b. Such apathy is also in breach of the Convention on Rights 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.
- c. 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.

d. 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 relief.

a. 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.

b. 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.

c. 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.

d. 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.

e. 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.

f. Issue a Writ, Order or Direction directing the Respondents to initiate criminal prosecution in respect of child marriages, girl child servitude and sexual abuse.

g. 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.

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

The Petition is pending and many states have filed their responses.

The State responses can be broadly summarized as under:

Daman & Diu

- a. As per Article 3 of Chapter 1 of Family Laws No. 1 (Law of Marriage as a Civil Contract) registration of marriage is compulsory.
- b. Child marriages very rarely happen in the U.T. of Daman and Diu.

Haryana

- a. Compulsory registration of marriages does not appear to be desirable as social legislation could not be effective unless it has a social backing of the community at large.
- b. In the absence of a uniform civil code, registration of marriages for different religious communities may pose problems.
- c. Child marriage is not common in the State of Haryana.
- d. Social awareness against the menace of child marriage amongst the vulnerable sections would be preferable rather than introducing a legislation.

Madhya Pradesh

- a. Awareness activities have been introduced to prevent child

marriages and sensitize opinion makers, civil society members, parents of such children and community at large, in the form of publications, audio, Sitcom Training, competitions.

- b. Notices to all Collectors about the Child Marriage Restraint Act. Resolution passed opposing child marriages.

- c. Reports called from all Collectors about the steps taken to prevent child marriages during “Akshaya Tiritiya”.

- d. A circular has been published whereby boys and girls who have been marrying as children are disqualified for government service.

- e. There is a public proclamation made in every village through beating of drums.

- f. Leaflets in local languages highlighting ‘why child marriages should not be performed’, have been distributed to the general public in the states, showing the adverse affects of such marriages.

- g. Officers have been advised to keep a distance by not participating in the functions promoting and concerning child marriages.

h. Appeal made by the Chief Minister and the Deputy Chief Minister to the public, that child marriage is a social evil.

Chattisgarh

a. The State has framed a comprehensive policy called “Chattisgarh State Policy for Women Empowerment”.

b. Collectors have been directed to take effective steps to identify the sensitive areas and take up special drives especially at the time of Akshya Tritiya and other important dates when the child marriages take place.

c. Sarpanch’s of the Panchyat are personally trying to convince the concerned people against child marriage.

d. Directions have been issued to the Collectors whereby, inter alia, they have been asked to prepare a list of teenage girls in villages and to take immediate legal actions in case of receipt of intimation about child marriages.

E. Legal action has been taken against persons who have been involved actively in child marriages.

F. The reports given in the Petition with respect to the number of child marriages are highly exaggerated.

Bihar

a. To stop child marriages, steps have been taken by directing all Divisional Commissioners, District Magistrates and Deputy Directors, Welfare, D.W.O’s and D.P.O of the State Government. They have been directed to give wide publicity to this Act and also directed to lodge an F.I.R. against parents/ guardians responsible for child marriage. MP’s and M.L.A’s, Chairman, District Board, Panchyat Pramukhs and Mukiyas have been requested by the Hon’ble Minister, Welfare to be aware of this evil and try their level best to prevent the same.

Maharashtra

a. Maharashtra has enacted the “Maharashtra Regulation of Marriages Bureau and Registration of Marriages Act, 1998” with effect from 15th April 1999 wherein there is a provision for compulsory registration of marriages in the State.

b. The State Government has appointed Gram Sevaks who are the Marriage Registrars as “Child Marriage Prevention Officer” in 2003.

Punjab

- a. Child marriages are very few in Punjab.
- b. Only three cases came to the notice of the State Government in 2000, 2003 and 2004 and action has been taken.

Goa

- a. As per the Portuguese Laws, which continued in force after the liberation of Goa in 1961, the registration of marriages is compulsory and marriages solemnized in any other form are not legally valid.
- b. Since registration of marriages is compulsory and Registrar does not register child marriages, there have been no incidences of child marriages in the State of Goa.

Tripura

- a. All District Magistrates and Superintendents of Police have been directed to implement the provisions of the Act through mass awareness programmes and by preventing any child marriage within their functional jurisdiction.

b. All Chairmen of Panchayat Samities etc, have been requested to discuss the matter by organizing meetings in their respective areas, for the purpose of generating public awareness against child marriages.

c. The Tripura Recording of Marriage Bill 2003 was introduced in the Tripura Legislative Assembly, which has been passed and is awaiting the assent of the Governor, Tripura. As per this Act, all marriages performed after the Act are to be satisfactorily recorded in the format provided.

d. There are penalties in case of willful failure on the part of the male partner to report the fact of marriage. It is interesting that reporting the fact of marriage vests solely with the male partner.

e. The State Government is empowered to appoint Chief Marriage Recorders, District Marriage Recorders and Marriage Reporters for the purpose of direction, superintendence, control and detection of child marriages.



CHAPTER VI

A REPORT ON THE
NATIONAL CONSULTATION ON
CHILD MARRIAGES IN INDIA

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A two-day national consultation was held on the topic '*Child Marriages in India: The Way Forward*' on 17th and 18th of July 2004 at India International Centre, New Delhi.

The consultation attempted to bring the various issues related to child marriages into public deliberation. There was a reflection on countering the menace of child marriages, issues of accountability and critically revisiting the existing laws. The specifics on amendment and formulation of a new law were also highlights of the programme. The consultation underscored that law and social movement need to move hand in hand to combat the problem of child marriages. The discussion also contemplated the empowerment of the girl child, taking decisions on matters pertaining to her marriage, health and reproduction, and whether any such program was already in place.

Representatives of various organizations from different parts of the country were present at the programme. They reflected on the issue and shared their efforts in

arresting the tradition of child marriages. Pointing out the lacunae in the law in checking child marriages and the practical difficulties faced by them in implementing the law, they also put forth their views and suggestions on the way forward to eradicate this age-old custom.

At the end of the meeting, a revised draft of demands to be placed before the Supreme Court was outlined by the various organizations to counter this custom effectively, by building up social and legal pressure on those indulging in this practice.

A presentation was made on the PIL filed on 23rd April 2003. The case was filed when the shocking instance of mass child marriages, in the State of Chattisgarh, was brought to everyone's notice by displaying clippings of the 100-200 child marriages taking place. The audience was apprised of the dangers of child marriages, particularly on the girl child. These primarily involved the risks on the health of the girl due to adolescent pregnancy and sexual exploitation.

Weak Act: It was pointed out in the petition, that The Child Marriage Restraint Act, 1929 (referred to as *CMRA* henceforth) is weak and not implementable and is therefore unable to stop child marriages. The penalty mentioned in the *CMRA*, is inadequate and hardly a deterrent. A very important problem highlighted, was the patronage of people from politics, the bureaucracy and police services who grace such occasions thus fostering the custom. The question of accountability comes in at such instances, because they are the ones who are responsible for the implementation of the law. The example of Jharkhand was cited, where to fulfill the quota of the adivasis, 200 child marriages were arranged and the Chief Minister himself graced the occasion.

The Supreme Court has considered these points and taken cognizance of the issue of registration of marriages. The states were directed to introduce registration of marriages by a court order. They responded by filing affidavits, extending their efforts to curb the practice of child marriages.

The consultation progressed by elaborating on the various legislations passed by different states. Maharashtra has the

Registration of Marriages Act, 2002, whereby even child marriages are registered. One of the objections raised to this provision was, that in case of no registration there is no marriage. Therefore, in a divorce proceeding, a man can simply deny the fact of marriage and escape paying the maintenance. However, the Act does not invalidate marriages in case of non-registration. So, this fact coupled with the meagre fine of Rs.500, defeats the very purpose of registration of marriages. Besides, there is no way an erring police officer or a Collector, can be made accountable for failing to prevent a child marriage or being present on the occasion. Under the Child Marriage Act of Rajasthan, when the registrar informs the police after the registration of a child marriage, the police say that it is a legal marriage since it has been registered. This way, the Act, in effect, legalizes child marriage.

In the consultation, the example of the movement started by Raja Ram Mohan Roy was also referred to. The stress was laid on the simultaneous involvement of both the law and social movement to challenge the menace of child marriages. It also pondered on the idea of invoking the new government on the issue, so that

there could be a new legislation or an amendment, both at the national and state levels.

Examining the CMRA: A critical analysis of the CMRA was made to scrutinize its present state of failure. It was discussed that the Act was very secular in nature but different religious groups have interpreted it in their own convenient ways and mis-utilised its clauses.

Child marriages are prevalent in most communities, apart from the Hindu community, coupled with the practice of mass marriages. However, the CMRA does not address these issues. This calls for a fresh look at the Act. The practice of invoking customs and traditions to block punishment to the responsible parties also needs to be re-examined. Nevertheless, there is a need to understand, that punishments are not the only solution to the problem.

Uniformity of Age of Majority: Different legislations define the term “child” differently. While it is desirable to have a uniform age for both boys and girls, below which they can be defined as children, there is a problem of non-uniformity of age for adulthood. The age of consent in the IPC is 15

years and consummation of marriage below that age renders it void. Hence, in effect, the IPC recognizes, that a marriage between 15 and 18 years is valid. This conflict of laws has to be regarded and resolved. There is a need to clearly establish a uniform age of adulthood, for all the laws pertaining to children. One positive aspect, however, is that there was no invalidation of the marriage when it was brought to notice. This ensures that the husband does not abandon the girl.

The weakness of the Act is in not being sufficiently punitive. The provision for the punishment has been made under section 3 but it is hardly a deterrent. The magistrate has the discretionary power to reduce the punishment if he or she thinks it fit. Also, while the Act criminalizes child marriage, unlike criminal law the burden of proof is on the person contracting the child marriage. This makes the job of the prosecution even tougher to secure a conviction, since the accused can cite a reason of honest belief, or produce an age certificate to escape conviction.

However, the provision of injunction under Section 12 of the CMRA seemed to be the most

worthwhile provision in the Act. Complaints can be made directly to the magistrate and an injunction can be obtained. This is necessary for initiating quick action in case a child marriage is reported. There is a need for awareness and education and the use of provision u/s 12, to check the cases of child marriages, till there is a more concrete law in place.

State Government Responses to the PIL by HRLN: In response to the PIL, seven states responded by filing affidavits – Tripura, Punjab, Goa, Maharashtra, Madhya Pradesh, Chattisgarh and Bihar. Most of these states have awareness programs for prevention of child marriages, compulsory registration, and recording of marriages. But they always seemed to circumvent the central issue. A review of the legislations in these states and the affidavits filed by them, was undertaken at the consultation.

Tripura affidavit: The Tripura Governor has not yet signed the affidavit. The present Tripura Recording of Marriage Bill provides, that a male partner can register the marriage and in the case of a minor partner, the parents can sign the marriage deed. This does not stop child marriage. The

progress in Tripura, so far, is that some awareness programmes like road shows, public meetings, radio and T.V programmes etc, have been undertaken.

Punjab affidavit: In Punjab, between 2000-2004, only three cases of child marriage were registered and action has been taken in all these cases. According to the monthly reports sent by the State, the Act is being fairly implemented and there are not many cases of child marriages.

Goa affidavit: In Goa, registration of marriages is compulsory because of the provision of civil contract marriages. There is no law but the civil contract binds the marriage and all marriages must be registered with the registrar. It was found, that no child marriages have been registered in Goa. If any child marriage or any marriage is not registered, then it is an invalid marriage.

Maharashtra affidavit: Here, there is compulsory registration of marriage and the CMRA is thoroughly implemented. In this state, awareness is being spread through documentaries, road shows, films etc. *Gram Sewak* is the registrar as well as the child marriage prevention officer.

However, there is no mention of prevention and child marriages do get registered. The registrar may take action after being informed. The penalty is a meagre Rs. 500/- and child marriages do not get invalidated after registration.

Madhya Pradesh affidavit: The state government is conducting programs to create awareness. Directions have been issued to the SPs to take action in case of a violation and collectors have been asked to prevent child marriages in their areas. However, no proactive steps have been taken to stop child marriages.

Chattisgarh affidavit: The state government cited, that the recent creation of the state was the reason why there was no law on the subject. But they claimed to have a policy for empowering women. Also, the official figure of child marriages stood at 75 for the year 2002, denying the findings that 3,000 child marriages take place, annually. Most marriages take place around the time of Ramnavami and Akshya Trtitiya. However, all reports were termed as exaggerations.

Bihar affidavit: The Child Marriage Restraint Act is actively implemented by the State. All

district magistrates, commissioners and collectors have been ordered to act upon the Marriage Act. FIRs have been lodged against the guardians responsible for the child marriages. But none of the affidavits have stated, that they will take action against the SP or Registrar of marriages, who are the persons propagating these marriages.

The discussion on the State affidavits presented the apparent image of government as not treating the issue with seriousness. What appeared from the above discussion was the fact, that the state laws, in effect, contributed to promoting child marriages and not curbing this system. All the state affidavits incorporated awareness programs but none spoke about the prevention of child marriages.

Registration of marriages: The issue of registration of marriage also emerged as an important issue. If there is no registration then it won't be clear if a marriage has taken place or not and hence, it is difficult to validate the marriage. On the other hand, if registration did take place, the marriage would be invalidated.

The second point raised was on the increase in age of marriage due to

compulsory registration. The Sri Lanka example was criticized, given that registration and rise in age of marriage are clubbed together because of several other social factors in their society. Therefore, to address child marriage, socio-economic factors also need to be considered seriously.

Customs: Though customs are cited as the most common reason for child marriage, this argument does not always hold good. Customs are never unchallengeable and hence it would be a farce if child marriages were attributed to customs.

Dealing with erring officials: As far as punishing those officials who violate the law on child marriages is concerned, it should be considered a violation of oath of office as per Schedule III of the Constitution. Strict action should also be taken against any public servant taking active part in a child marriage, including the higher authorities and not just lower level workers

Section 7: As regards section 7, the culpability lies on the person who gives orders to perform child marriages. Section 7 is sufficient and the provisions of Cr. P.C could

be applied to deal with this. Some pamphlets should be distributed amongst the public, to educate people on this matter.

Child marriages in the state of Chattisgarh: The status of child marriages in the state of Chattisgarh was brought under sharp focus. The study by FFDA in the state revealed, that child marriages were being performed in the age group 2-15 years and it was mostly the tribal people who were engaged in child marriages. The study also revealed that more than it being a custom, it was actually a caste conspiracy against tribals to systematically exploit them. A total of 47% of the population were involved in the practice of child marriage and this percentage comprises the backward castes and tribes alone.

More findings suggested an abysmally low literacy rate of 37%. Since the backward castes serve in the homes of the upper castes, the upper castes conspire to keep them in bondage and subservience forever. In one instance, the (tribal) village headman's daughter was studying and had not been married but the other girls in the village had been married off. The headman cited this as a tradition and those who did not conform had to pay huge fines.

A fact-finding team found, that the entire village community and the headman were sexually exploiting girls in the name of tradition. In one case, a girl and a boy were caught in a love affair. As punishment, they were ordered to only wear underclothes while the girl was auctioned to the villagers for Rs.551 and to the headman for Rs.51. When the team tried to intervene, the team was confined to a room for ten hours, as a punishment.

Labor requirement and child marriages: A detailed study revealed that the problem of child marriage is closely related to requirement of labor. Families marry their daughters, within the family, at an early age, to add them to the labour force. Early marriage reduces the chances of them getting married to other families.

There are groups who use children for cheap labor by paying some money to the family. These children are sent to work in places like Delhi, Haryana, U.P., Orissa and Calcutta. There is an increase in child marriage for the sake of child trafficking.

Law and society: The need for a law, made after considering the

needs of the society, was stressed. Most of the people affected by the stringent laws of the government, are those who are extremely poor. It was highlighted, that apart from the custom of child marriage, there were other exploitative customs that also needed to be looked at and solutions found for all. For example, Rajasthan has the custom of *Nata*. It is actually the customary right of a married woman to go to another man. Presently, the woman is being forced into *Nata* by the father and the husband, since there is a huge bride price paid through *Jhagda*. Notwithstanding the corruption, what needs to be examined is whether the woman will lose her customary right, if registration is made compulsory. All this needs to be seen within the context of the various communities that are directly affected.

Concern was raised about the ideology of *Sati* – still being perpetuated everyday – which needs to be challenged. Similarly, the issue of the two-child norm was also highlighted, which results in increasing the problems of the poor. The two-child norm is pushing more women into sex determination since the issue of son-preference has not been addressed.

It was urged, that all these social issues need to be sorted out simultaneously and only pushing the legal aspects would not solve the problem holistically.

Reasons for early marriage and its effects: The reasons for marriage at a younger age were also taken up in the discussion. The fear of coercive sex was one of the reasons that led to early marriages. Lack of education also played an important part in it. It was suggested, that groups should be formed to monitor the repercussions on the child after early marriage. Concerns about the problems related to child marriages were also raised, among which health problems, delaying pregnancy, being a mother at risk, lack of birth preparedness etc. are some of the important issues.

Empowerment of women: The need for empowerment of women was stressed, as a way of combating child marriage, from a holistic perspective. An empowered woman would be able to enjoy more freedom and make choices about her reproductive health and the marriage of children. Plans to introduce a module for education and develop the skills of women, were also discussed in the consultation. This was being

planned in coordination with the UNEP. For example, if daughters-in-law were skilled in developing soil manure by composting, they would earn a place of pride in their in-laws house. It was highlighted that women's workforce participation was also an issue that had not been studied so far, in detail. There was no doubt about the fact, that the literacy level of the mother had a bearing on the age of marriage of her child.

Child marriages in the state of Karnataka: Initiatives taken by Campaign Against Child Trafficking (CACT), especially in the northern regions of the state where most of the child marriages were taking place, were shared. The discussion highlighted the political patronage given to the practice of child marriage. There were instances when the Chief Minister himself came down to bless the couples. Despite writing to the CM, the S.P and the D.C.P, many marriages were solemnized, during the marriage of a minister's son.

In another case, the CACT workers faced stiff resistance when they tried to intervene. The women and child department raised the question as to what would happen to those girls whose marriages had been stopped. To address this

concern, the NGOs and concerned authorities together decided that follow-up action, such as sending girls to pre-schools, could be a possible solution. The juvenile justice board took up another 15-20 cases of which some were referred to other NGOs. These organisations focused their efforts in areas of trauma counseling, meeting with the community to change their attitude towards the girls whose marriages were called off, and making people aware of the law on the practice of Devdasi.

Bhanwari Devi, a social activist in Rajasthan, was raped when she tried to stop a child marriage. However, the picture is changing slowly, ever since the media brought the issue into the spotlight and international focus. Lack of knowledge, information and awareness are the main causes of these problems. To eliminate this evil from society, a multi-pronged approach needs to be followed, ranging from awareness programs to community initiatives such as life-skill programmes for young girls and enforcing the legal age of marriage.

