

Child Marriage in India: Achievements, Gaps and Challenges

Response to Questions for OHCHR Report on Preventing Child, Early and Forced Marriages for Twenty-sixth Session of the Human Rights Council

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a) How States are implementing their obligations under international human rights conventions and international human rights treaties on child, early and forced marriage at the national level:

As a concept, Child Marriage, Early Marriage and Forced Marriage are yet to find a definition in Indian jurisprudence or child rights jurisprudence in India. However, as a practice they have been part of the discussions on reproductive health, trafficking and child marriage. Before making an attempt to answer the questions that follow, it is imperative to take a look at India's status on various internal legal obligations having a bearing on child rights in general and child marriage in particular.

India's International Commitments

International Legal Instruments	Status of Ratification/Signature/Adoption
CPR and ESCR	
International Covenant on Civil and Political Rights, 1966	ACCEDED on 10 April 1979
International Covenant on Economic, Social and Cultural Rights, 1966	ACCEDED on 10 April 1979

Women	
Convention on the Elimination of All Forms of Discriminations Against Women (CEDAW), 1979	SIGNED on 30 July 1980 and RATIFIED on 9 July 1993 with a declaration/reservation
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 1999	NOT SIGNED
Amendment to article 20, paragraph 1 of the Convention on the Elimination of All Forms of Discrimination against Women, 1995	NOT SIGNED
Children	
Convention on the Rights of the Child, 1989	RATIFIED on 11 December 1992 with a declaration on Article 32
Optional Protocol to CRC on Sale of Children, Child Prostitution and Child Pornography	SIGNED on 15 November 2004 and RATIFIED on 16 August 2005
Child Marriage	
Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1962	NOT SIGNED
Slavery and Trafficking	
International Agreement for Suppression of White Slave Traffic, 1904	Declared Applicable to India at the time of transfer to the Secretary-General
International Convention for Suppression of White Slave Traffic, 1910	Declared Applicable to India at the time of transfer to the Secretary-General
International Convention for the Suppression of the Traffic of the Women and Children, 1921	RATIFIED on 28 June 1922 with reservations on age on Article 5
Slavery Convention, 1926	RATIFIED in 1954
Supplementary Convention on the Abolition of Slavery, Slave Trade and Institutions and Practices of Slavery, 1956	SIGNED on 7 September 1956 RATIFIED on 23 June 1960

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others 1951	SIGNED on 9 May 1950 and RATIFIED on 9 January 1953
Convention against Transnational Organised Crime, 2000	SIGNED on 12 December 2002 RATIFIED on 5 May 2011
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention against Transnational Organized Crime	SIGNED on 12 December 2002 RATIFIED on 5 May 2011
REGIONAL CONVENTIONS	
SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia	SIGNED on 5 January 2002 at the Eleventh SAARC Summit in Kathmandu on 4-6 January 2002

India is still not a signatory to **The Convention on Consent to Marriage, Minimum Age for Marriage and Registration for Marriages**, which came into force in December 1964. It obligates States Parties to –

- (a) specify a minimum age for marriage
- (b) prohibit legal acceptance of any marriage without the full and free consent of both parties
- (c) register all marriages

Minimum age for marriage:

Interestingly, even before the UN adopted this Convention, India had a law prescribing the minimum age of marriage, known as the Sarda Act, 1929. Later renamed as the Child Marriage Restraint Act (CMRA), 1929, it prohibited marriage of girls below the age of 15 years and boys below the age of 18. In 1978, the law was amended to raise the minimum age of marriage to 18 years for girls and 21 years for boys. This position remains the same even in the new law called the Prohibition of Child Marriages Act (PCMA), 2006, which replaced the CMRA.

Despite making strides on prescription of a minimum age for marriage, implementation of the law has remained a challenge. Various courts continue to uphold the customary practices and personal laws of different religious communities, which govern family matters. Only the Hindu Marriage Act, 1955 changed with time to bring the age criteria in consonance with the CMRA. Absence of a uniform civil code allows differential treatment of children resulting in discrimination. Some victims of child marriage are thus entitled to better legal protection under the national law while their peers may remain out of this protective net.