Education has also helped change people's attitudes. A person from Bihar said that though he and many of his friends were married in

childhood, their children abhor the idea of child marriages.

Power of the state: An important point raised was, that the police and the state should not be encouraged to beat-up people or exploit them. It was also urged that child marriages should be looked at in the context of what the girl chooses and not just the CMRA.

Trafficking: A study conducted by HAQ, showed that a large number of girls were being trafficked from Bengal to J&K mainly for the purpose of marrying them to much older men or forcing them into prostitution, after marriage.

Declining sex ratio in Haryana and Punjab: Attention was drawn to the declining sex ratio in the states of Haryana and Punjab. Minor girls, who had been married at a young age, were being trafficked from states like West Bengal, Assam and Chattisgarh. Known as 'Paro', they are devoid of any rights whatsoever, and are subjected to sexual slavery and bonded labor. The whole process of trafficking involves large amounts of money.

The discussion was also aimed at seeking possible solutions to end the practice and other issues related

to it. Some of the major points were:

- Need of child focused law
- Tackling traditional marriages
- Punishing the government officers responsible for preventing/prosecuting child marriages
- Incentives – if at all possible, to be given to the people to delay marriages
- Whether charges for rape under IPC could be filed or not for underage consummation of child marriage?

Tackling the problem: The points that emerged from the discussion showed how the problem has been tackled in different parts of the country.

In Karnataka, which has one of the oldest laws on compulsory registration in the country, groups have demanded compulsory registration of marriages. This requires a proactive approach from the judiciary and the police. However, the reality is that people in the echelons of power are themselves participating in these marriages. The commissioner has been requested to provide forms to big organizations, so that the ages of the boy and the girl – apart from other information – can be recorded. Rules for the organizers

state, that they have to give a birth certificate or identity to those who are already over 18 years of age. There is a demand to punish those government officers who participate in it. The role of NGOs is actively sought for stopping child marriages, as well as taking up cases against erring officials and ministers. The procedures for stopping child marriages should be such that the NGO can directly take action since getting a warrant wastes a lot of time.

In Maharashtra, the *gram sewak* is authorized to stop child marriages. The matter is handled entirely by the Panchayat, which hardly abides by the Constitution. The Panchayat decides whether a marriage should take place or not in case a minor has been raped. If the rapist is a married man, it violates the law, but the Panchayat's decision is final. This custom needs revision; it should be mandatory for the Panchayat to obey the law of the land though enforcing the Constitution at the local level is undoubtedly a daunting task.

There have been cases where girls, inspired by social programmes, have resisted child marriage and joined the rallies. Though the law punishes those involved in child marriage it should provide an

incentive to delay marriage as well. The government cannot do anything for those girls who resist marriage and are tormented and harassed. In another incident, a boy and girl who had eloped, were burnt in a brick kiln. Since marriage has become such an exploitative institution, there is an urgent need for provisions in the law which help those girls who don't want to marry at all. There should also be incentives for late marriage if not for no marriage at all.

Misuse of government funds:

Another issue that was raised was the misuse of government funds by the ministers and MLA's who lead these marriages. Though they have their own source of funds in tribal areas, this practice still continues and a lot of government money is going down the drain.

Punishing those responsible:

Another serious issue raised many times during the consultation process, was regarding the punishment of those who are responsible for conducting or directing and failing to prevent these marriages. Several objections were raised – such as the jail population would overflow, and it would be difficult to decide the punishment – if every relative who

participated was punished. The implication on the family is also to be considered – since if one member is punished, the whole family is affected. The punishment should not be class biased. Strict action should also be taken against any public servant, from the lower rung or higher authorities, for taking active part in a child marriage. CMRA should be amended so that prosecution becomes easy. Police should have the power to make arrests.

In cases where the marriage was consummated, and the girl was underage, the boy should be booked under rape. But filing cases against the poor will never solve matters. Child marriage issues have to include matters of neglected education and health. Since the role of the state comes before that of the judiciary in a democratic state, it is the primary role of the state to ensure the good health and well being of its citizens. Increasing the responsibility of the state was the main focus of the discussion. For this, loopholes in civil society need to be sorted out so that collaborative efforts by civil society and NGOs can be taken forward. For this purpose, the framework has to be one, where:

- The child is the focus
- The state will be responsible for framing any Act

- State officials will be governed by a code of conduct
- Special care will be taken that the dalits and oppressed sections are not victimized
- The law will also take care of traditions and customs.

There was a suggestion that all marriages, except illegal marriages, should be compulsorily registered. The certificate of registration should be given only to adult legal marriages. Child marriages should be recorded but no certificate should be issued, unlike Maharashtra, where a certificate is also issued thus making the marriage legal.

There was a unanimous agreement on the issue of punishing all those responsible for preventing child marriages. This would include people like ministers who grace such occasions, SPs, collectors, marriage prevention officers, MLAs, Gram Sewaks, CDPOs and Pujaris. There was, however, a difference of opinion on whether to punish the parents or not and whether it would be right to book people who marry off their children due to deprivation, poverty and fear of coercive sex.

The annulment of child marriages was also debated. According to the existing law, child marriage is illegal but not void. But declaring child marriages invalid, would jeopardize women's status on property and their claims for maintenance.

Injunction should be granted immediately so that a child marriage can be stopped quickly. The procedural difficulties in law that delay swift action were also discussed. Some NGOs and people from civil society, apart from the government officials, should be empowered to make enquiries and take action. There should be incentives for increasing the age of marriage. There should also be an increase in the amount of the fine – though some had a different opinion.

Early marriages and risks: Early marriages pose a great risk to the girl child especially to her health. The child born to adolescent mothers is also at risk. The presentation by the Population Council¹ focuses on early marriages and the risks associated with early pregnancy and childbearing. It provides some idea of the proportion of women in the age groups 15-19 and 20-24, who

¹ For the detailed presentation made by Population Council, see annexures.

get married before reaching the legally permissible age of 18. It also shows, that at least 50 percent women get married by the time they are 18 years of age, which means these women are married before they become adults. The risks associated with early marriage are as follows:

- These women give birth while still in their adolescent years. The average age at first birth is 16.7 years for those who marry before the age of 15.
- Adolescent mothers have high rates of obstetric complications like eclampsia, intrauterine growth retardation, pregnancy induced hypertension, premature delivery, etc.
- The maternal mortality rate is also high among adolescent mothers – twice that of adult women.
- The neonatal mortality rate is also high for adolescent mothers – 63 per 1000 live births as compared to 41 for women in the age group 20-29 years.
- The infant mortality rate is very high. Besides, it is most likely that the new born child will be of a low birth weight.
- Gender based violence is more likely to be perpetrated on women who are married in their childhood.

Causes of early pregnancy: Other causes of early pregnancy are:

- Limited use of contraceptives. Only 8% of adolescents are currently using contraceptives and 27% have reported an unmet need for contraceptives.
- Around 15% of the births are unplanned.
- Young abortion seekers opt for delayed abortion and unsafe methods of abortion that lead to complications.
- Increased sexual exposure within marriage is also a major cause. It is also riskier and hence, there are a number of STI and RTI cases. Gender based violence is also more likely to be perpetrated on women who are married in their childhood.

The major reasons for the above, are as follows:

- Limited access to information – victims of child marriages are less likely to be in school, less exposed to any form of mass media and have very little or no information about sexual or reproductive health.
- Limited freedom to exercise own choice – such women are also not in a position to exercise their own choice regarding their sexual and

reproductive health, they have lesser freedom to move around and are also isolated from familiar social networks.

- They also have limited access to healthcare, as they are less likely to seek medical attention or receive advice related to SRH matters.

The problem can be addressed by raising awareness about the dangers of early marriage and early pregnancy, enforcing the legal age for marriage, developing community support that encourages delayed marriages, and implementing life skill programs.

Education: Education has a great impact on the age of marriage and the health of the child. An example of M.V. Foundation, which helped 600 girls in the state of Andhra Pradesh, was discussed as a model for others to follow. Initially, the issue of bonded labor was paramount and they were concentrating specifically on boys. Soon they realised that all those who were not in school were actually bonded laborers comprising a large number of girls. Such children were found to be generally insecure, fearful and full of anxiety; emotions which could be resolved only in school. It was necessary to create an atmosphere where the girl child was not afraid

to go to school. Girl's literacy is affected to a great extent, by early marriages and gender discrimination. Taking up this issue was a challenge and it was not easy to identify girls who were getting married by the age of about 11 years. It was also not easy to recognize their status as married women, since they were still not adults. But the fact was, that they were married and treated as adults. The organization started taking up cases of child marriage much later, when a girl of 11 years came to them for help, as her family was forcing her to get married.

The issue of rehabilitating the girls, after the intervention, was a great challenge. Taking the step of abandoning their home was not advisable. Hence, awareness programs to educate families about the harmful effects of child marriages were initiated, in the form of street theatres and rallies. These interventions highlighted the need of education to tackle this issue. Till today, they have succeeded in stopping about 15,000 child marriages and continue to stop 500 marriages every year. Male youths participated actively in this programme. Oaths were taken in numerous villages not to marry child girls and if any one violated the oath, he would be

reported to the police. This caused another problem: in many cases, the poor parents were brought to the police station. The organization provided them with tiffin, a gesture that surprised the police.

The direct impact of the campaign resulted in 30,000 girls enrolling in schools. However, the pressure on the girls to get married remained. So committees of these girls were formed in the schools, for the purpose of tackling problems faced by them. The functions of these committees are to review all the problems of the girls, report any purported child marriage to the teacher or principal who in turn would inform the village Pradhan to stop the marriage. These committees also reported that the girls faced a lot of problems during the exams, as they could not get enough time to study. The organization intervened and convinced parents to allow their daughters more time to study during the examination.

The M. V. Foundation has also organized a child rights protection forum in every village and anyone can become a member. These forums review the progress of child rights in their villages, every fortnight. The forum also takes up cases that normally remain

unreported e.g. rapes, molestations, unwanted pregnancies, and most of all, cases of incest.

The organization has also made a deal with some families, that until their children finish their 10th standard, they will continue with the organization and stay out of the marital home. In this way girls are helped to get out of the rigors of marital life and stay away from sexual exploitation.

At the level of the Mandal, there is a Mandal Task Force. Every month, all the officials from the revenue department, the police department, health department and other officers get together to meet and give their reviews to the organization. Issues like progress on the reports made to the police, Iron Folic Acid tablets not reaching the beneficiaries etc. are discussed with the task force.

With the enrolment of children in schools, it was much easier to monitor them. While creating an atmosphere conducive to the education of girls was important, it was as critical to develop the required infrastructure for schools. Though sensitising the community was not easy, once addressed the communities themselves began to hold government agencies

accountable to prevent child marriages.

M. V. Foundation encountered and resolved the following issues:

- Education, especially of girls
- Gender discrimination
- Early marriage
- Advising the girls how best to avoid child marriages
- Helping poor parents booked for marrying off their children
- Building community awareness to promote girls' education and stop child marriages
- Accountability from government officials
- Absence of the required infrastructure for setting up schools.

The presentation from ICRW highlighted the problem of child marriages, its consequences and the ways in which it can be combated. Though it is a problem most developing countries are facing, ICRW cited examples of South Korea, Taiwan, and Thailand who have successfully rid themselves of this scourge.

The chief reasons for the continuation of the practice of child marriages are as follows:

- Patriarchal nature of the

society: schooling is considered the prerogative of the boys, while girls are supposed to be working at home.

- Discriminatory socialization: early marriage is seen as socializing girls regarding their sub-ordinate role in the society as compared to men, and keeping women “in their place”.

- Family honor and alliances: there is a general view that the earlier the woman marries the better her family honor is maintained. A great deal of stress is placed on virginity and delayed marriages give society the opportunity to view the girl with suspicion. If the girl is married early, it is considered that the alliance will be stronger.

- Early marriage fetch a higher bride price and a lower dowry: parents get inclined to early marriage of their children in the hope of saving expenses. The earlier the girls are married the lesser the amount of dowry to be paid. The stronger incentive is the higher bride price that is gained when the child bride is of a younger age.

- Poverty and low levels of development: for many poor people, marrying off their girl child early is the best way to get rid of one extra mouth to feed. Since they don't have access to education, they are also unaware of the consequences of

early marriages. In addition, they have faith in the older traditions due to the lower levels of development.

The consequences of child marriages are as follows:

- Health consequences: high rates of STI, RTI, maternal mortality and morbidity, and infant mortality. These women also have a greater risk of being subjected to physical and sexual violence.

- Life and societal consequences: early, unwanted pregnancies, burden of responsibilities of an adult, and rigors of married life. They also miss the opportunity to acquire any useful skills.

Life skills education: To address this problem, a community based intervention study was undertaken in rural Maharashtra. A programme of Life Skills Education was taken up and its impact on the age of girls at marriage, was studied. The reason why the life skills programme is important for adolescent girls is that they have been deprived of education, have low self-confidence, low self-esteem and face numerous health problems.

The objectives of this programme are as follows:

- Delay age at marriage for adolescent girls.
- Improve skills related to gender, team building, and legal literacy to improve their social status.
- Improve their health status by increasing their cognitive and practical skills in health and nutrition.
- Promote self-development and increase self-confidence through community and individual projects.

The basic idea of the programme is empowerment of adolescent girls. For this, there is a need for a community based Life Skills Course, of a much longer duration. This is also necessary for social approval. Besides, the intervention needs to extend beyond reproductive and sexual health. These were some of the policy recommendations made by the ICRW:

- Educating parents and young people about the law, their rights and international norms.
- Educating parents and young people about the benefits of early marriage.
- Providing girls with complete education and vocational training.
- Providing safe and non-exploitative work opportunities to women outside their homes.
- Tutoring young people about

reproductive health.

- Supporting further research on child marriages and identifying its reasons.

Another study, conducted by MAMTA, similarly highlighted the problems related to child marriages. These centered on health issues and MAMTA's efforts to check the incidences of early marriages and pregnancy. Their study was conducted in six states – Delhi, Uttar Pradesh, Madhya Pradesh, Rajasthan, Karnataka and West Bengal. The study also took up specific intervention work such as educating people on the effects of early marriage.

The main objective of the study was to examine the prevailing status of early pregnancy in these states and undertake educational intervention for its prevention.

The specific objectives were:

- To determine incidences of early pregnancy.
- Understand socio-cultural and other statistics.
- Examine access and quality of health services for early pregnancies.
- Study risks associated with complications on maternal and infant health.
- Develop appropriate educational interventions.

The issues that were regarded during the study were:

- *Health issues:* age at first pregnancy, order of pregnancy, pregnancy care and outcome, abortions, post natal complication (maternal and new born), risks of early pregnancy, maternal mortality and morbidity.

- *Socio-cultural issues:* cultural practices related to early pregnancy, age at marriage, educational status, social and familial pressures, societal reaction to unmarried pregnancy and gender issues.

The study showed that 11% of the pregnancies were below the age of 19 years; the trend was more in the rural areas than in the urban areas. Regional variations were also recorded where Calcutta had the highest incidence of teenage pregnancy. Another disturbing issue was that there was no record of correct age in the register, especially in the rural areas. The health officials present, said that they could not record the correct age for a woman less than 18 years, since the law prohibits them to show the marriage of a woman less than 18 years of age.

As far as health services were concerned, only 8.5% of the women went for check-ups during the complete duration of their

pregnancy. The study also indicated that half the deliveries took place at home. Low birth weight was also seen as a major problem, especially with the younger age group.

The study found that reasons for early pregnancy were early marriages and vice-versa and in some cases the lack of information, knowledge and access to health services. In most cases, pregnancies occurred in the very first year of marriage, mostly due to familial pressure. In case the girls failed to conceive in the first year they were termed barren. There is a similar pressure on the male to prove his potency, in the early years of marriage.

The reasons for early marriage were:

- Girls are seen as a liability and someone else's property.
- Young girls are good looking and it is easier to find matches for them.
- Family loses social status if there is a delay in the marriage of girls.
- Poor economic status.
- If the elder girl gets married then the younger ones get married along with her.
- Even on death feasts, the girls get married.

Following are the recommendations of the study:

- Empowering the adolescent to address the following issues: poor education, reducing gender inequality, poverty and gainful involvement to prevent early marriages.
- In case there is a child marriage, then the societal pressure must be reduced so that pregnancy can be delayed, and the problem addressed through couple communication, knowledge on contraceptive methods, better nutrition and better ANC care.
- Correct recording of age without fear of punitive action. The health officials are afraid they would be punished if they record the age correctly.
- Linking traditional and non-traditional birth attendants to the health sub-center.
- Panchayat to record all outside sub-center pregnancies.
- Registration of all marriages and births.
- For educational intervention, delay the age of marriage, thus delaying the age of pregnancy. In this, parents can play an important role.

Another set of recommendations came from Mahila Samakhya, Uttar Pradesh.

- First, there has to be coordination between the law and social movements.

- There is a need to involve the government in the social movement, as the NGOs alone cannot take these movements to all parts of the country.
 - There has been an increase in the workload of women with all the work they are doing, inside and outside their homes, but the decision-making powers have not yet been delegated to them. The decision-making has to go on along with the men and they have to be told that such marriages will not salvage their caste, prosperity, ego or prestige but will affect the health of the women.
 - There is a considerable need for girl empowerment. This can be achieved through group support and the involvement of men.
 - Values need to be changed and rituals and myths have to be attacked to achieve this. This can help prevent child marriages and sexual exploitation of girls.
 - There is a need to introduce a legal course at every level.
 - All the programs have to be taken up simultaneously.
 - Child rights are often talked about but 'adolescent rights' are missed out in the discussion. These also have to be taken up as a major issue.
- Other suggestions and recommendations focused on reinforcing the efforts of the NGOs with government support, accountability of the government officials, sex education in schools, initiatives at the grassroots level, implementation of the Act, and coordination between the law and social movements.
- Enlisting support of Government: It was suggested that postcards should be written to the MPs about the problem and their replies sought. The counter argument was that hardly any of them knew whether there were any initiatives on this issue, or what was going on in their constituencies. They do not even read the post cards, let alone reply to them. There is a need to act on the MPs as a pressure group and ensure that the bureaucracy does its work. Also, the system that the government has put in place should be made functional.
 - Allocating a budget: One of the suggestions was to allocate a budget to the smallest unit – the Panchayat, to create awareness and monitoring. Appoint an inspector to monitor the budget every two to three months.
 - Initiative at the grassroots level: People should be heard at the grassroots level while the

proceedings should be heard in a national level commission and recommendations made accordingly. Resolutions should be passed at the village level. Support should be arranged for village groups to take action at village level.