Full and free consent of both parties:

Marriage laws of all religious communities in India talk about the consent of parties to the marriage. Under the Hindu Marriage Act, 1955, the parties to the marriage must have the capacity to consent and a marriage where consent is obtained through force is voidable and can be annulled by a decree of nullity.¹ This law governs all Hindus, Sikhs, Jains and also Buddhists. Under the Islamic law, both the bride and groom must consent to the marriage, and also express the same verbally and in writing. Under the Indian Christian Marriage Act, 1872, if a party to a marriage is a minor, the consent of father if living, or if the father is dead, the consent of the guardian of the person of such minor or if there is no guardian, then that of the mother, is essential before marriage. A marriage of minor without such consent is not valid.² The Special Marriages Act, 1954, which allows inter-caste and inter-religious marriage contains provisions similar to the Hindu Marriage Act.³

The Prohibition of Child Marriage Act, 2006, which is the national law against child marriage, does not allow the question of consent in case of minors and treats child marriage as a punishable offence. However, it creates confusion by declaring some marriages void and some others voidable. Marriage of a minor solemnized by use of force, fraud, deception, enticement, selling and buying or trafficking a void marriage, while all other child marriages are voidable at the option of the parties to the marriage and hence valid marriages until they are nullified by the court. If the law does not attribute consent to a child, it must render all child marriages void, as all child marriages then become marriages that have taken place either through some form of coercion or use of fraud, trafficking and such other illegal means, or by influencing the mind of the child.

Registration of marriages:

The Registration of Births and Deaths (Amendment) Bill, 2012⁴ was introduced in the Rajya Sabha on May 7, 2012 after a series of efforts being made since 2007 primarily to include the registration of marriages within its purview. Registration of marriages is not compulsory across the country. Different states have taken their own measures in this regard. However, it is noticed that all state specific marriage registration laws talk about registration of every marriage, including a child marriage. This reinforces the practice of child marriage because on being registered, it is not only viewed by society as a valid marriage but also as a valid practice. The need for a national law ensuring compulsory registration of marriages has been voiced repeatedly. But it must be ensured that the registrar of marriages do not register a child marriage and are provided the means to ascertain the age of the couple before the marriage is finally registered.

¹ Section 5 and Section 12 of the Hindu Marriage Act, 1955 (as amended in 1978). Available at: <http://indiankanoon.org/doc/590166/>

² Section 19 and 22 of the Indian Christian Marriage Act, 1872. Available at: <http://indiankanoon.org/doc/1166543/>

³ Section 5 and Section 12 of the Special Marriage Act, 1954. Available at: <http://indiankanoon.org/doc/4234/>

⁴ The Registration of Births And Deaths (Amendment) Bill, 2012. Bill No. XXII Of 2012, As Introduced in the Rajya Sabha. Available at: <http://www.prsindia.org/uploads/media/Registration%20of%20births%20and%20deaths/REegistration%20of%20Births%20and%20Deaths%20%28Amendment%29%20bill,%202012.pdf>

The recent **UN Resolution on Child, Early and Forced Marriage** was adopted unanimously and India too is now a party to it. However, there has been much criticism about India not being a co-sponsor to the resolution and the Indian delegates giving official statements to the effect about India not being in a position to eliminate child marriage completely due to high poverty levels. Ironically, while the Planning Commission of India has recorded a dip of 15.2 percentage points in poverty levels between 2004-05 and 2011-12, trends in marriage below the legal age have failed to reflect a proportionate decline. The National Strategy for Prevention of Child Marriage acknowledges that early marriage contributes to intergenerational cycle of poverty.⁵ The India: Child Rights Index developed by HAQ: Centre for Child Rights shows that the top five states with the highest GDPs rank low on child marriage and the best performing states in child marriage are Nagaland, Arunachal Pradesh and Manipur, which are amongst the lowest GDP states of India.⁶ More than poverty, it is the practice of 'Dowry' given by the girl's family to the groom's family at the time of marriage that forces people to get their daughters married early.⁷

A brief situation analysis of child marriage in India

Indian states with a high proportion of girls getting married below age 18 are Bihar (46 percent), West Bengal (41 percent), Rajasthan (40 percent), Jharkhand (36 percent), Uttar Pradesh (33 percent), Madhya Pradesh, Dadra and Nagar Haveli and Andhra Pradesh (29 percent). In these nine states more than one-fourth of the girls are married before they are 18 years old and it is more than the national average. In 16 states, less than or equal to one-tenth of the girls are married below 18 years; these states are Himachal Pradesh, Lakshadweep, Goa, Chandigarh, Pondicherry, Daman and Diu, Uttarakhand, Punjab, Delhi, Andaman and Nicobar Islands, Manipur, Kerala, Jammu and Kashmir, Arunachal Pradesh, Tamil Nadu and Mizoram. Despite Himachal Pradesh and Kerala having high female literacy, the levels of child marriage are noticeably high. Over 45,000 child marriages, bulk of them from the Muslim community, are reported to have occurred in Kerala since 2001.⁸

The national goals set out by India its various policy and plan documents are still far from being met. The analysis as presented in the chart that follows is also a reflection on the poor implementation of international.

⁵ Ministry of Women and Child Development, Govt. of India, National Strategy Document on Prevention of Child Marriage, p.1.

⁶ HAQ: Centre for Child Rights, India: Child Rights Index, pp 237-238, 2011. Available at: www.haqrc.org.