- Accountability and punishment: To make the existing system accountable, the officials responsible for the prevention of child marriages need to be taken to task. The Sarpanch should be warned that if any child marriage takes place under his area, he/ she would be debarred from contesting the elections, in the future. As mentioned earlier, there is a need to act as a pressure group on the MPs and the bureaucracy. The bureaucrat should be deprived of any increments and other benefits. In case of MPs and MLAs, the party head should be notified and the media should play a proactive role in highlighting the role of these people.

- Sex education in schools: This will be practicable only when education is made available to all. As of now, there are countless villages where there is no scope for educating the children. Generally, such education is limited to urban centers, but the need to address the issue is the greatest in rural and

tribal areas. Also, the methods used should not be such that in the end the woman ends up feeling victimized. There has to be a people's movement, to ensure that the education reaches the grassroots level. For this it is essential to change the attitude of the society. It is important to function on all the different fronts, at the same time.

- Implementation of the Act: A mere act will not solve the problem. It is important that the objectives of the act are clearly identified. It has to incorporate sections in terms of enactments and the acceptance of it. The Act has to be made cognizable.

The amount of fine should be raised and enforcers should be made punishable.

Socio-economic factors: The implementation of the Act is also dependant upon socio-economic factors that need to be addressed. All countries in the developing world that have eradicated the tradition of child marriages successfully, have achieved it in conjunction with socio-economic development. Apart from the above, there is a need to coordinate law and social movement so that the agenda can be taken forward.



CHAPTER VII

RECOMMENDATIONS
THAT EMERGED FROM
THE NATIONAL CONSULTATION

CHAPTER VII

RECOMMENDATIONS THAT EMERGED FROM THE NATIONAL CONSULTATION

The recommendations that emerged from the National Consultation were presented to the group for further discussion. These were:

1. Make 18 years the age of majority:
 - a. Increase 16 years (Rape IPC) to 18 years.
 - b. Increase age of consent from 15 years to 18 years.
 - c. Make the minimum age of marriage 18 years.
2. Make registration of all adult marriages compulsory:
 - a. Make recording of child marriages compulsory.
 - b. No certificates to be issued for child marriages.
3. Focus punishment on:
 - a. Collector
 - b. Superintendent of Police
 - c. Panchayat Officials responsible for registering child marriages
 - d. Marriage Prevention Officer
 - e. Patwari
 - f. MPs/ MLAs
 - g. Gram Sewaks
4. Child marriages should be declared void.
5. Punish all those responsible: parents, those participating in the child marriages, those lending money for the marriage, any aanganwadi workers and lower officials, all those who glorify child marriages, those abetting, those responsible for preventing but failed to do so.
6. Make it misconduct for public servants to participate/ etc. in child marriages.
7. Amend Child Marriages Restraint Act (CMRA) to enable prosecution by any concerned individual, enable immediate arrest by police official, enable the Police to take immediate steps to prevent etc.
8. Use CMRA as it exists, or amend if necessary, to enable the court to pass an order
 - h. CDPO
 - i. Local Registrars
 - j. Pujari etc.

- immediately, for injunction of child marriage.
9. Authorize NGOs, gazetted officers and other sections of civil society to act as inspectors under the CMRA.
 10. Provide incentives for communities traditionally engaging in child marriages, to avoid child marriage.
 11. Increase the penalties under the Act.
 12. Increase awareness of the law. CMRA and Supreme Court orders should be telecast on TV, radio and other media.
 13. Ask court to direct government to make a social audit of the implementation of CMRA, involving NGOs and civil society experts in the process.
 14. Impose collective fines on communities in cases of CMRA violations. Institute other types of acceptable (reformation type) punishments.
 15. Registration process must involve careful scrutiny of the age of the parties getting married and ought not to be done casually or mechanically.
 16. A Child Marriage Rehabilitation Fund to be established for victims of child marriage.
 17. SC should appoint NGO's as Commissioners in every state, to monitor and enforce the CMRA and SC orders.
 18. Incumbent on every panchayat to put up a notice that child marriages are illegal and consequences will follow.
 19. Kishore/ Kishoree "panchayat" to be set up within every panchayat to campaign against child marriages.
 20. SC must order all schools/ colleges to educate children on CMRA and the evils of child marriages. Government Teachers and ANW's play an important role in this process.
 21. Community initiatives to delay marriages.
 22. Implementation of life skill programs for young females.
 23. Collector to be directed to call a meetings of all officials: SDM, BDO, ADO's Patwari, Police, IPS etc. where they will be trained by NGOs, on child marriages, once a year.

DISCUSSIONS ON RECOMMENDATIONS THAT EMERGED FROM THE NATIONAL CONSULTATION

The following discussions emerged on the points recommended for demands to be made to the Supreme Court.

Age of Consent: Presently, the age of 15 years is considered to be the age of consent under Rape IPC. This should be increased to 18 years. The argument against this was that many people under the age of 18 who have sex, would come under the purview of the law as rapists. Hence, the changing sexual mores need to be taken into consideration. However, this situation will be cognizable only if there is a complaint of rape. Likewise, the age of 15 years under the CMRA, must be increased to 18 and similarly, under the Hindu Marriage Act, it should also be 18 years.

Registration of marriage: The second point, on the issue of compulsory registration, threw up some very important questions. The need to make registration of adult marriages compulsory was agreed upon by all, but the suggestion to record child marriages without issuing a

certificate might lead to the boy disowning the girl at a later date. However, the situation in Maharashtra, where issuing of certificates makes the marriage legal, should not be permitted. This is a major concern. At the same time, the right of annulment under customary laws has to be protected. The codification of customary laws was also debated upon. While some states agreed to it, there were other states like Delhi, where the people did not want it.

Punishments: This discussion focused on the punishment for marriage prevention officers including the patwari, MP, MLA, Gram Sewak, CDPO, local registrar, pujari and parents. This might lead to incorrect recording of age in the register, by the person concerned. If the age is enhanced, the person not recording correctly will be punished. This punishment will act as an incentive for the officer to record the age correctly. The patwari or sarpanch will only be responsible for recording and not for stopping the marriage. That onus would lie with the police or the collector.

However, this might raise the problem of action being taken too late in stopping the child marriage. Hence accountability should lie on

the people's representative first. The problem here is: whom to hold responsible first? Though it would be unfair to hold the junior officers responsible, the risk is that he will ignore his duty and blame the higher officials. So the unit head at every level, should involve the primary man who should be held accountable. A difference should be made between wrongly recording the marriage and failing to record the marriage. The pujari should also be accountable.

Declaring child marriage void:

This suggestion needed to be discussed in greater detail. The objection was, that if the marriage is annulled, what would happen to the property rights, maintenance, etc. There were many contradictions in this issue. If the marriage were annulled, the women would be left in the lurch. Validating the marriage, after passing the Act is also unviable since the law would be weakened. There could be a separate provision as in the SC/ST Act, for allowing the girl benefits for a specified period of time: say, one year – and during that period, the government will give full publicity to the Act, that from the said period, any child marriage that takes place will be treated as void and illegal. Sufficient time should be given to

people so they do not have a sense of deprivation. But, if all child marriages are not treated as void from the stipulated date, it might provide an escape route to the violators.

The question of *gauna* was also debated. Though a legislation to increase the age of *gauna* would help, but the fact that *gauna* is recognized automatically condones child marriage. Although *gauna* is a practice that delays consummation of marriage, it is not prevalent under all the customary practices. For example, *gauna* is prevalent in Bihar, but not in Bengal.

Punishment to parents: The suggestion was that there should be no punishment for the family or the parents. The emphasis should be on the police, collector etc. and the fine should not be changed. Another suggestion was to fine the community and the parents at least Rs.5,000. It was agreed that parents should not be let off.

The arguments against the above were, that it would not be feasible to punish the parents since they are usually very poor; and imprisoning them would make their children's life more miserable. Punishing the community had its own dangers as,

it would give the police a reason to exploit the community.

The fine of Rs.5,000 would not serve any real purpose since the prospective buyer of the girl would pay at least Rs.40,000-50,000 which would easily cover the loss. Making the neighbour liable was another suggestion. All the suggestions were considered as they could be used in different situations.

Punishment to public servants:

There was unanimity on the point of punishing the public servants. Public servants would include public representatives, government servants or those holding any public office. There was a suggestion that there should be a government order apart from the Civil Service Rules.

Need of amendment in law: There was no objection to the fact, that the law needed amendment. The report should be filed immediately and action taken. The moment a report is made by an individual or an NGO, the police can take anticipatory or quick action and the court can also pass an order immediately.

Provision of injunction: This point was unanimously agreed upon.

Inspectors under CMRA: There was a lot of discussion on the point that NGOs should be appointed inspectors under the Act. The question was that those who monitor should also come under the purview of the Act. One suggestion was, that NGOs would have the right to inspect but they would do so only when the government machinery failed. They would have the power of the law, but that would be apart from the government servants. They would always be accountable. An institution like the Commissioner for Right to Food can be created from the NGO. They will have the power to stop a child marriage but would not have the power to pass orders or make orders. Intervention would be at two different levels, local and institutional.

This was criticised because it was felt, that the creation of a parallel structure would lead to corruption as the NGO could simply sign off, take the money and disappear.

The above argument was countered with the suggestion, that a very efficient two-tier structure can be created where, under Supreme Court orders, power will only be given to those NGOs who are reputed and have done good

work. This could be taken up on an experimental basis. On the other hand, if NGOs are not given any powers, they can at least, act as the voice of the community. There was also a suggestion to make the existing system more accountable.

Finally, it was suggested that the reports of the NGO should be treated as authentic but they would not be empowered in the functioning of the Act.

As per Supreme Court orders, 1 or 2 persons could be Commissioners in the states who would report back to the system.

Incentives to stop child marriage: It was agreed, that communities who have been engaged in the custom of child marriages should be provided some incentive to improve the quality of their life. To spread awareness, the provisions of the CMRA and the adverse effects of child marriage on the health of children, should be publicised through TV and other media. For awareness in the villages, panchayats should be allocated a budget monitored by a specially appointed officer.

Increase awareness on law: There was unanimity on this point.

Social audit: It was agreed, that the court should ask the government to organize a social audit to check the implementation of the CMRA and the convictions.

Collective fine: Collective fines and other forms of punishments were discussed. Collective fines can be imposed on panchayats, gram and block panchayats, and zila parishads, but it was unclear whether these fines would be feasible or not. Since fines conform to the State's point of view, they would close the scope of dialogue on preventing child marriages. However, it was decided, that no collective fines should be imposed for the time being, but panchayats should be punished in some way or the other.

It was agreed, that a fund for rehabilitation was necessary for a child born out of a child marriage. In addition, there should be a child welfare fund to help the child go out and work.

Kishor/Kishori Panchayats: There is need to set up Kishor/Kishori Panchayats but these will not fall under the purview of the court.

Inclusion in school curriculum: Everyone agreed, that the evils of

child marriages should be part of the curriculum in schools.

There were several suggestions to ensure complete implementation of the programme. These were:

- Approaching the Supreme Court
- Conducting meetings to ascertain the approach of the law and take the agenda forward in different states
- Drawing up a poster on the suggestions of the CMRA and the dangers associated with child marriages
- Provision for punishment of mass marriages
- The scale of the campaign should be big and sensitive teachers who can take the issue further, should be appointed
- All states should be made parties to the PIL
- Creation of a think tank or a clearing house mechanism to report or access information from it
- Involvement of all the movements
- Issue of trafficking to be seen in conjunction with the rest of the issues
- Involvement of the media to spread awareness
- Workshops to be held all over the country to spread awareness, especially in the villages. Socio-cultural studies

to be conducted in those states where such a study has not been conducted so far

- Formation of a dialogue process with other forums so that there is a correlation on such issues. For this, a campaign on social schooling and advocacy needs to be taken up
- There should be a detailed commentary of the Act along with the findings of the study, to strengthen the Act. The Act should be a strong piece of social legislation
- There should also be public hearings at street and national level, to spread awareness
- Existing campaigns should be moulded to accommodate the issues. Documentation of cases for building up data, so that they can be referred to when there is a need for changing guidelines
- Issue of child rights can be included in the Sarpanch's oath.

FINAL RECOMMENDATION FROM THE NATIONAL CONSULTATION

The final recommendations that emerged after the discussion, are as follows:

1. Make 18 years the age of majority:

- a. Increase 16 years (Rape IPC) to 18 years
 - b. Increase age of consent for sexual intercourse on marriage from 15-18 years
 - c. Make minimum age of marriage 18 years.

2.
 - a. Registration of all adult marriages to be compulsory
 - b. Registrar will also record divorces (including customary divorces) and subsequent remarriage
 - c. Register in the case of adults – it is not necessary to conduct an enquiry but only to make entries on the basis of delineation made by the parties. However, registration process must involve careful scrutiny of the age of the parties to the marriages, and ought not to be done casually or mechanically.

3.
 - a. Recording of all child marriages to be compulsory
 - b. No certificate to be issued, but extract/copy of the entry in the register to be provided.

4. Focus Punishment on:
 - a. The collector, the SP, the CEO and the Gram Panchayat Pradhan for failing to prevent/prosecute child marriages

- b. Pujaris etc for performing the ceremony
 - c. Other officials like patwaris for failing to record child marriages. MP's, MLA's and other public functionaries for participating in or encouraging child marriages.

5.
 - a. Child marriages should be declared void
 - b. The child “bride” should be deemed to retain all property and other rights, as if the marriage was valid, not withstanding the declaration that the marriage is void
 - c. A child marriage rehabilitation fund to be set up for the victims of child marriages. This is to be used for education and other purposes.

[Serious Disagreement on (a)]

6. Make it a misconduct for public servants to participate etc. in child marriages.

7. Amend CMRA to enable prosecution by any concerned individual, enable immediate arrest by police official, enable the police to take immediate steps to prevent etc.

8. Use CMRA as it exists or amend if necessary, to enable

- immediate order by the Court to pass an injunction restraining child marriages.
- CMRA involving NGOs and civil society experts, in the process.
9. Authorise NGOs, gazetted officers and other sections of civil society to act as inspectors, under the CMRA. SC should appoint NGO's as commissioners in every state, to monitor and enforce the CMRA and SC orders.
 10. Provide incentives for communities traditionally engaging in child marriages to avoid child marriage.
 11. Increase the penalty under the Act from Rs 500 to Rs 5,000.
 12. Increase awareness of the law. CMRA and Supreme Court orders should be telecast on TV/Doordarshan, Akashvani, as wall posters/writing, etc.
 13. Ask the court to direct government to make a social audit of the implementation of
 14. Every panchayat must put up a notice to the effect, that child marriages are illegal and consequences will follow.
 15. Supreme Court must order the teaching of CMRA and the evils of child marriages in all schools/colleges, government teachers and anganwadi workers to play an important role.
 16. Make the Act cognizable for all purposes.
 17. Suo-moto action by officials necessary. Practice of waiting for a complaint to be deprecated.
 18. Option to repudiate a child marriage should be available for a short while, after 18 years to enable an informed choice. ■

ANNEXURES

- (i) Presentation's made in the National Consultation
 - a. Child Marriage Restraint Act, 1929, *Aparna Bhat, Human Rights Law Network, Delhi*
 - b. Early Marriage and Early Pregnancy in India, *MAMTA – Health Institute for Mother and Child*
 - c. Married Adolescent Girls, Satish Agnihotry, WCD, Orissa
 - d. State Responses to the Petition, Pratibha P. Menon, Human Rights Law Network, Mumbai
 - e. Early Marriage: Risk for Sexual and Reproductive Health and Choice, *Population Council*
 - f. Child Marriage and Development Programmes, *International Centre for Research on Women*
- (ii) The Child Marriage Restraint Act, 1929
- (iii) Law in Daman and Diu
- (iv) Maharashtra Act No. XX of 1999
- (v) Goa Law
- (vi) The Karnataka Marriages (Registration and Miscellaneous Provisions) Act, 1976
- (vii) The Prevention of Child Marriage Bill, 2004
- (viii) Supreme Court Order

ANNEXURE I

PRESENTATIONS MADE IN
THE NATIONAL CONSULTATIONS

- a. Child Marriage Restraint Act, 1929, **Aparna Bhat, Human Rights Law Network, Delhi**
- b. Early Marriage and Early Pregnancy in India, ***MAMTA – Health Institute for Mother and Child***
- c. Married Adolescent Girls, **Satish Agnihotry, (WCD, Orissa)**
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ANNEXURE I-a

**Child Marriage (Restraint) Act,
1929**

**By Aparna Bhat
Human Rights Law Network, Delhi**

- Section 2 of this Act deals with definitions.
“Child” means a person who, if a male is under 21 years of age and if a female, is under 18 years of age.
“Child Marriage” means a marriage to which either of the contracting parties is a child. “Minor” means person of either sex who is under 18 years of age.
- The penal provisions do not invalidate the fact of marriage nor do the penal provisions apply to a child.

- Section 3 of this Act provides that, who ever, being a male above 18 years of age and below 21 years, contracts a child marriage shall be punished with simple imprisonment, which may extend to 15 days or with a fine which may extend to one thousand rupees, or with both.
- A male above 21 years of age contracting a child marriage shall be punished with simple imprisonment, which may extend to 3 months and shall also be liable to fine.

- Section 5 provides that any person who conducts or directs any child marriage, unless he proves that he had reasons to believe that the marriage was not a child marriage will be punished with imprisonment, which may extend upto 3 months and shall be liable to fine.
- If a minor contracts a child marriage, any person whether parent or guardian who is incharge of the minor, who does any act to promote such marriage or negligently fails to prevent it from being solemnized, shall be punished with simple imprisonment which may extend to 3 months and shall also be liable to pay fine. (Section 6). Provided that no woman shall be punishable with imprisonment.

- Section 7 of the Act provides that the Code of Criminal Procedure, 1973 shall apply to offences under the act as if they were cognizable offence for the purpose of investigation.
- No court can take cognizance of any offence under this Act after the expiry of one year from the date on which the offence is alleged to have been committed.

- Section 12 empowers the Magistrate to issue injunction prohibiting marriage in contravention of this Act. The Court may issue an injunction against any of the persons mentioned in Section 3, 4, 5 and 6 of this Act prohibiting such marriage.

- This injunction shall not be issued against any person unless the court has previously given notice thereof to the person concerned and has afforded him an opportunity to show cause against the issue of the injunction.
- The courts may either of its own motion or on the application of any person aggrieved, rescind or alter any order made under sub-section (1). When such an application is received, the court shall afford the applicant an early opportunity of appearing before it either in person or by pleader; and if the court rejects the application wholly or in part, it shall record in writing its reasons for so doing.

ANNEXURE I-b

**Early Marriage
and Early Pregnancy in India**

MAMTA
Health Institute for Mother and Child
New Delhi, India

The Concerns

- Early marriage continues to be the practice, despite laws prohibiting marriage before age 18 yrs. for girls and 21 yrs. for boys
- 59% of adolescent girls age 15 – 19 yrs. and 52% of young girls age 20 – 24 are illiterate
- Every third adolescent girl (15 – 19 yrs.) is married
- Every second married adolescent girl has given birth

(source NFHS-2)

The Concerns.....

- Early marriage and early pregnancy are synonymous
- Fertility at age 15 – 19 yrs. accounts for 19 % of total fertility and at age 20 – 24 yrs. for 37 %
- 48 % of currently married adolescent girls age 15 – 19 yrs. and 83 % of young girls age 20 – 24 yrs. have already given birth
- 23% currently married adolescent girls age 15 – 19 yrs. have 2nd order of birth
- 56% adolescent girls age 15 – 19 yrs. have Iron deficiency –mild to severe anaemia

(source NFHS-2)

The Concerns.....

- High infant and child mortality in young mothers age <20 yrs. than of age 20 – 29 yrs

	<20 yrs.	20 – 29 yrs.
Neonatal Mortality	63.1	40.7
Postneonatal Mortality	29.7	22.6
Infant Mortality	92.7	63.3
Child Mortality	31.0	28.7
Under Five Mortality	120.8	90.2

(source NFHS-2)

MAMTA's Efforts

- Prevention of early marriage and early pregnancy are the key issues of wider concerns of YRSHR-
- Presented the issues of early pregnancy in U.N. General Assembling (UNGASS) Special Session on Children, at New York, USA
- Presently implementing the state level programme on prevention of early marriage and early pregnancy in Rajasthan
- Conducted the Study on Dimensions of early pregnancy in rural and urban India – Six States

The Study

Dimensions of Early Pregnancy in
Rural and Urban India

2001 - 2003

Supported by
Ministry of Health and Family Welfare
Government of India

Objectives

- **Main Objectives**
 - Examine prevailing status of early pregnancy and undertake educational interventions for its preventions

Objectives

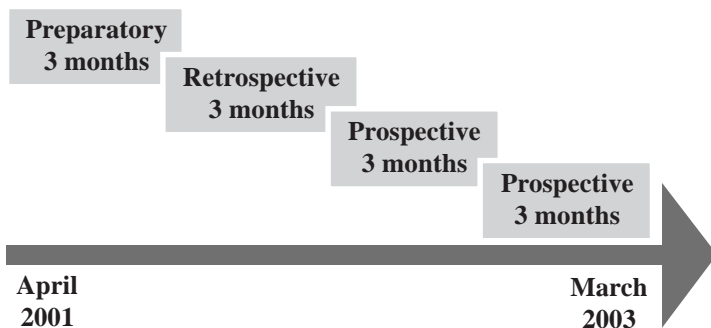
- **Specific Objectives**
 - Determine incidence
 - Understand socio-cultural and other characteristics
 - Examine access and quality of health services
 - Study risks associated and complications on maternal and infant health
 - Develop appropriate educational interventions

Study Areas

Study was Conducted in Six Selected Indian States

- Delhi (Delhi NCR)
- Uttar Pradesh (Mirzapur)
- Madhya Pradesh (Gwalior)
- Rajasthan (Bikaner)
- West Bengal (Kolkata)
- Karnataka (Bangalore)

Duration of the Study



Issues Covered

- **Medical/ Health**
 - Age at first pregnancy
 - Order of pregnancy
 - Pregnancy care (time of first contact with service provider)
 - Outcome of pregnancy
 - Abortions
 - Post-natal complication – maternal and newborn
 - Risks/complications of early pregnancy
 - Maternal morbidity and mortality in early pregnancy

Issues Covered

- **Socio-Cultural**
 - Cultural practices related to early pregnancy
 - Age at marriage
 - Educational status
 - Social and familial pressures
 - Societal reaction to unmarried pregnancy
 - Gender Issues

Methodology

- **Study Tools**
 - Quantitative
 - Structured Formats
 - Interview Schedule
- **Qualitative**
 - Focus Group Discussion
 - Key Informant Interviews

Sample

- Follow-up Pregnancy Cases N=1253
 - (Ru-661, Ur-592)
- Experience sharing (one- to- one) N=240
 - (Ru-120, Ur-120)

Incidences

Significant number of adolescent girls get pregnant in early age – largely unplanned and unintended

11% pregnancy in age < 19 yr.

- high in rural (18.2%) than urban (8.1%)
- regional variation

Bangalore (20.2%)
Delhi (8.6%)
Gwalior (3.1%)

Kolkata (29.9%)
Mirzapur (9.6%)
Bikaner (5.5%)

Continued...

- Order of Pregnancy (N = 1253)

Age Group	Order of Pregnancy		
	1 st	2 nd	3 rd
16 – 18 yrs.	86.7	11.9	1.4
19 – 20 yrs.	71.9	22.6	5.5

- 30% females had first pregnancy by 16 yrs. 56% by 17 yrs. 80 % by 18 yrs (N = 240)

Age at Marriage										in per cent
Place	Age at Marriage (by exact years)									Total No
	10	11	12	13	14	15	16	17	18	
Bangalore	-	-	-	-	25.0	30.0	32.5	12.5	-	40
Bikaner	7.5	5.0	7.5	22.5	7.5	15.0	20.0	12.5	2.5	40
Delhi	7.5	5.0	7.5	5.0	10.0	20.0	22.5	20.0	2.5	40
Gwalior	2.5	-	7.5	5.0	15.0	20.0	10.0	22.5	17.5	40
Kolkata	-	-	-	2.5	27.5	42.5	22.5	5.0	-	40
Mirzapur	-	-	-	2.5	35.0	42.5	15.0	2.5	2.5	40
All	2.9	1.7	3.8	6.3	20.0	28.3	20.4	12.5	4.2	240

Age at First Pregnancy								in per cent
Place	Age at First Pregnancy (by exact years)							Total No
	13	14	15	16	17	18	19	
Bangalore	-	-	10.0	30.0	32.5	22.5	5.0	40
Bikaner	2.5	5.0	15.0	17.5	40.0	15.0	5.0	40
Delhi	-	-	7.5	15.0	30.0	40.0	7.5	40
Gwalior	-	2.5	7.5	15.0	15.0	37.5	22.5	40
Kolkata	-	-	20.0	27.0	37.5	15.0	-	40
Mirzapur	-	-	-	2.5	5.0	40.0	52.5	40
All	0.4	1.3	10.0	17.9	26.7	28.3	15.4	240

Utilising the Services

- More than 70 % visited health facility for first time in the stage of 2nd and 3rd trimester
- Only 8.5% visited health facility more than 3 times
- 60% visited health facility for TT injection and only 4.9% for confirmation of pregnancy
- 52.5% delivery took place at home, higher in rural areas (62.9%) than urban (40.7%)

Pregnancy, Delivery & Post Delivery Complications

- 32% were high risk pregnancy
- 27% were observed with delivery complications
- Intervention was performed in 22% delivery cases
- Caesarean section cases were higher in age 16 – 18 yrs. Than in age 19 – 20 yrs.
- 20% had post delivery complications

Delivery Outcome

- 5.3% Caesarian section and 15% episiotomy
- 2.6% still birth
- 4.6% died soon after birth, and 1.4% within one week

Delivery Outcome

- 47% newborn weighed <2.5 kg.

Weight in Kg.	16-18yr.	19-20 yr.
1.0 – 1.5	4.2	1.0
1.6 – 2.0	18.9	7.4
2.1 – 2.5	34.7	35.7
>2.5	42.1	55.9

Reasons of Early Pregnancy

- Early marriage and early pregnancy are synonymous
- Lack of information/ knowledge and access to reproductive health services
- Social and familial pressures lead to early pregnancy
 - > Most adolescent girls get pregnant within first year of marriage – on failing to do so generally termed as ‘barren’ (infertile)
 - > Male also has to prove his potency in the early years of marriage otherwise – seen with doubt
 - > But it is female who has to bear the stigma usually

Reasons of Early Marriage

- socio-cultural norm to marry off girls at an early age
- girls are seen as a liability and someone else’s property
- young girls are good looking and so it is easier to get a good match (husband)
- in-law’s house is the actual destiny of every woman – sooner the better
- family loses social status if it has ‘marriageable’ girl unmarried

Reasons of Early Marriage

- poor economic status contributes to socio-cultural norms resulting in early marriages.
- In some areas:
 - > very young girls get married along with their elder sister
 - > girls and boys from one community are married off in mass marriage ceremony
 - > on the day of death feast of an elderly person girls in a family are married off

In Conclusion

- Poverty, underdevelopment (combined with lack of correct information) and illiteracy are among the principal contributing factors to early marriage – early pregnancy
- Available statistics is probably not the true reflection of ground reality as substantial number of early marriages and pregnancies are not recorded or misclassified
- It is particularly difficult to address the issue of unmarried pregnancy as data for its prevalence and its determinants are not available due to strong social and system disapproval

Prevention and Management of Early Marriage and Early Pregnancy

- Empowerment of Adolescents: Address the following issues
 - Poor education, educational retainment
 - Societal pressures
 - Reduce gender inequality
 - Address poverty
 - Gainful involvement of girls

Prevent Early Marriage

Prevention and Management of Early Marriage and Early Pregnancy

- If married early, ensure the following:
 - Reduce Societal Pressures
 - Couple Communications (Men and Women)
 - Knowledge on Contraceptive Methods
 - Better Nutrition
 - TT and IFA Supplement

Prevent Early Pregnancy

Prevention and Management of Early Marriage and Early Pregnancy

- Health Providers Need
 - Reorientation of all levels of providers of health services (medical and paramedical professionals) with special emphasis on early pregnancy
 - Record Age without fear of punitive action (incentive for correct age)
 - Linking Traditional and Non-Traditional Birth Attendants to Health Sub-Centres
 - Panchayats to record all outside sub-centre pregnancies
 - Legislation for registration of all marriages and births – constitutional requirement

Educational Intervention

Focus Areas

- Delaying Age at Marriage
- Delaying Age at Pregnancy
- Ensuring Pregnancy Care

Key Strategies

- Generate awareness among unmarried adolescent about reproductive & sexual health
- Sensitise and orient health professionals on adolescents' special requirement – early pregnancy & its management
- Sensitise parents regarding consequence of early marriage & pregnancy
- Sensitise panchayat & other key members of the community about risks related to early marriage & pregnancy

Young People's Voices

Delaying marriage is less difficult than delaying pregnancy. “We can speak to our parents to delay marriage but not to our in-laws about delaying pregnancy because that is not our home.”

Young People's Voices

We can delay the first pregnancy. But we must know how to do this. We do not have knowledge about it. Because of illiteracy, people do not have awareness about the contraceptives and its use

Young People's Voices

Pregnancy is not in our hands. Girl has to prove her fertility within a year or two of marriage. If she fails, family members see her with doubt (biological incompetence)

ANNEXURE I-c

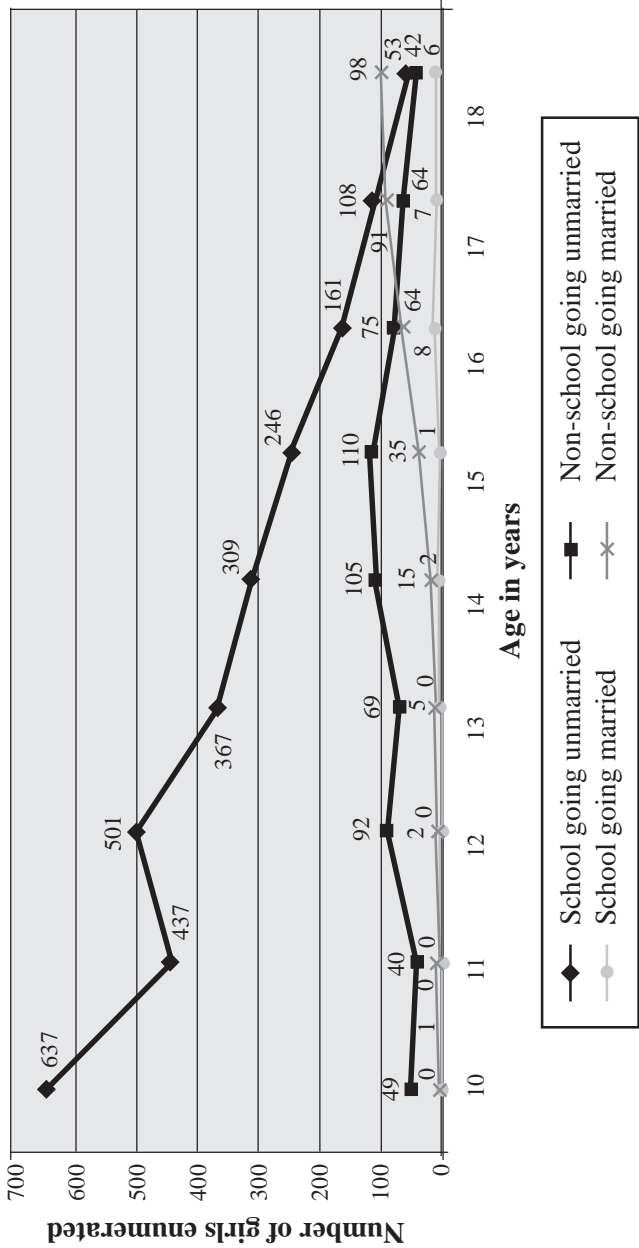
**National Consultation on Child Marriage
Married Adolescent Girls**

By Satish Agnihotry, WCD, Orissa

- Marriage below 18 years will remain a reality
- Married Adolescent is an ignored constituency
- They are not 'Kishori' de facto: Not recognised nor members of the SHGs de jure.
- Yet their number is not small.
- Their needs for RCH knowledge is greater and different from that of unmarried girls.
- Yet their social communication declines sharply upon marriage
- They:
 - have weak 'bargaining' power
 - are more likely to be 'at risk' mothers and
 - give birth to Low Birth Weight babies

WHAT DO WE DO?

Adolescent girls enumerated by age (44 villages in Jalangi)



A partial solution

- MAGs as ‘affiliates’ of SHGs
- Regular participation in SHG meeting
- Trained in account keeping etc.
- Life skills training:
 - Anaemia
 - Delaying pregnancy
 - Mothers at risk
 - Birth preparedness
 - Adult education/distant learning
- Skill training useful in the rural setting
 - Vermicomposting
 - Cement tile making
 - Agro - processing

Need for further analysis

- Trends from
 - Census nuptiality data,
 - RCH I & II
 - NFHS
- Going behind averages and analyse the spread
- Age at first pregnancy versus marriage
- Disaggregated analysis of secondary data
- Correlates of early marriage
 - Traditional and weakening
 - Traditional and getting strong
 - Emerging e.g. crime situation
 - Women’s Work force participation
 - Parental education / literacy level

Not a ‘regulatory’ view: but it might work

ANNEXURE I-d

State Responses to the Petition

**By Pratibha P. Menon
Human Rights Law Network, Mumbai**

Tripura

- Mass awareness programmes to be conducted by the District Magistrates and Superintendents of Police to implement provisions of the Child Marriage Restraint Act 1929.
- Public meetings to be held by the Chairmen of Panchayat Samitis, Block Advisory Committees and Nagar Panchayats on the social evil of child marriage.
- Seminars to be organized especially in districts where child marriage is prevalent by the Tripura Commission for Women.
- Tripura Recording Marriage Bill of 2003- has been passed by the Legislative Assembly and is awaiting the assent of the Governor, Tripura.

Tripura Contd.

- Under section 7 (2) of the abovementioned Act, a male partner to a marriage (if adult) has to within 31 days of the marriage intimate orally to the Marriage recorder in that district about the marriage.
- The male partner has to get the signature/thumb print of the female partner in the form along with two witnesses of that locality.
- In case of a minor male partner, the parents will do the above.
- In case no reporting is done or the marriage is suppressed, penalties will be imposed on the male partner.
- State govt. to appoint Chief marriage recorders, District marriage recorders and reporters for superintendence, control and detection of child marriages.

Punjab

- The Child Marriage Restraint Act, 1929 is being implemented in Punjab.
- The people of Punjab are aware of the evils of child marriage and there have been only three cases of child marriage that have come to the notice of the State government from 2000-2004. Action has been taken in these three cases.
- Reports to be sent on a monthly basis by the Deputy Commissioners and Senior Superintendents of Police to the Department of Social Security and Development of Women and Children.
- State govt. is considering the enactment of the law for compulsory registration of marriages.

Goa

- Registration of marriages is already compulsory. All other forms of marriage are not valid.
- Civil registration of marriage is the only proof of marriage.
- Marriages to be registered before Civil Registrars.
- No child marriages are registered in Goa.

Maharashtra

- State govt. has already enacted the Maharashtra Regulation of Marriages Bureau and Registration of Marriages Act, 1998, with effect from 15th April, 1999.
- There is a provision for compulsory registration of marriages.
- Provisions of the Child Marriage Prevention Act are also being implemented but the state government has not notified the rules under the Act.
- Public awareness programmes are being carried out.
- Government of India has recommended amendments to the Child Marriage Prevention Act, 1929, and the state govt. has given consent to said amendments.
- A gram sevak who is a marriage registrar has been appointed as the Child Marriage Prevention Officer.

Madhya Pradesh

- State govt. has already enacted the Maharashtra Regulation of Marriages Bureau and Registration of Marriages Act, 1998, with effect from 15th April, 1999.
- There is a provision for compulsory registration of marriages.
- Provisions of the Child Marriage Prevention Act are also being implemented but the state government has not notified the rules under the Act.
- Public awareness programmes are being carried out.
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Chattisgarh

- A comprehensive policy has been formed by the State to implement the provisions of the Child Marriage Prevention Act namely the Chattisgarh State Policy for Women Empowerment.
- Collectors have been directed to identify sensitive areas where child marriages take place, create awareness through drum beating in villages, village meetings to be organized, gram panchayats & anganwadi workers to create awareness and women awareness processions to be conducted.
- In the last two years, 600 awareness camps and meetings have been organized.
- Ramnawami and Akshay Tritiya are the two main propagators of child marriage.

Chattisgarh (Cont.)

- Child marriages have been prevented by the State in many cases.
- District Kawardha has been identified as a sensitive district and prevention committees have been formed in this district.
- District Sarguja has also been identified as a sensitive district and efforts are being made in that district to stop child marriages.
- News paper reports enclosed in the writ petition have highly exaggerated the figures of child marriages. The exact figures of child marriages are 75 in Kawardha and 38 in Sarguja in 2002.

Bihar

- The Child Marriage Restraint Act is actively implemented by the State.
- All district commissioners, district magistrates and welfare officers have been directed to act upon the marriage act.
- Awareness programmes are conducted.
- F.I.R's are being lodged against the parent/ guardian responsible for child marriage.