⁷ UNICEF Information Sheet, Child Marriage, p. 2. Url: http://www.unicef.org/india/Child_Marriage_Fact_Sheet_Nov2011_final.pdf

⁸ R Gopakumar, *Child marriages high in Kerala*, Deccan Herald, Thiruvananthapuram, Sunay, June 19, 2011.

marriages by 2010 Stop sale of children and all forms of child trafficking, including for ... marriage ...				
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Relationship between falling sex ratio and trafficking of girls as brides in some districts is well documented by now. Although there are no clear patterns, often enough it is girls from poorer states who end up being bought and sold into marriage in the rich states, which corresponds with the fact that sex-selective abortions are carried out more in prosperous states among wealthy families that can afford use of technology.

b) Steps taken to prohibit child, early and forced marriage as well as examples of positive experience and challenges encountered at the national level in adopting policies, measures and implementing strategies to address this issue;

Child marriage is still not seen as a crime. It is also not a child protection issue in as much as the concerned department responsible for implementation of the child marriage law and related programmes and schemes fall in the women’s welfare section of the Ministry of Women and Child Development. A close look at the national laws, policies and schemes in this section explains how the focus of the government interventions on elimination of child marriages has been more in terms of addressing it within the realm of reproductive health, nutrition and education programmes for adolescent girls than as part of child protection.

National Legal Framework

The Constitution of India recognises the vulnerable position of children and their right to protection. Therefore, following the doctrine of protective discrimination, it guarantees in Article 15 special attention to children through necessary and special laws and policies that safeguard their rights. The right to equality, protection of life and personal liberty and the right against exploitation enshrined in Articles 14, 15, 16, 17, 21, 23 and 24 further reiterate India’s commitment to the protection, safety, security and well-being of all its people, including the girl child. Article 39 enjoins that the State shall, in particular, direct its policy towards securing that “children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and childhood and youth are protected against exploitation and against moral and material abandonment”.

Nationally, the history of initiatives against child marriage in India date back to the colonial rule, when the first law restraining child marriages came into existence in 1929. Known as the Sarda Act, it prohibited child marriages of girls below the age of 15 years and of boys below the age 18. In 1978, the law was amended to make it more effective and raise the

minimum age of marriage by three years i.e. from 15 to 18 years in case of girls and from 18 to 21 years in case of boys. The amended law came to be known as the Child Marriage Restraint Act, 1929. In 2006, the old law was repealed and new one brought in called the Prohibition of Child Marriage Act, 2006 with stringent measures against those indulging in such practices and a provision of a cadre of officers called the Child Marriage Prohibition Officers, to stop child marriages from taking place.

The Indian Penal Code (IPC) too contains certain provisions that can be brought to use to book a case of child marriage or forced marriage. Under section 366 of the IPC kidnapping/abduction of a woman to compel her marriage or for illicit intercourse and use of criminal intimidation or any other method of compulsion is a punishable offence. Section 496 makes going through the marriage ceremony with fraudulent intention a punishable offence.

With an amendment to the criminal law in April 2013, Section 370 of the IPC now contains specific provisions to deal with human trafficking for purposes of sexual exploitation, slavery and servitude. This provision can be used to book a case of trafficking for marriage also, though marriage is not mentioned in it explicitly.

Registration of marriage is compulsory under the Christian Marriage Act, 1872, the Parsi Marriage and Divorce Act, 1936, and the Special Marriage Act, 1954, and optional under the Hindu Marriage Act, 1955. On July 23, 2007, the Supreme Court of India reiterated its earlier judgement of February 14, 2006, that marriages of all citizens of India, irrespective of their religion, have to be compulsorily registered in the States where the marriage is solemnised. This is a major step forward to prevent child marriage, as it makes it mandatory to give age at the time of marriage.⁹

Policy Framework, Strategy and Plans

National Policy for Children, 2013:

Replacing the outdated National Policy for Children 1974, the Government of India adopted a new policy in April 2013. MWCD is the nodal Ministry for overseeing and coordinating the implementation of this Policy. Within its objective to strengthen the overall child protection framework, the policy provides for tracking, rescuing and rehabilitating out of school children, including married children and ensuring them access to their right to education.¹⁰

National Strategy on Child Marriage:

The MWCD has proposed a National Strategy on child marriage dated 14 February 2013 that reflects the commitment of the Government of India to curb child marriage¹¹. It has suggested ensuring linkages with the Integrated Child Protection Scheme (ICPS) structures and statutory bodies to ensure detection and prompt referral of cases that require care and protection. One of the strategic directions is 'In cases in which children have already been

⁹ Ministry of Women and Child Development, Govt. of India, India: Third and Fourth Combined Periodic Report on the Convention on the Rights of the Child, 2011, pp. 10 and 35.

¹⁰ wcd.nic.in/childreport/npc2013dtd29042013.pdf , { (v), pg. 7}

¹¹ <http://wcd.nic.in/childact/Strategychildmarrige.pdf>

married, they should not be discriminated when accessing services such as health, nutrition, education and employment programmes’.