ANNEXURE I-e

Early marriage: Risks for sexual and reproductive health and choice

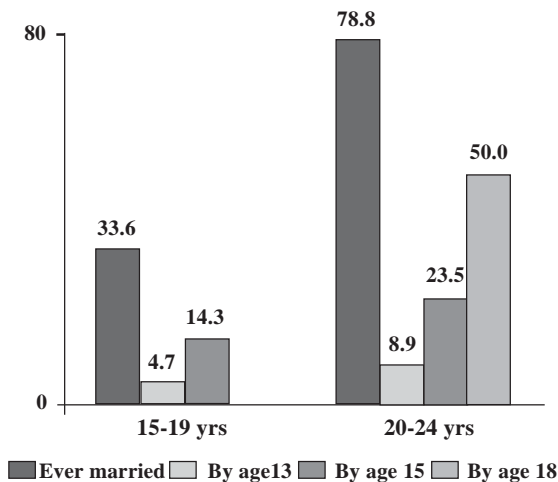
K G Santhya
Population Council

National Consultation on Child Marriages in India:
The Way Forward

July 17-18, 2004



Proportion of females married in adolescence



Risks of early marriage



Early pregnancy and childbearing

- Average age at first birth
 - > 16.7 years for girls who marry before 15 years
 - > 23.9 for who marry at 21 & above
- High rates of obstetric complications
 - > Eclampsia, pregnancy induced hypertension, intrauterine growth retardation, premature delivery etc
- Higher maternal mortality ratios – twice that of adult women



Early pregnancy and childbearing (contd...)

- Higher rates of neonatal mortality
 - > 63 per 1,000 live births for babies born to adolescent mothers
 - > 41 among 20-29 year old mothers
- Higher rates of infant mortality
 - > 93 per 1,000 live births for babies born to adolescent mothers
 - > 63 among 20-29 year old mothers
- More likely to be of low birth weight



Unplanned pregnancy and abortion

- Limited contraceptive use
 - > Only 8% of married adolescents currently using
 - > 27% report unmet need for contraception
- 15% births are unplanned
- Young abortion seekers delay abortion, opt for unsafe providers and experience complications
- Risk of sepsis in abortion is higher among adolescents



Intensified and often riskier sexual exposure

- Marriage tends to increase the frequency of sexual exposure
- Sexual activity within marriage is less likely to be protected
< 2% currently using condoms
- One or more RTIs reported in 49% and STIs in 18% of young married females in one study in Tamil Nadu
- Estimates suggest almost 1% of young women are HIV positive
vs. 0.5% of young men



Heightened risk of gender based violence

- More likely to justify wife-beating
62% of women married below 15 years
44% of women married at ages 21-25
- More likely to experience wife-beating
12% of women married below 15 years
5% of women married at ages 21-25
- More likely to experience sexual violence within marriage
- Less likely to report positive sexual experience within marriage



Underlying factors



Limited access to information

- Less likely to be in school
- Less likely to be exposed to any media

45% of married adolescents vs 39% adult women not exposed to any media

- Less knowledgeable about sexual and reproductive health issues



Limited exercise of informed choice

- Less likely to participate in decisions on SRH matters
- Less likely to negotiate on SRH outcomes
- Limited mobility
- Isolated from familiar social networks



Limited access to health care

- About as likely as older women to seek pregnancy related care

68% vs 66% received at least one ante-natal check-up

32% vs 35% had institutional delivery

18% vs 16% received a postpartum check-up

- Less likely to seek services for RTIs
- Less likely to receive family planning advice



The way forward

- Raise awareness about the negative impact of early marriage
- Initiate actions to enforce legal age of marriage
- Develop community initiatives that support delayed marriage
- Implement life-skills programs for young females

ANNEXURE I-f

**Child Marriage and Development
Programmes**

International Center for Research on Women (ICRW)
New Delhi

ICRW's work referred:

- Youth, Gender, Well being and Society – August 2001 and April 2004
- Too young to Wed – 2003
- Caring men? Husbands' involvement in the maternal care of their young wives – PAA, 2003
- Realizing Reproductive choice and rights - 2003
- Cross generational and transactional sexual relations in Sub Saharan Africa - 2001
- Critical Role of youth in global development - 2001
- Adolescent Girls' Life Aspirations and reproductive health in Nepal – RHM 9 (2001)
- Making it work: linking youth reproductive health and livelihoods – 2001
- Reproductive health seeking by married adolescent girls in Maharashtra – RHM 9 (2001)
- Health and Consequences of Adolescent Childbearing in Developing Countries – 1997
- Marriage timings in Sri Lanka – 1996

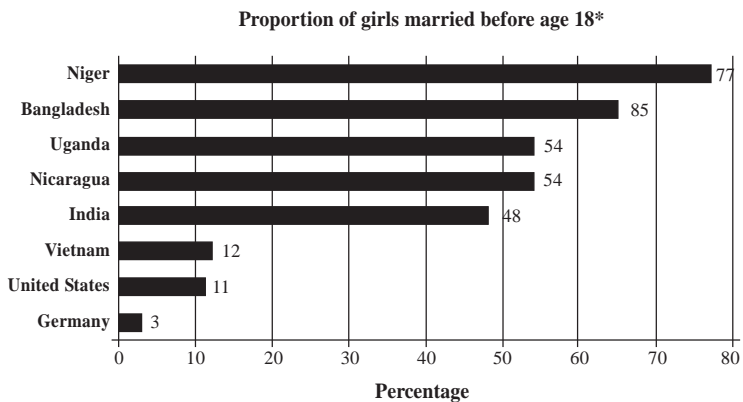
What is child marriage ?

- Child marriage to any marriage before the age of 18.
- Despite national laws and international agreements to the contrary, millions of children in the developing world are married, and as a result, denied the ordinary experiences of childhood and adolescence.
- Grassroots and community-based groups in a number of countries are trying to eradicate this harmful traditional practice, but their efforts are hampered by lack of funds and coordination.

Child marriage is not a small problem

- Over 51 million adolescent girls aged 15-19 years in the world are currently married and bearing the burden of domestic responsibility, early pregnancy, and other risks including HIV/AIDS.
- But this is a snapshot, and not a moving picture: millions more are at risk of early marriage as they approach puberty: in a number of countries, 50% to 70% of girls are married while they are still children.

Child marriage is common worldwide



*Among young women currently aged 20-24

Sources: DHS data since 1990; UN 1989; Cornell

Why Do Societies Encourage or Tolerate
the Marriage of Girls
While They are Still Children?

Historical basis for marrying girls during childhood

- Maximizing fertility under conditions of high mortality.
- Building and strengthening social, economic and political alliances as early as possible.
- Maintaining control over girls.

The world has changed —

- Fertility and mortality declines have made the first motivation obsolete in many settings
- Social, economic, and political change has created alternative means of gaining influence and resources —the second motivation is much less important as well.

— **But not enough**

- A number of countries have been slow to change on child marriage.
- It is no coincidence that these same countries in Africa, Asia and the Middle East are also “laggers” on overall development with:
 - High poverty rates, birth rates, death rates.
 - Greater incidence of conflict and civil strife
 - Lower levels of overall development, including schooling, employment, health care.

The “success stories” of development

The East Asian “Miracles” like Taiwan, South Korea, Thailand have successfully eradicated the harmful traditional practice of child marriage in conjunction with:

- economic growth and opportunity
- declines in birth and death rates
- change in social norms and attitudes
- increases in educational and employment options for girls
- substantial political will and policy impact

**Reasons for the Continuation of
Child Marriage as a
Harmful Traditional Practice**

Lack of alternative options for girls

- Activities and social spaces normal during adolescent years – schooling, work, friends, social life – are the domain of boys, not girls
- Early marriage is seen as an important means of socializing girls regarding their subordinate role and “keeping women in their place.”

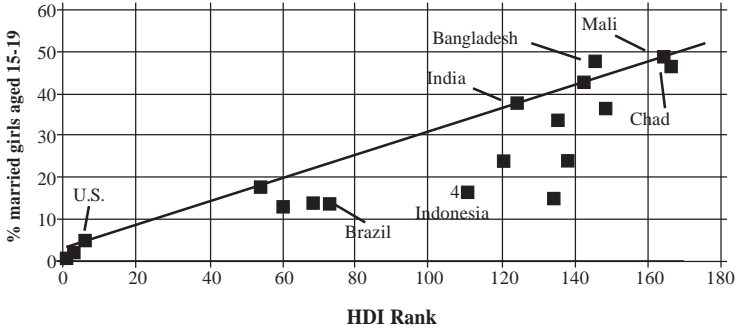
Family honor, marriage alliances

- General view that alliances are stronger if a girl is married young
- Value of a girl in the marriage transaction is usually higher at younger ages: higher bridewealth and lower dowry
- Family members' honor and shame are often defined by how early a girl marries and whether or not she is a virgin.

Poverty and low levels of development

- For poor families, unburdening themselves of daughters while they are young is often part of a strategy for coping with extreme poverty
- Low levels of social and economic development: for households and societies are associated with earlier marriage of girls.
- Low levels of education are also associated with earlier marriage of girls.

Child marriage and rank on Human Development Index (HDI)



Sources: PRB 2000 State of the World's Youth; UNDP HDR 2002

What are the Consequences
of Early Marriage:
For Young Women and for Societies?

Health consequences

- Early Marriage → Early Childbearing → High Maternal Mortality and Morbidity
- Early Marriage → High risk of STIs, RTIs, and higher vulnerability to HIV/AIDS
- High infant mortality rates
- Little knowledge and information on pregnancy, childbirth, and STIs, HIV
- Poor access to health services
- Lack of power to negotiate safe behaviors
- Experience of coercion, violence, abuse

Life and societal consequences

- Early, unwanted pregnancies
- Loss of childhood to adult responsibilities
- Lack of education
- Lack of skills to be viable in the labor market
- Limited friendships or social support systems
- Wasted investment in development initiatives
- Wasted potential of each generation of young girls to become contributing, active citizens

How do we address this ?

**Impact of life skills education on age
at marriage of girls**

A community based intervention study in rural
Maharashtra

Conducted by Institute of Health Management, Pachod
(IHMP) in collaboration with International Center for
Research on Women (ICRW)

Why life skills for adolescent girls

- Education discontinued after age 13 years
- Low confidence, self esteem
- Married early
- Attain motherhood prior to adulthood
- High prevalence of anemia / morbidity
- Bear large burden of work in / outside home
- Social /Health Status of Adolescent Girls is Low

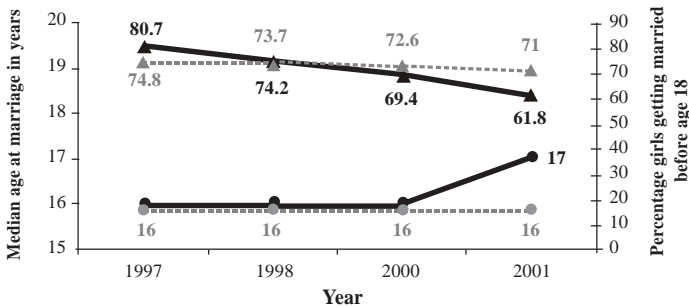
Objectives of life skills course

- Delay age at marriage for adolescent girls
- Improve social status through skills related to gender, legal literacy, team building, etc.
- Improve health status by increasing their cognitive and practical skills in health and nutrition.
- Promote self development, increase self-confidence through community & individual Projects.

Life skills programme

- 1-yr course offered for unmarried girls, 12-18, in their village
- 1 hr/day, 5 days/wk, 17 villages
- 1146 girls total – 166 completed, 243 partial, 737 none
- Targeted out-of school & working adolescent girls
- 225 sessions – Social Issues, Local Bodies, Life Skills, Child Health & Nutrition, Health (Sex Educ for girls >15)
- Practicum – girls in community teaching literacy & nutrition
- Meetings with parents – BCC to parents, community
- Teachers provided primary health care & referral

Fig. 2. Median age at marriage and % girls getting married before age 18 years



- Median age at Marriage (Study Area)
- Median age at Marriage (Control Area)
- ▲ Percent girls getting married before 18 (Study Area)
- ▲ Percent girls getting married before 18 (Control Area)

Manju - 13 years (Name changed)

- Molested by a man on the road while walking home from school
- Went straight to police station to lodge complaint & demanded a copy of FIR
- Told Police inspector she got this information in the Life Skills course

Policy recommendations

- Life Skills Course of substantially long duration needed for empowering adolescent girls
- Intervention needs to go beyond reproductive and sexual health
- Programmes should be community based to ensure social support / approval
- Programme should engage key decision makers and gate keepers in the community
- Replication of 'Life Skills' programme possible through over 60,000 ICDS workers in Maharashtra

Tools to end child marriage

- Educating parents and young people about their rights, and laws and international norms
- Educating parents and young people about the benefits of later marriage
- Increasing girls' access to, enrollment in and completion of primary, secondary education and vocational training
- Providing safe, non exploitative employment opportunities outside home
- Tailoring reproductive health services to young married people and unmarried youth
- Supporting further research on child marriage, its causes and solutions

ANNEXURE II

THE CHILD MARRIAGE RESTRAINT
ACT, 1929

ANNEXURE II

[THE] CHILD MARRIAGE RESTRAINT ACT, 1929 (19 OF 1929)
[The Text of the Act printed here is as on 31.3.1990]

CONTENTS

SECTIONS

1. Short title, extent and commencement.
2. Definitions.
3. Punishment for male adult below twenty-one years of age marrying a child.
4. Punishment for male adult above twenty-one years of age marrying a child.
5. Punishment for solemnising a child marriage.
6. Punishment for parent or guardian concerned in a child marriage.
7. Offences to be cognisable for certain purposes.
8. Jurisdiction under this Act.
9. Mode of taking cognizance of offences.
10. Preliminary inquiries into offences.
11. [Repealed].
12. Power to issue injunction prohibiting marriage in contravention of this Act.

STATEMENTS OF OBJECTS AND REASONS

Act 2 of 1978. – The Child Marriage Restraint Act, 1929, was enacted with a view to prevent child marriage, namely a marriage to which either of the contracting parties is under a specified age. Originally, the age limit for a male was eighteen years and for a female fourteen years. The age limit was subsequently raised in the case of females from fourteen to fifteen by the Amending Act 41 of 1949. Violation of the provisions of the Act is made punishable.

2. The question of increasing the minimum age of marriage for males and females has been considered in the present context when there is an urgent need to check the growth of population in the country. Such increase of the minimum age of marriage will result in lowering the total

fertility rate on account of latter span of married life. It will also result in more responsible parenthood and in better health of the mother and child. A Bill introduced for this purpose in the Lok Sabha on 25th August, 1976, lapsed with dissolution of the Lok Sabha on 18th January, 1977. The matter has been examined in all its aspects again.

3. The Bill seeks to amend the Child Marriage Restraint Act, 1929, to increase the minimum age of marriage from fifteen to sixteen for females and from eighteen to twenty-one for males and to make consequential amendments in the Hindu Marriage Act, 1955, and the Indian Christian Marriage Act, 1872. It is also being provided that offences under the Child Marriage Restraint Act may be investigated upon by a police officer under the Code of Criminal Procedure as if it were a cognizable offence. The police officer shall, however, not have the power to arrest without a warrant or an order of a Magistrate. – Gaz of Ind., 15.12.1977, Pt. II, S. 2, Extra., p. 882.

[The] Child Marriage Restraint Act, 1929

THE CHILD MARRIAGE RESTRAINT ACT, 1929 (19 OF 1929)

[1st October, 1929]

An Act to restrain the solemnization of child marriages.

WHEREAS it is expedient to restrain the solemnisation of child marriages; it is hereby enacted as follows:

- (a) For Statement of Objects and Reasons, see Gazette of India. 127, Pt. V. p. 28 ; for Reports of Select Committees, see *ibid*, 1928, Pt. V, pp. 111 and 165.

This Act has been extended to the new Provinces and Merged States by the Merged States (Laws) Act, 1949 (59 of 1949), S. 3 (1-1-1950) and to the Union Territories of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act, 1950 (30 of 1950) S. 3 (16-4-1950). Manipur and Tripura are States now (see Act 81 of 1971), but Vindhya Pradesh now forms part of the State of Madhya Pradesh – See Act 37 of 1956, S. 9 (1) (e).

This Act has been extended to States merged in the State of Bombay : see Bom. Act 4 of 1950.

The Act now extends to the Union Territories of : -

- (1) Goa, Daman and Diu – See Regn. 11 of 1963 [1-2-1965] ; (Goa is now a State).
- (2) Dadra and Nagar Haveli – See regn. 6 of 1963 [1-7-1965].
- (3) Laccadive, Minicoy and Amindivi Islands – See Regn. 8 of 1965 [1-10-1967]. These are now known as Lakshwadeep Islands.
- (4) Pondicherry – Act 26 of 1968 [15-8-1968].

1. Short title, extent and commencement.- (1) This Act may be called the Child Marriage Restraint Act, [1929]

(2) It extends to the whole of India except the State of Jammu and Kashmir and it applies also to all citizens of India without and beyond India.

Provided that nothing contained in this Act shall apply to the Renoncants of the Union Territory of Pondicherry.

(3) It shall come into force on the 1st day of April, 1930.

2. Definitions.- In this Act, unless there is anything repugnant in the subject or context.

- (a) «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;
- (b) «child marriage» means a marriage to which either of the contracting parties is a child;
- (c) «contracting party to a marriage» means either of the parties whose marriage is or is about to be thereby solemnised ; and
- (d) «minor» means a person of either sex who is under eighteen years of age.

3. Punishment for male adult below twenty-one years of age marrying a child.- Whoever, being a male above eighteen years of age and below twenty-one, contracts a child marriage shall be punishable with simple imprisonment which may extend to fifteen days, or with fine which may extend to one thousand rupees, or with both.

4. Punishment for male adult above twenty-one years of age marrying a child.- Whoever, being a male above twenty-one years of age, contracts a child marriage shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine.

5. Punishment for solemnising a child marriage.- Whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine, unless he proves that he had reason to believe that the marriage was not a child marriage.

6. Punishment for parent or guardian concerned in a child marriage.

-
1) Where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised, shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine.

Provided that no woman shall be punishable with imprisonment.

(2) For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent the child marriage from being solemnised.

7. Offences to be cognizable for certain purposes.- The Code of Criminal Procedure, 1973 (2 of 1974), shall apply to offences under this Act as if they were cognizable offences-

(a) for the purpose of investigation of such offences; and

(b) for the purposes of matters other than (i) matters referred to in section 42 of that Code, and (ii) the arrest of a person without a warrant or without an order of a Magistrate.

8. Jurisdiction under this Act. - Notwithstanding anything contained in section 190 of the Code of Criminal Procedure, 1973, no Court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall take cognizance of, or try, any offence under this Act.

9. Mode of taking cognizance of offences.- No Court shall take cognizance of any offence under this Act after the expiry of one year from the date on which the offence is alleged to have been committed.

10. Preliminary inquiries into offences.- Any Court, on receipt of a complaint of an offence of which it is authorised to take cognizance, shall, unless it dismisses the complaint under section 203 of the Code of Criminal Procedure, 1973, either itself make an inquiry under section 202 of that Code or direct a Magistrate subordinate to it to make such inquiry.

11. Power to take security from complainant. - Repealed by the Child Marriage Restraint (Amendment) Act, 1949 (41 of 1949), S. 7 (15-7-1949).

12. Power to issue injunction prohibiting marriage in contravention of this Act. –

1) Notwithstanding anything to the contrary contained in this Act, the Court may, if satisfied that information laid before it through a complaint or otherwise that a child marriage in contravention of this Act has been arranged or is about to be solemnised, issue an injunction against any of the persons mentioned in sections 3, 4, 5, and 6 of this Act prohibiting such marriage.

(2) No injunction under sub-section (1) shall be issued against any person unless the Court has previously given notice to such person, and has afforded him an opportunity to show cause against the issue of the injunction.

(3) The Court may either on its own motion or on the application of any person aggrieved, rescind or alter any order made under sub-section (1).

(4) 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; and if the Court rejects the application wholly or in part, it shall record in writing its reasons for so doing.

(5) Whoever knowing that an injunction has been issued against him under sub-section (1) of this section disobeys such injunction shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both:

Provided that no woman shall be punishable with imprisonment.

ANNEXURE III

LAW IN DAMAN AND DIU

ANNEXURE III

LAW IN DAMAN & DIU

FAMILY LAWS

NO. 1 (1): LAW OF MARRIAGE AS A CIVIL CONTRACT

The Provisional Government of the Portuguese Republic makes it known that in the name of the Republic it is hereby enacted, to have the force of law as follows:

**CHAPTER I
OF CIVIL MARRIAGE AND ITS SOLEMNIZATION**

The marriage is a contract solemnized between two persons of different sex with the purpose of legitimately constituting a family.

ARTICLE 2

Such contract is purely civil and is presumed to be perpetual, without prejudice to its dissolution by way of divorce as per the provisions of the decree, with the force of law dated 3rd November, 1910.

**CHAPTER II
OF IMPEDIMENTS OF THE MARRIAGE**

ARTICLE 4

The following shall not contract marriage.

- (1) Relatives by consanguinity or affinity in a direct line, although the marriage, which is the cause of affinity, has been dissolved;

In pursuance of clause (3) of article 348 of the Constitution of India, the following translation in English of the Maharashtra Regulation of Marriage Bureaus and Registration of Marriages Act, 1998 (Mah. Act No. XX of 1999), is hereby published under the authority of the Governor.

By order and in the name of the Governor of Maharashtra,

ORATIMA UMARJI,
Secretary to Government

ANNEXURE IV

MAHARASHTRA ACT NO. XX
OF 1999

ANNEXURE IV

MAHARASHTRA ACT NO. XX OF 1999

(First published, after having received the assent of the Governor in the "Maharashtra Government Gazette", the 15th April, 1999)

An Act to provide for a comprehensive and stringent law for regulation of marriage bureaus for prevention of mal practices and misuse of marriage registration facility; and for compulsory registration of marriages in the State of Maharashtra; and for matters connected therewith or incidental thereto.

WHEREAS it is expedient to make a comprehensive and stringent law for regulation of marriage bureaus for prevention of mal-practices and misuse of marriage registration facility; and for compulsory registration of marriages in the State of Maharashtra, and to provide for matters connected therewith or incidental thereto;

It is hereby enacted in the forty-ninth year of the Republic of India as follows:

1. (1) This Act may be called the Maharashtra Regulation of Marriage Bureaus and Registration of Marriages Act, 1998.
(2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.
2. In this Act, unless there is anything repugnant in the subject or context:
 - (a) "Government" means the Government of Maharashtra in the Public Health Department;
 - (b) "marriage" includes a re-marriage;
 - (c) "Marriage bureau" or "bureau" means a bureau or institution consisting of a person or group of persons, which carries on the activity of helping the unmarried persons including divorcees, widows and widowers, desirous of getting married, registered with the bureau, in finding a suitable match for them by arranging to bring such persons together etc., and which is registered under section 5;

- (d) “memorandum” means a memorandum for registration of marriage mentioned in section 6;
 - (e) “parties” means the husband and wife whose marriage has been solemnized;
 - (f) “prescribed” means prescribed by rules made under this Act;
 - (g) “register of marriages” means the register of marriages maintained under this Act;
 - (h) “register of marriage bureaus” means the register of marriage bureaus maintained under this Act;
 - (i) “Register” means a Registrar of marriage bureaus and marriages, appointed under this Act;
 - (j) “Registrar General” means the Registrar General of Births, Deaths and Marriages, appointed by the State Government for the State of Maharashtra under the Births, Deaths and Marriages Registration Act, 1886.
3. (1) The State Government may, by notification in the Official Gazette, appoint as many persons, as it thinks necessary to be the Registrars of Marriage Bureaus and Marriages, for such area or areas as may be specified in such notification.
- (2) The Registrar shall exercise such powers and duties as provided by or under this Act and shall work under the general supervision and control of the Registrar General, and the Government.
4. From the date of coming into force of this Act, every marriage bureau and every marriage in the State shall be registered with the Registrar of marriage bureaus and marriages.
5. (1) Any person or group of persons desirous of conducting or running a marriage bureau shall apply for registration of such marriage bureau to the Registrar, in such manner and alongwith such fees and documents as may be prescribed.

Provided that, the marriage bureaus existing on the date of commencement of this Act shall apply for registration within a period of 3 months from the date of such commencement.

- (2) The Registrar shall, on receiving an application under sub-section (1), after scrutiny of such application and verifying the prescribed documents, register such marriage bureau and grant a certificate of registration to such bureau, in the prescribed form. The registration certificate so granted shall be displayed prominently by such bureau in its registered office premises.
- (3) In case an application for registration is not made in the prescribed manner or is not in compliance with the prescribed requirements, the Registrar may, for reasons to be recorded in writing, refuse to register such marriage bureau, after giving the applicant an opportunity of being heard.
- (4) Every such marriage bureau shall renew its registration after every two years from the date of grant of such certificate, on payment of the prescribed renewal fee; and the Registrar shall renew the certificate in the same manner, as laid down under sub-section (2).
- (5) No marriage bureau shall carry on or conduct its activities as the marriage bureau, except at its registered office or place as specified in the registration certificate granted under sub-section (2).
- (6) Every marriage bureau shall conduct its activities as such bureau strictly as per the terms and conditions of the registration granted under sub-section (2); and contravention or non-compliance by a bureau with any of the provisions of this Act or the rules made thereunder or the terms and conditions subject to which the registration has been granted, shall make the registration of such bureau liable for cancellation and shall also constitute an offence making the bureau liable for punishment as provided in sub-section (b) of section 12:

Provided that, registration of a bureau shall not be cancelled without giving a reasonable opportunity, or being heard, to the concerned bureau.

- (7) Any person or bureau aggrieved by the order of the Registrar refusing to register or renew the registration of the bureau or canceling the registration may, appeal against such order to the Registrar General, in the prescribed manner, and the provisions of sections 7, 8 and 9 relating to appeal against the order of refusal to register a marriage shall, mutates mutandis, apply to such appeal.
6. (1) (a) On solemnization of a marriage, it shall be the responsibility of the husband to present, within a period of ninety days from the date of the solemnization of the marriage, a memorandum in the prescribed form before the Registrar within whose jurisdiction the husband ordinarily resides or where either one of the parties ordinarily reside;
- (b) The parties and three witnesses to the marriage shall appear in person before the Registrar and sign the memorandum;
- (c) the memorandum shall be accompanied by such fee and other documents as may be prescribed;
- (d) The Registrar before whom the memorandum is presented shall, after verification of the identity of the parties and the witnesses in the prescribed manner, register the marriage in the register of marriages;
- (e) on registration of the marriage, the Registrar shall issue a certificate of registration of marriage to the parties in the prescribed form.
- (2) Any marriage which is not registered within the time limit specified in sub-section (1), may be registered as provided in the said sub-section, by the Registrar within whose jurisdiction the parties ordinarily reside, on submission of the memorandum within a period of one year from the date of the marriage, along with such penalty, not exceeding rupees one hundred, as may be prescribed;

Provided that, any marriage which is not registered as provided under this sub-section may, subject to the provisions of sub-section (1) of section 12, be registered at any time as provided in sub-section (1), after charging a penalty not exceeding rupees five hundred, as may be prescribed.

- (3) Notwithstanding anything contained in this section, any marriage which is solemnized before the coming into force of this Act and a period of not less than one year has elapsed since its solemnization, and which for any reason has not been registered, may be registered on presentation of a memorandum along with a penalty of one hundred rupees, in relaxation of any of the provisions of this section :

Provided that, any marriage solemnized within a period of one year, prior to the date of commencement of this Act, shall be registered in accordance with the provisions of sub-section (1), on payment of penalty of one hundred rupees.

- 7 (1) Where the Registrar, before whom the memorandum is presented under section 6, on scrutiny of the documents submitted with the memorandum or, on the basis of other facts noticed or brought to his notice, is satisfied or has reason to believe that —

- (a) the marriage between the parties is not performed in accordance with the personal law of the parties; or
- (b) the identity of the parties or the witnesses or the persons testifying the identity of the parties and the solemnization of the marriage is not established beyond reasonable doubt; or
- (c) the documents tendered before him do not prove the marital status of the parties;

he may, after hearing the parties and recording the reasons in writing, refuse to register the marriage and may —

- (i) call upon the parties to produce such further information or documents as deemed necessary, for establishing the identity of the parties and the witnesses or correctness of the information or documents presented to him, and for that purpose direct the parties to appear before him with the required further information or documents on any other date as may be mutually fixed; or
 - (ii) If deemed necessary, also refer the papers to the local police station within whose jurisdiction the parties reside, for verification, and direct the parties to appear before him on any other date as may be mutually fixed.
 - (2) Whereon further verification as provided in sub-section (j), the Registrar is satisfied that there is no objection to register the marriage, he may register the same. If in the opinion of the Registrar, the marriage is not fit for registration, he may pass an order of refusal in writing, recording the reasons therefore and then refer the matter, with all the relevant record and his report in the matter, to the Registrar General, within a period of seven days, from the date of the order of such refusal.
8. The Registrar General, on receiving the reference under section 7 from the Registrar, shall, within a period of one month from the date of receipt of such report, after giving an opportunity to the parties concerned of being heard, pass an order, after recording the reasons in writing, either directing the Registrar to register the marriage, or confirming the order of the Registrar refusing to register the marriage.
 9. The person or party aggrieved by the order of the Registrar General under section 8 refusing to register the marriage under this Act may, within a period of thirty days from the date of the order appeal against such order to the District court within the local limits of whose jurisdiction the Registrar of marriages has his office, and the decision of the District Court on such appeal shall be final, the Registrar of Marriages before whom the memorandum was presented under section 6 shall act in conformity with such decision.

10. Subject to the provisions of section 9, no marriage to which this act applies shall be deemed to be invalid solely for the reasons that it has not been registered under this Act.
11. No employer or a Government or Semi-Government Authority or Company, or Public Sector Undertaking or Local Authority shall carry out any change in their office record or in any office documents, such as change in the material status or change of nomination, etc., of its employee or in their dealings with any person, customer or client, unless the employee or, as the case may be, the applicant, applying for carrying out or recording of such change, submits a certified copy of the Marriage Registration Certificate granted under section 6 of this Act.
12. (1) On solemnization of a marriage,—
 - (a) if the husband fails to submit a memorandum as provided under sec. 6, within the time limit specified therein, or
 - (b) if the husband or the wife makes any statement or declaration in such memorandum which is false in any material particular, or submits any documents or papers which he or she, as the case may be, knows or has reason to believe to be false, the husband or the wife, as the case may be, shall be guilty of an offence punishable with fine which may extend to one thousand rupees.
- (2) Any person or bureau or party who contravenes any of the provisions of this Act, shall, on conviction, be punishable with fine which may extend to five thousand rupees or, with simple imprisonment which may extend to six months, or with both.
13. No prosecution for an offence punishable under this Act shall be instituted except by an officer authorized by the Registrar General, by general or special order, in this behalf.
14. (1) The register maintained under this Act, on application made to the Registrar and on payment of such fees as may be prescribed, shall, at all reasonable times, be open for public inspection.

(2) On an application being made in that behalf, and on payment of such fees as may be prescribed, the Registrar shall furnish to the applicant a copy of any extract of the register maintained under this Act.

15. Subject to the provisions of the Child Marriage Restraint Act, 1929, any marriage solemnized when parties are minor, or where either of the party is a minor shall be registered as provided in sub-section (1) of section 6 :

Provided that, the Registrar shall, immediately, report such marriage to the local police station within whose jurisdiction, the parties ordinarily reside, for necessary action under the provisions of the Child Marriage Restraint Act, 1929.

16. When the Registrar registers a marriage under this act, he shall immediately thereupon send a duplicate copy of the registration certificate, to the Registrar General.

17. Every Registrar and every employee in the office of the Registrar shall, while acting or purporting to act in pursuance of any of the provisions of this act, be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

18. No suit, prosecution or other legal proceeding shall be instituted against any person for anything which is in good faith done or intended to be done under this Act or rules made thereunder.

19. (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :

(a) the form and the manner of, maintenance of registers or records under this Act;

- (b) (i) the form of application for registration of a marriage bureau;
 - (ii) the documents to be submitted therewith by the applicant;
 - (iii) the amount of fees for grant of and renewal of, such registration;
 - (iv) the form of certificate of registration to be granted to a marriage bureau and the terms and conditions subject to which such registration may be granted; and
 - (v) the manner and procedure of filing an appeal to the Registrar General;
- (c) (i) The form of the memorandum for registration of a marriage and the details of the witnesses and the priest to be specified in the memorandum;
 - (ii) the amount of fee for such registration;
 - (iii) the form of certificate of registration of marriage;
 - (iv) the amount of penalty for late registration;
- (d) the form of application and the fees for grant of a copy of the extract of the register of marriage bureaus or the register of marriage maintained under this act ;
- (e) any other matter for which rules may be made under this Act.
- (3) Except when rules are made for the first time, all rules made under this Act shall be subject to the condition of previous publication.
- (4) Every rule made under this Act shall be laid as soon as may be, after it is made, before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, and notify such decision in the official

Gazette, the rule shall from the date of publication in the Official Gazette, of such decision, have effect only in such modified form or be of no effect, as the case may be, so however that, any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

20. This Act shall not apply to marriages contracted under the Special Marriage Act, 1954, the Indian Christian Marriage Act, 1872, or the Parsi Marriage and Divorce Act, 1936.
21. The Bombay Registration of Marriage Act, 1953, is hereby repealed. Notwithstanding such repeal, any marriage registered or any action taken by the Registrar, under the provisions of the said Act before such repeal shall be deemed to have been validly registered or, as the case may be, taken under the corresponding provisions of this Act.
22. The Government may, from time to time, issue such directions not inconsistent with the provisions of this Act, to the Registrar and the Registrar General, as it may think fit in this regard for the effective and smooth implementation of the provisions of this Act; and the Registrar and the Registrar General shall be bound to follow such directions.
23. (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order published in the Official Gazette, give such directions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for the purposes of removing the difficulty.

(2) No order under sub-section (1) shall be made after the expiry of two years from the date on which this Act comes into force.

ANNEXURE V

GOA LAW

ANNEXURE V

GOA LAW

No. 1

Law of marriage as a civil contract

The Provisional Government of Portuguese Republic makes it known that in the name of the Republic is decreed having the force of Law the following:

CHAPTER I

Of civil marriage and its solemnization

- Article 1. The Marriage is a contract solemnized between two persons of different sex with an aim of constituting a family legitimately.
- Article 2. Such a contract is purely civil and presumed to be perpetual, without prejudice to its dissolution by way of divorce, in terms of the Decree, having the force of Law, dated 3rd November 1910.
- Article 3. All Portuguese shall solemnize the marriage before the respective officer of Civil Registration, with the conditions and in the form established under civil law, and only that is valid.

CHAPTER II

Of impediments to the marriage

- Article 4. The following shall not contract marriage:

CODE OF CIVIL REGISTRATION OF GOA, DAMAN AND DIU

CHAPTER I

Of the purpose of Civil Registration, its obligatoriness and fixation.

- Article 1. The Civil Registration, that the State hereby enacts by this decree with the force of law, has the purpose of establishing authentically the juridical individuality of such citizen and to serve as the base for his civil rights.
- Article 2. The inscription in the civil registration of the essential facts relating to the individual and to the family and to the composition of the Society, namely those of births, marriages and deaths is obligatory.
- Article 3. In the same book or registration the acknowledgements, legitimations and adoptions of children, the divorces, declarations of nullity and annulments of marriage and other acts of facts relating to the civil state shall be inscribed or entered.
- Article 4. The facts mentioned in Article 2 as well as those referred to in Article 3, when requiring registration, shall only be proved in future by the civil registration, being null and void and without juridical value any other documents made concerning them.

Number of marriages registered by the Civil Registrars in the
State of Goa.

Years	No. of Marriages registered
1999	5389
2000	7634
2001	9611
2002	8772
2003	8757
2004 (Till June)	3866

ANNEXURE VI

THE KARNATAKA MARRIAGES
(REGISTRATION AND
MISCELLANEOUS PROVISIONS)
ACT, 1976

ANNEXURE VI

**THE KARNATAKA MARRIAGES
(REGISTRATION AND MISCELLANEOUS
PROVISIONS) ACT, 1976**

**STATEMENT OF OBJECTS AND REASONS KARNATAKA
ACT NO. 2 OF 1984**

Karnataka Gazette, Extraordinary, dated 13-11-1976

At present all marriages need not be registered, Registration will provide proof of marriage and consequently will limit the scope for avoidable litigation. It is therefore proposed to provide for compulsory registration of all marriages.

Dowry and wasteful pageantry have become pernicious incidents of marriages. In spite of the Dowry Prohibition Act, 1961 (Central Legislation), dowry is still playing havoc. Similarly the pomp and pageantry, involving as they do lavish expenditure. It is necessary to provide for stringent measures to eliminate the said evils. Therefore, it is proposed to make dowry prohibition more rigorous and to tax marriages involving lavish expenditure.

In order to achieve the aforesaid provisions are made in the Bill for:-

- (1) Compulsory registration of all marriages by a simple procedure of applying for registration by post:
- (2) Expanding the scope of the expression of dowry to include various forms of seeking it and penalizing the demand and taking of dowry:
- (3) Making contravention of dowry prohibition a cognizable offence:
- (4) Placing in prosecutions for contravention the burden of proof on the accused :
- (5) Imposing disability to hold certain public offices on the culprit: and

- (6) Levying a luxury tax on a slab basis where the expenses of any marriage exceeds Rs. 5000.

The Bill incidentally makes provisions to encourage inter-caste marriages and restricts the serving of food in connection with a marriage.

(First published in the Karnataka Gazette Extraordinary on the Twenty-fifth day of February, 1984).

Received the assent of the President on the Fifteenth day of July, 1983).

An Act to provide for uniform law for registration of marriages and certain other matters in the state of Karnataka.

Whereas it is expedient to provide for compulsory registration of marriages, to prohibit giving or taking of dowry, to provide for the levy of luxury tax on certain marriages and for certain other matters connected therewith:

Be it enacted by the Karnataka State Legislature in the Twenty-seventh year of the Republic of India as follows:

CHAPTER-1

Preliminary

1. Short title, extent and commencement.- (1) This Act may be called the Karnataka Marriages (Registration and Miscellaneous Provisions) Act, 1976.
2. It extends to the whole of the State of Karnataka.
3. It shall come into force on such date as the State Government may, by notification, appoint and different dates may be appointed for different provisions of the Act.
2. Definitions:- In this Act unless the context otherwise requires:
 - (a) “**Appointed day**” means the date notified under sub-section (3) of Section 1,
 - (b) “To contract a marriage” means to solemnize or enter into a marriage in any form or manner:

- (c) “**Dowry**” means any property (including cash) or valuable security given or agreed to be given either directly or indirectly,
- (i) by one party to a marriage to the other party to the marriage: or
 - (ii) by the parents of either party to marriage or by any other person, to either party to marriage or to any other person, at or before or after the marriage as consideration for the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim personal Law (Shariat) applies.

Explanation. – (1) For the removal of doubts, it is hereby declared that, -

- (i) any presents made at, before or after a marriage in the form of cash ornaments, clothes or other articles, the total value of which does not exceed five hundred rupees shall not be deemed to be dowry within the meaning of this section unless they are made as consideration for the marriage of the said parties:
- (ii) any person financially assisting a boy, whether related to him or not, either in his education, business or otherwise with the intention of giving his daughter or any other relation in marriage

To such boy shall be deemed to give and the boy so receiving such assistance shall be deemed to receive, dowry:

(2) The expression “**valuable security**” has the same meaning as in Section 30 of Indian Penal Code:

- (d) “**Expenses of Marriage**” in relation to a marriage means all expenses incurred in connection therewith by the parties to the marriage and the person celebrating it
- (e) “**Marriage**” includes remarriage
- (f) “**Marriage Tax**” means the luxury marriage tax payable under Section 12
- (g) “**Marriage tax officer**” means the Luxury Marriage Tax Officer appointed under Section 13

- (h) **“Memorandum”** means a memorandum of marriage mentioned in Sections 5 and 6
- (i) **“Register”** means a register of marriages maintained under this Act
- (j) **“Registrar”** means a Registrar of Marriages appointed under Section 4
- (k) **“Registrar General”** means the Registrar General of Births, Deaths and Marriages appointed under any law for the time being in force relating to the registration of births, deaths and marriages appointed under any law for the time being in force relating to the registration of births, deaths and marriages.

CHAPTER II

Registration of Marriages

- 3. **Every marriage to be registered** – Every marriage contracted in the state on or after the appointed day shall be registered in the manner provided in this Act.
- 4. **Appointment of Registrar of Marriages, etc.** –
 - (1) For the purpose of this Act, the state Government may, by notification, appoint, as many Registrars of Marriages as it thinks necessary for such area or areas as may be specified in the notification.
 - (2) The Registrar shall maintain in the prescribed manner a register of marriages and such other registers as may be prescribed.
- 5. **Memorandum of marriages** –
 - (1) The parties to a marriage shall, prepare and sign a memorandum in the form specified in Schedule A and deliver or send by registered post the said memorandum in duplicate to the Registrar of the area in which the marriage was contracted, within a period of thirty days from the date of marriage.
 - (2) The memorandum shall be accompanied by the prescribed fee in the form of court fee stamps and shall be attested by prescribed person.
 - (3) On receipt of the memorandum, the Registrar shall file the same, enter the particulars thereof in the register, send the duplicate copy thereof to the Registrar General and issue a marriage certificate in

- such form and manner as may be prescribed.
6. Memorandum of marriage submitted after thirty days, etc.-
(1) The Registrar may suo motu or otherwise issue notice to the parties to a marriage which has not been registered under this Act, to appear before him and get the memorandum of marriage signed and delivered with the prescribed fee in such manner and within such time as may be specified in the notice.
(2) On receipt of a memorandum under sub-section (1) the Registrar shall file the same, enter the particulars thereof in the register, send the duplicate copy thereof to the Registrar General and issue the marriage certificate as provided in Section 5.
(3) Nothing contained in sub-section (1) shall affect the liability of any person under the provisions of Section 17.
7. Register to be open for public inspection.- The register maintained under this Act shall, at all reasonable times, be open to inspection and certified extracts there from shall, on application be given by the Registrar on payment of the prescribed fee. The entries in the memorandum or the register or the certified extract thereof or the marriage certificate issued under section 5 or section 6 shall be admissible in evidence and be proof of the statement contained therein.
8. Non-registration not to invalidate the marriage.- No marriage contracted in the State shall be deemed to be invalid solely by reason of the fact that it was not registered under this Act or that the memorandum was not delivered or sent to the Registrar or that such memorandum was defective, irregular or incorrect.

CHAPTER III

Dowry

9. **Giving or taking of dowry prohibited.**— No person shall, after the appointed day, demand, give or take or abet the demanding, giving or taking of dowry.

10. **Agreement for giving or taking to be void.**- Any agreement whether written or otherwise for giving or taking of dowry shall be void.
11. **Dowry to be for the benefit of the wife or her heirs.**-
- (1) Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman,-
 - (a) if the dowry was received before marriage, within one year after the date of the marriage: or
 - (b) if the dowry was received at the time or after the marriage, within one year after the date of its receipt: or
 - (c) if the dowry was received when the woman was a minor within one year after she has attained the age of eighteen years and pending such transfer shall hold it in trust for the benefit of the woman.
 - (2) Where the woman entitled to any property under sub-section(1) dies before receiving it, the heirs of the woman shall be entitled to claim it from the person holding it for the time being.
 - (3) Nothing contained in this section shall affect the liability of any person holding it for the time being.

CHAPTER IV Luxury Marriage Tax

12. **Levy of luxury marriage tax.** –
- (1) Every marriage including any function connected therewith celebrated after the appointed day, the expenses of which exceed five thousand rupees, shall be considered to be a luxury marriage and there shall be levied and collected by the State Government from the parties to such marriage and the persons celebrating such marriage a tax called luxury marriage tax at the rate specified in Schedule B.
 - (2) For the purpose of this section and clause (d) of section 2, the parents or the guardians of the parties to the marriage shall, unless it is proved otherwise, be deemed to be persons who celebrated the marriage.

13. Levy and collection of marriage tax.-

- (1) The state Government may by notification appoint, for the purposes of levying and collecting the marriage tax payable under Section 12, as many Luxury Marriage Tax Officers as it may think necessary and the officers so appointed shall have jurisdiction within such area or areas as may be specified in the notification.
- (2) Every person liable to pay marriage tax in respect of a marriage shall within a period of seven days from the date of such marriage furnish to the Marriage Tax Officer having jurisdiction a return indicating the expenses of the marriage in the prescribed form.
- (3) (a) If the Marriage Tax Officer is satisfied that the return submitted under sub-section (2) is correct he shall determine the amount of marriage tax payable on the basis thereof.

(b) If any person liable to furnish a return under sub-section (2) either fails to furnish a return or furnishes a return which, in the opinion of Marriage Tax Officer, is incorrect or incomplete, such officer may, in such manner as may be prescribed, require any person to furnish such information and particulars, as he may deem necessary to determine the expenses of the marriage, and after giving the person or persons concerned a reasonable opportunity of being heard determine the expenses of the marriage and the amount of marriage tax payable by such person or persons.
- (4) A copy of the order made under sub-section (3) determining the amount of marriage tax payable shall be served on the person or persons liable to pay it and any person aggrieved thereby may, within thirty days from the date of such service, appeal to the prescribed authority who shall after giving the appellant an opportunity of being heard pass such orders as it thinks fit.
- (5) The person or persons liable to pay the marriage tax determined under sub-section (3) as modified in appeal, if any under sub-section (4) shall be jointly and severally liable to the payment thereof and the same shall be recovered as arrears of land revenue.

CHAPTER V
Inter-caste Marriages

14. **Inter-caste Marriage,-** Each party to an inter-caste marriage shall, subject to such rules as may be prescribed, be eligible for grant of one thousand rupees and for such other facilities as may be prescribed.

Explanation,- ‘Inter caste marriage’ means a marriage between two persons belonging to different religions or different castes of Hindus.

CHAPTER VI
Certain Restrictions

15. **Restriction on preparation and consumption of foodstuffs in connection with marriages,-** No person shall, in connection with a marriage on any one day, prepare, or serve, distribute or provide for consumption, or cause to be prepared or served, distributed or provided for consumption, any foodstuffs prepared from or containing cereals or pulses or sweet for more than five hundred persons including the members of the family of such person.

16. **Presents prohibited.-**

- (1) No person other than a party or parents of a party to a marriage shall give any present to a party or to the parents of a party to a marriage or to the person celebrating the marriage at the time of marriage or any other function or ceremony connected with the marriage of such party.
- (2) No party to a marriage or the parents of a party to a marriage or a person celebrating a marriage shall accept any presents prohibited by sub-section (1)

CHAPTER VII
Offences and penalties

17. **Penalty for omission to deliver or send memorandum under Section 5 or for making false statement in memorandum.-**

- (1) Any person who,-

- (a) after the appointed day, willfully omits or neglects to deliver or send the memorandum as required by Section 5:
- (b) makes any statement in a memorandum delivered or sent to the Register under section 5 or under section 6 is false in any material particular and which he knows or has reason to believe to be false,
shall, on conviction, be punishable with imprisonment which may extend to three months or with fine which may extend to five hundred rupees or with both.

(2) The Registrar or any officer authorized by the State Government in this behalf may prosecute any person for an offence punishable under sub-section (1).

18. Penalty for failure to file a memorandum.- Any Registrar who willfully fails to file a memorandum delivered or sent to him or to make entries in the register as required by Section 5 or Section 6 shall, on conviction, be punishable with imprisonment which may extend to three months or with fine which may extend to five hundred rupees or with both.

19. Penalty for secreting, destroying or altering register.- any person secreting, destroying or dishonestly or fraudulently altering the memorandum or the register or any part thereof shall, on conviction, be punishable with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees.

20. Penalty for giving, taking or demanding dowry.- Any person, who, after the appointed day,-

- (a) gives or takes or abets the giving or taking of dowry;
- (b) demands, directly or indirectly, from the parents or guardians of a bride or bridegroom or any other person any dowry,

Shall, on conviction, be punishable with imprisonment which shall not be less than three months but may extend to one year and with fine which shall not be less than one thousand rupees but may extend to five thousand rupees.

- 21. Penalty for contravening provisions of Section 11.-** Any person who fails to transfer any property as required by sub-section (1) of Section 11 within the time specified therein, shall on conviction be punishable with imprisonment which shall not be less than three months but may extend to one year and with fine which shall not be less than one thousand rupees but may extend to five thousand rupees. Any such punishment shall not absolve the person from his obligation to transfer the property as required by sub-section (1) of Section 11.
- 22. Penalty for depriving any party to a marriage of the rights and privileges of the marriage.-** If, after the marriage, for non-payment of dowry, any party to the marriage with or without the assistance of his parents or guardian or any other person, deprives the other party of the rights and privileges of marriage, or tortures or refuses to maintain the other party, he shall, on conviction be punishable with imprisonment which shall not be less than six months but may extend to one year or with fine which shall not be less than two thousand rupees but may extend to five thousand rupees or with both.
- 23. Penalty for omission to furnish return sub-section (2) of Section 13.-** Any person who being liable to furnish a return under sub-section (2) of Section 13, willfully omits or neglects to furnish a return as required by the said sub-section shall, on conviction, be punishable with imprisonment which may extend to three months or with fine which may.....
- 24. Penalty for contravening provisions of Section 15.-** Any person who prepares, serves, distributes or provides for consumption or causes to be prepared, served, distributed or provided for consumption any sweet or foodstuff in contravention of Section 15, shall on conviction, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees or with both.
- 25. Penalty for contravening provisions of Section 16.-** Any person contravening the provisions of Section 16 shall on conviction be

punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

26. Offences to be cognizable and non-bailable. -

- (1) Every offence punishable under this Act, except those punishable under Sections 17, 22 and 23 shall be cognizable.
- (2) Every offence punishable under Section 20 shall be non-bailable and non-compoundable.

27. Burden of proof.- Notwithstanding anything in any other law, in a prosecution for an offence punishable under Section 20 the burden of proving that he has not abetted, given, taken or demanded dowry or that he has not given, taken or demanded dowry shall lie on the accused.

CHAPTER VIII
MISCELLANEOUS

28. Protection of persons acting under this Act.- No suit or prosecution or other legal proceedings shall be instituted against any person for anything which is in good faith done or intended to be done under this Act.

29. The Registrar to be a public servant.- Every Registrar acting in pursuance of the provisions of this Act or rules or orders made thereunder shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.

30. Power to make rules. –

- (1) The State Government, may, by notification and after previous publication make rules to carry out the purposes of this Act.
- (2) In particular and without prejudice to the generality of the foregoing powers such rules may provide for all or any of following matters, namely :-
 - (a) the duties and the powers of the Registrar;
 - (b) the manner in which the memorandum shall be filed;
 - (c) the registers or records required to be kept under this Act;

- (d) the custody in which the registers and records are to be kept and the preservation of such records;
 - (e) powers and duties of the Marriage Tax Officers;
 - (f) manner and procedure for the levy and collection of marriage tax;
 - (g) manner of determining the expenses of a marriage;
 - (h) rules subject to which grants may be made under Section 14;
 - (i) facilities that may be granted under Section 14;
 - (j) such other matter as is required to be prescribed under this Act;
 - (k) any other matter for which there is no provision or no sufficient provision in this Act and for which provision is, in the opinion of the State Government necessary for giving effect to the purposes of the Act.
- (3) Every rule made under this section shall be laid as soon as may be, after it is made, before each House of the State Legislature, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session in which it is so laid or the sessions immediately following, both Houses agree in making any modifications in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under such rule.

31. Act to override other laws.— The provisions of this Act and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom, usage, contract or decree or order of the Court or other authority.

32. Amendment of Mysore Act 69 of 1949.— In the City of Bangalore Municipal Corporation Act, 1949 (Mysore Act 69 of 1949)—

- (1) for sub-section (1) of Section 56, the following sub-section shall be substituted, namely:—

“(1) A person who has been sentenced by a Criminal Court to,—

- (i) imprisonment for life or to imprisonment for a period of more than six months for any offence other than an offence of a political character or an offence not involving moral turpitude; or
- (ii) imprisonment of an offence punishable under Section 20, 21 or 22 of the Karnataka Marriages (Registration and Miscellaneous Provisions) Act, 1976,

Such sentence not having been reversed or the offence pardoned, shall be disqualified for election or appointment as a councilor while undergoing the sentence and for five years from the date of expiration of the sentence;:

(2) in sub-section (1) of Section 69-X, after clause (b), the following clause shall be inserted, namely :-

“(c) offence punishable under Sections 20, 21 or 22 of the Karnataka Marriages (Registration and Miscellaneous Provisions) Act, 1976.”

33. Amendment of Karnataka Act 10 of 1959.- In the Karnataka Village Panchayats and Local Boards Act, 1959 -

(1) in sub-section (1) of Section 11, for clause (c), the following clause shall be substituted, namely :-

- “(c) If he has been sentenced by a Criminal Court to imprisonment:
- (i) for an offence which involves moral turpitude and which is punishable with imprisonment for a term exceeding six months; or
 - (ii) for an offence punishable under Sections 20, 21 or 22 of the Karnataka Marriages (Registration and Miscellaneous Provisions) Act, 1976,

such sentence not having been subsequently reversed or remitted”.

(2) in sub-section (1) of Section 103, for clause (a), the following clause shall be substituted, namely :-

“(a) if he has been sentenced by a Criminal Court to imprisonment,—

- (i) for an offence which involves moral turpitude and which is punishable with imprisonment for a term exceeding six months; or
- (ii) for an offence punishable under Sections 20, 21, 22 of the Karnataka Marriages (Registration and Miscellaneous Provisions) Act, 1976,

such sentence not having been subsequently reversed or remitted; or”.

34. Amendment of Karnataka Act 22 of 1964.- In Karnataka Municipalities Act, 1964, for clause (a) of sub-section (1) of Section 16, the following clause shall be substituted, namely:-

“(a) if he has been sentenced by a Criminal Court to imprisonment,-

- (i) for an offence which involves moral turpitude and which is punishable with imprisonment for a term exceeding six months; or
- (ii) for an offence punishable under Sections 20, 21 or 22 of the Karnataka Marriages (Registration and Miscellaneous Provisions) Act, 1976,

such sentence not having been reversed or quashed or the offence pardoned, or”.

35. Amendment of Karnataka Act 27 of 1966.” In the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 for clause (b) of sub-section (2) of Section 16, the following clause shall be substituted, namely:-

“(a) if he has been sentenced by a Criminal Court to imprisonment,-

- (i) for an offence which involves moral turpitude and which is punishable with imprisonment for a term exceeding six months;

- (ii) for an offence punishable under Sections 20, 21 or 22 of the Karnataka Marriages (Registration and Miscellaneous Provisions) Act, 1976,

Such sentence not having been subsequently reversed or remitted; or“.

- 36. Repeal of Savings.-** The Bombay Registration of Marriage Act, 1953 (Bombay Act 5 of 1954) as in force in the Belgaum Area is hereby repealed :

Provided that the provisions of Section 6 of the Karnataka General Clauses Act, 1899 (Karnataka Act 3 of 1899) shall be applicable in respect of such repeal and Sections 8 and 24 of the said Act shall be applicable as if the said enactment had been repealed and re-enacted by this Act.

SCHEDULE A

[See Section 5]

Memorandum of Marriage

1. Date of Marriage
2. Place of Marriage (With sufficient particulars to locate the place)
3. (a) Name of the bridegroom
(b) His age
(c) Residential address
(d) Status of the bridegroom at the time of marriage whether unmarried, widower/divorced
(e) Signature of the Bridegroom with date
4. (a) Name of the bride
(b) Her age
(c) Residential address
(d) Status of the bride at the time of marriage whether unmarried/widow/divorced
(e) Signature of the bride with date
5. (a) Full name of the father or guardian of the bridegroom
(b) His age
(c) Residential address

- (d) Signature of the father or guardian of the bridegroom, with date if he is a consenting party
- 6. (a) Full name of the father or guardian of the bride
 - (b) His age
 - (c) Residential address
 - (d) Signature of the father or guardian of the bride, with date.
- (a) Name of the Witnesses (1) (2)
- (b) Addresses of the witnesses with (1) (2)
the name of the father
- (c) Signature of the witnesses with (1) (2)
date

Attested
(Prescribed Person)

Signature
Name
Designation
Address

Received by Post/in person on

Date

Seal

Registrar

SCHEDULE B
[See Section 12]

Where the expenses of marriage exceed Rs. 5,000.00 but does not exceed Rs. 10,000.00	10 per cent of the amount by which the expenses exceed Rs. 5,000.00
Where the expenses of marriage exceed Rs. 10,000.00 but does not exceed Rs. 20,000.00	Rs. 500.00 plus 25 per cent of the amount by which the expenses exceed Rs. 10,000.00
Where the expenses of marriage exceed Rs. 20,000.00 but does not exceed Rs. 50,000.00	Rs. 3,000.00 plus 40 per cent of the amount by which the expenses exceed Rs. 20,000.00
Where the expenses of marriage exceed Rs. 50,000.00	Rs. 15,000.00 plus 60 per cent of the amount by which expenses exceed Rs. 50,000.00.

ANNEXURE VII

THE PREVENTION OF
CHILD MARRIAGE BILL, 2004

ANNEXURE VII

**THE PREVENTION OF CHILD MARRIAGE
BILL, 2004**

A BILL

to provide for the prevention of solemnization of child marriages and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-fifth Year of the Republic of India as follows: -

Short title, extent and commencement.

1. (1) This Act may be called the Prevention of Child Marriage Act, 2004.
- (2) It extends to the whole of India except the State of Jammu and Kashmir; and it applies also to all citizens of India without and beyond India;

Provided that nothing contained in this Act shall apply to the Renoncants of the Union territory of Pondicherry.

- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different State and any reference in any provision to the commencement of this Act shall be construed in relation to any State as a reference to the coming into force of that provision in that State.

Definitions

2. In this Act, unless the context otherwise requires: -
 - (a) "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;

- (b) “child marriage” means a marriage to which either of the contracting parties is a child;
- (c) “contracting party”, in relation to a marriage, means either of the parties whose marriage is or is about to be thereby solemnized;
- (d) “Child Marriage Prevention Officer” includes the Child Marriage Prevention Officer appointed under sub-section (1) of section 16;
- (e) “district court” means, in any area for which a Family court established under section 3 of the Family Courts Act, 1984 exists, such Family Court, and in any area for which there is no Family Court but a city civil court exists that court and in any other area, the principal civil court of original jurisdiction and includes any other civil court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act; **(66 of 1984)**
- (f) “minor” means a person who, under the provisions of the Majority Act, 1875 is to be deemed not to have attained his majority. **(9 of 1875)**

3. 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 the marriage;

Provided that a petition for annulling a child marriage by a decree of nullity may be filed in the district court only by a contracting party to the marriage who was a child at the time of 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 alongwith the Child Marriage Prevention 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 this section, the district court shall make an order directing both the parties to the marriage and their parents or their guardians to return to the other party, his or her parents 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 order should not be passed.

4. Provision of Maintenance and Residence to Female Contracting Party to Child Marriage:

- (1) While granting a decree under section 3, the district court may also make an interim or final order directing the male contracting party to the child marriage, and in case the male contracting party to such marriage is a minor, his parent or guardian to pay maintenance to the female contracting party to the marriage until her remarriage.
- (2) The quantum of maintenance payable shall be determined by the district court having regard to the needs of the child, the lifestyle enjoyed by such child during her marriage and the means of income of the paying party.

- (3) The amount of maintenance may be directed to be paid monthly or in lump sum.
- (4) In case the party making the petition under section 3 is the female contracting party, the district court may also make a suitable order as to her residence until her remarriage.

5. Custody and Maintenance of Children of Child Marriages:

- (1) Where there are children born of the child marriage, the district court shall make an appropriate order for the custody of such children.
- (2) While making an order for the custody of a child under this section, the welfare and best interests of the child shall be the paramount consideration to be given by the district court.
- (3) An order for custody of a child may also include appropriate directions for giving to the other party access to the child in such a manner as may best serve the interests of the child, and such other orders as the district court may, in the interest of the child, deem proper.
- (4) The district court may also make an appropriate order for providing maintenance to the child by a party to the marriage or their parents or guardians.

6. Legitimacy of Children Born Marriages:

Notwithstanding that a child marriage has been annulled by a decree of nullity under section 3, every child begotten or conceived of such marriage before the decree is made, whether born before or after the commencement of this Act, shall be deemed to be a legitimate child for all purposes.

7. Power of District court to Modify Orders issued under Section Under Section 4 or Section 5:

The district court shall have the power to add to, modify or revoke any order made under section 4 or section 5 and if there is any change in the circumstances at any time during the pendency of the petition and even after the final disposal of the petition.

8. Court to which Petition Should be Made:

For the purpose of grant of reliefs under sections 3, 4 and 5, the district court having jurisdiction shall include the district court having jurisdiction over the place where the defendant or the child resides, or where the marriage was solemnised or where the parties last resided together or the petitioner is residing on the date of presentation of the petition.

9. Punishment of Male Adult Marrying a Child:

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

10. Punishment for Solemnising a Child Marriage:

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

11. Punishment for Propromoting or Permitting Solemnisation of Child Marriages:

- (1) Where a child contracts a child marriage, any person having charge of the child, whether as parent or guardian or any other person or in any other capacity, lawful or unlawful, including any member of an organization or association of persons who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised, including attending or participating in a child marriage, shall be punishable with simple imprisonment which may extend to two years and shall also be liable to fine which may extend up to one lakh rupees:

Provided that no women shall be punishable with imprisonment.

- (2) For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that where a minor child has contracted a marriage, the person having charge of such minor child has negligently failed to prevent the marriage from being solemnised.

12. Marriage of a Minor Child to be Void in Certain Circumstances:

Where a child, being a minor—

- (a) is taken or enticed out of the keeping of the lawful guardian; or
- (b) by force compelled, or by any deceitful means induced to go from any place; or
- (c) is sold for the purpose of marriage; and made to go through a form of marriage or if the minor is married after which the minor is sold or trafficked or used for immoral purposes, such marriage shall be null and void.

13. Power of Court to issue Injunction Prohibiting Child Marriages:

- (1) Notwithstanding anything to the contrary contained in this Act, if, on an application of the Child Marriage Prevention 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 solemnised, such Magistrate shall issue an injunction against any person including a member of an organization or an association of persons prohibiting such marriage.
- (2) 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 solemnisation of a child marriage or child marriages.
- (3) 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.
- (4) For the purposes of preventing solemnisation of mass child marriages on certain days such as Akshaya Trutiya, the District Magistrate shall be deemed to be the Child Marriage Prevention Officer with all powers as are conferred on a Child Marriage Prevention Officer by or under this Act.
- (5) The District Magistrate shall also have additional powers to stop or prevent solemnisation of child marriages and for this purpose, he may take all appropriate measures and use the minimum force required.
- (6) 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.

- (7) 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.
- (8) 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).
- (9) 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.
- (10) 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 woman shall be punishable with imprisonment.

14. Child Marriages in Contravention of Injunction Orders to be Void:

Any child marriage solemnised in contravention of an injunction order issued under section 13, whether interim or final, shall be void ab initio.

15. Offences to be Cognizable and Non-bailable:

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.

16. Child Marriage Prevention Officers:

- (1) 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 Prevention Officer having jurisdiction over the area or areas specified in the notification.
- (2) 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 nongovernmental organization to assist the Child Marriage Prevention Officer and such member, officer or office bearer, as the case may be, shall be bound to act accordingly.
- (3) It shall be the duty of the Child Marriage Prevention Officer—
 - (a) to prevent solemnisation of child marriages by taking such action as he may deem fit;
 - (b) to collect evidence for the effective prosecution of persons contravening the provisions of this Act;
 - (c) to advise either individual cases or counsel the residents of the locality generally not to indulge in promoting, helping, aiding or allowing the solemnisation of child marriages;
 - (d) to create awareness of the evil which results from child marriages;

- (e) to sensitize the community on the issue of child marriages;
 - (f) to furnish such periodical returns and statistics as the State Government may direct; and
 - (g) to discharge such other functions and duties as may be assigned to him by the State Government.
- (3) The State Government may, by notification in the Official Gazette, subject to such conditions and limitations, invest the Child Marriage Prevention Officer with such powers of a police officer as may be specified in the notification and the Child Marriage Prevention Officer shall exercise such powers subject to such conditions and limitations, as may be specified in the notification.
- (4) The Child Marriage Prevention 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.

17. Child Marriage Prevention Officers to be Public Servants:

The Child Marriage Prevention Officers shall be deemed to be public servants within the meaning of section 21(45 of 1860) of the Indian Penal Code.

18. Protection of Action Taken in Good Faith:

No suit, prosecution or other legal proceedings shall lie against the Child Marriage Prevention Officer in respect of anything in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

19. Power of State Government to Make Rules:

- (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.
- (2) Every rule made under this Act shall, as soon as may be after it is made, be laid before the State Legislature.

20. Repeal and Savings:

- (1) The Child Marriage Restraint Act, 1929(19 of 1929) is hereby repealed.
- (2) Notwithstanding such repeal, all cases and other proceedings pending or continued under the said Act at the commencement of this Act shall be continued and disposed of in accordance with the provisions of the repealed Act, as if this Act had not been passed.

ANNEXURE VIII

ITEMS No. 303

Court No. 2

SECTION PIL
A/N MATTER

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

Writ Petition (Civil) No. 212/ 2003

FORUM, FACT FINDING DOCUMENTATION & ADV. Petitioner (s)

VERSUS

UNION OF INDIA & ORS. Respondent (s)

[With Appln (s). for interim directions]

Date: 28.02.2005 This Petition was called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE S.B. SINHA
HON'BLE MR. JUSTICE S.H. KAPADIA

For Petitioner (s)

Mr. Colin Gonsalves, Sr. Adv.
Mr. Aparna Bhat, Adv.
Mr. P. Ramesh Kumar, Adv.

For Respondent (s)
for U.O.I./ Mo Health

Mr. G.E. Vahanvati, SG.
Mr. P.P. Malhotra, ASG.
Mr. Devadatt Kamat, Adv.
Mrs. Rekha Pandey, Adv.
Sushma Suriuri, Adv.

For NCT of Delhi	Mr. Mushtaq Ahmad, Adv. Mr. Anil Katiyar, Adv.
For state of Gujarat	Ms. Hemantika Wahi, Adv. Mrs. Sadhna Sandhu, Adv.
For UT of Andaman & Nicobar	Mrs. Rekha Pandey, Adv. Mr. D.S. Mahra, adv.
For UT of Chandigarh	Ms. Kamini Jaiswal, Adv. Mr. Shomila Bakahi, Adv.
For Govt. of Pondicherry	Mr. V.G. Pragasam, Adv.
For State of H.P.	Mr. J.S. Attri, AAG,
For State of M.P.	Mr. Satish K. Agnihotri, Adv. Mr. Rohit K Singh, Adv. Mr. Amit Mishra, Adv.
For State of Chhatisgarh	Ms. Suparna Srivastava, Adv. Mr. Rahul Srivastava, Adv. Ms. Deepti Singh, Adv. Mr. Rajesh Srivastava, Adv.
For Start of Tripura	Mr. Gopal singh, Adv. Mr. Anurag Sharma, Adv. Mr. Rituraj Biswas, Adv.
For State of Punjab	Mr. Kuldip Singh, Adv. Mr. Raj K. Pandey, Adv. Mr. B.S. Sandhu, Adv. Mr. A.K. Sinha, Adv.
For State of Sikkim	Mr. A. Mariarputham, Adv. Ms. Aruna Mathur, Adv. For M/s. Arputham, Aruna & Co., Advs.

For State of Assam	Ms. Krishna Sarma, Adv. Mr. V.K. Sidharthan, Adv. Mr. J.R. Luwang, Adv. For M/s. Corporate Law Group, Adv.
For State of Goa	Ms. A. Subhashini, Adv.
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For State of Haryana	Mr. Praveen Kumar Rai, Adv. Ms. Kavita Wadia, Adv.
For State of Orissa	Mr. Radha Shyam Jena, Adv.
For State of U.P.	Mr. Ravi P. Mehrotra, Adv. Mrs. Deepti R. Mehrotra, Adv. Mr. Garvesh Kabra, Adv.
For State of Uttaranchal	Ms. Rachna Srivastava, Adv.
For State of Rajasthan	Mr. Aruneshwar Gupta, AAG Mr. Naveen Kumar Singh, Adv. Ms. Shivangi, Adv.
For State of W. Bengal	Mr. Tara Chandra Sharma, Adv. Ms. Neelam Sharma, Adv.
For State of Bihar	Mr. B.B. Singh, Adv.
For State of Jharkhand	Mr. Gopal Prasad, Adv. Mr. Anand Shekhar, Adv.
For State of Meghalaya	Mr. Ranjan Mukherjee, Adv.
For State of A.P.	Mr. Manoj Saxena, Adv. Mr. M.P. Meharia, Adv.

	Mr. S.K. Mitra, Adv., Mr. Debojit Borkakati, Adv.
For State of Nagaland	Mr. U. Hazarika, Adv. Mr. Satya Mitra, Adv. Ms. Sunita Hazarika, Adv.
For Arunachal Pradesh	Mr. Anil Shrivastava, Adv. Mr. Saurabh Shrivastava, Adv. Ms. Smita, Adv.
For State of T.N.	Mr. R. Ayyam Perumal, Adv. Mr. S. Vallinayagam, Adv. Mr. Sewa Ram, Adv.
For State of J&K	Mr. Altaf H. Naiyuk, A.G., J&K Mr. Ania Suhrawardy, Adv. Ms. Shamama Anis, Adv.
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For State of Kerala	Mr. Ramesh Babu M.R., Adv.
For State of Karnataka	Mr. Sanjay R. Regde, Adv. Mr. T.V. Ratnam, Adv. Mr. Prakash Srivastava, Adv. Mr. H.K. Puri, Adv. Mr. Ujjwal Banerjee, Adv. Mr. S.K. Puri, Adv. Mr. Shiv Gupta, Adv. Mr. Priya Puri, Adv. Mr. V.M. Chauhan, Adv.

UPON hearing counsel the Court made the following

ORDER

When the matter was called out, learned Additional Solicitor General appearing on behalf of the Union of India produced before us a copy of the Bill known as the Prevention of Child Marriage Bill, 2004. The Bill is said to have been introduced in the Parliament. It is also stated that the objections have been invited from the general public by issuing public notice in this behalf in the News Papers on 28.02.2005 in terms whereof objections may be filed within 15 days therefrom. We, however, hope and trust that in the meantime the Collectors and SPs of all the Districts in the States shall make endeavour to prevent child marriages as far as possible and preferably in cases where mass marriages take place.

In that view of the matter let the case be called out 8 weeks hence.

(Pawan Kumar)
Court Master

(Prem Prakash)
Court Master

ABBREVIATIONS

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ADO	Area Development Officer
BDO	Block Development Officer
CACT	Campaign Against Child Trafficking
CMRA	Child Marriage Restraint Act
Cr.P.C	Criminal Procedure Code
DCP	Deputy Commissioner of Police
FFDA	Forum for Fact-finding, Documentation and Advocacy
HRLN	Human Rights Law Network
ICRW	International Center for Research on Women
IPC	Indian Penal Code
IMR	Infant Mortality/Morbidity Rate
IPS	Indian Police Service
M.P.	Madhya Pradesh
OBC	Other Backward Castes
PIL	Public Interest Litigation
NFHS	National Family and Health Survey
NGO	Non-Governmental Organization
RHS	Rapid Household Survey
RTI	Reproductive Tract Infection
SC/ST	Scheduled Caste/Scheduled Tribe
SDM	Sub-Divisional Magistrate
SP	Superintendent of Police
SRH	Self Reproductive Health
SRS	Sample Registration System
STI	Sexually Transmitted Infection
TFR	Total Fertility Rate
UNICEF	United Nations Children's Fund
UNEP	United Nations Environment Programme
U.P.	Uttar Pradesh

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against child marriages.*

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on a national consultation
on child marriages
organized in July 2004
by HRLN with MacArthur support.*

Child marriages may seem to be an absolute anachronism in this day and age. But that does not detract from the reality of the common specter of mass marriages of children, still rampantly organized in parts of India, on “auspicious” days. It is appalling that these gala events receive the patronage of government, in the public glare and hence, also have tacit social approval. The prevailing socio-economic inequality, feudalism and patriarchy ensure, that such traditional practices are followed in the name of religion or poverty or are sanctified by male dominated values and norms of the society. Values like family honour, premium on virginity, maintaining social ties in caste/community, effectively play their roles in continuing the subjugation of the deprived class.

Poverty-stricken parents are often persuaded to marry off their daughters by promises of marriage, in many cases, by false marriages, or sometimes with the prospect of saving money by getting several daughters married at the same time. Many of the child marriages form a backdrop for trafficking girls into prostitution abroad.

The insensitivity, lack of will and hence the poor use and implementation of law - by law enforcers - is also a very tangible reason. The Child Marriages Restraint Act, 1929, is actually as remote and dysfunctional as its antiquity seems to impress: cases are hardly ever filed under this law, leave alone offenders being convicted. Even in its present form it is capable of impact if it is actually utilized. Resultantly, the practice of child marriages takes a heavy toll on young girls and boys. Children, especially girls, are always pulled out of school when the marriage takes place, a phenomena which contributes to our uneducated society. Physical and sexual violations are of course the most logical corollary, as the child bride is prematurely pushed into domestic chores and drudgery.

To craft a systematic path and not become party to this so called ‘cultural phenomena’, **Human Rights Law Network, HAQ: Center for Child Rights and India Alliance for Child Rights** had organized a National Consultation on July 17-18, 2004. The process, made us collectively understand, that the incidences and causes of child marriages have not been documented adequately. The role of law has not manifested itself and the position of law itself is dubious. The views expressed and strategies collectively evolved in this widely participated consultation, led us to focus on the issue with appropriate and effective strategy. This book intends to go a long way in our interventions, on the issue.