National Plan of Action on Prevention of Child Marriage:

According to MWCD’s Press Note on Child Marriages in India¹² dated 20 November 2013, a draft Plan of Action was discussed in a Regional Consultation at Lucknow on 8 July, 2013 and in a National Consultation at New Delhi on 18 July, 2013. It is being finalised based on the deliberations at these consultations. In its last draft, it did not have a timeline and any clarity on allocation of funds to implement the Plan.

Programmes and Schemes

The Rajiv Gandhi Scheme for Empowerment of Adolescent Girls:

A comprehensive scheme for the holistic development of adolescent girls aged 11-18 years, called the 'Rajiv Gandhi Scheme for Empowerment of Adolescent Girls – Sabla' was introduced in the year 2010. Sabla is being implemented in 205 selected districts across the country. Sabla includes nutrition provision @ INR 5/- per day for 300 days in a year; iron and folic acid supplementation (52 tablets annually); health check-up and referral services; nutrition & health education; counseling/guidance on family welfare, child care practices, and home management; life skills education and accessing public services; and, vocational training for girls aged 16 and above under the National Skill Development Programme.

Kishori Shakti Yojana (Adolescent Girls Scheme):

Initiated in 2001 with a focus on improving the nutritional and health status of adolescent girls between 11-18 years of age, and promoting school attendance The scheme now stands merged with Sabla and applies in districts which do not have Sabla.

Nutrition Programme for Adolescent Girls (NPAG):

The NPAG has also merged with Sabla.

Dhanalakshmi:

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

Conditional Cash Transfer Schemes in the States:

State governments too have launched conditional cash transfer schemes. Rajasthan had launched the Raj Lakshmi Scheme in 1992, Haryana initiated Apni Beti, Apna Dhan – ABAD scheme (My Daughter, My Pride) in 1994. Karnataka launched the Bhagyalaxmi Scheme in

¹² <http://pib.nic.in/newsite/erelease.aspx?relid=0>

2004. In 2005 and 2006, Delhi and Madhya Pradesh too launched the Ladli Yojana the Ladli Laxmi Yojana respectively.¹³

Poorna Shakti Kendras (PSKs):

Launched as a pilot project in September 2011 in Pali district of Rajasthan, it set up 150 village level PSKs to demonstrate convergence of programmes and schemes for the purpose of empowering women. Since then PSKs have also been set up in District Kamrup Metropolitan, Assam and Jaintia Hills, Meghalaya. While bringing women together and strengthening their participation in local self governance, women's *sabhas* (meetings) are mobilised under this project, which take up issues relating to the women and girls, including child marriage. The PSKs are reported to have prevented more than 200 child marriages.¹⁴

Integrated Child Protection Scheme (ICPS):

The scheme was launched in the XIth Five Year Plan (2007-2012) to strengthen families of children at risk as a measure to prevent children from falling out of the social security and protective net and also to strengthen structures and institutional and non-institutional mechanisms to protect children who come in contact with the law as victims of crimes or as children in conflict with the law. In principle it lays down a strong preventive, protective and rehabilitative framework on child protection. It is a scheme sponsored by the Central Government where the maximum share of the budget (75%) comes from the centre and the states have to put in the rest. All the states and Union territories have signed an MoU with the Centre and some state and district level structures have been set up in the to implement the scheme.

Bal Vivah Virodh Abhiyan (Campaign against Child Marriage):

In 2005 a nationwide awareness-raising programme against child marriage was started by the National Commission for Women. It focussed particularly on the states of Rajasthan, Bihar, Chattisgarh, Madhya Pradesh, Jharkhand and Uttar Pradesh.¹⁵

The National Bravery Award:

The National Bravery Award is a mechanism established by the Central Government since 1957 for public recognition of positive role models. These awards go to children who perform outstanding deeds of bravery and selfless sacrifice. In the year 2003, HAQ: Centre for Child Rights had written to the Indian Council for Child Welfare about 5 girls from Karnal district in the state of Haryana who had stopped two child marriages despite opposition from their community leaders, and sought a broadening of the definition of 'bravery' to include such courageous acts. Then onwards, several children have received the award for stopping child marriage in their local areas.¹⁶

¹³ UNICEF Information Sheet, Child Marriage, p. 3. Url:

http://www.unicef.org/india/Child_Marriage_Fact_Sheet_Nov2011_final.pdf

¹⁴ Ministry of Women and Child Development, Annual Report 2012-13., Para 2.26. & 2.27, p.24. Available at: http://wcd.nic.in/publication/AR201213_english.pdf

¹⁵ National Commission for Women, Annual Report, 2005-06, Chapter 10.

¹⁶ UNICEF Information Sheet, Child Marriage, p. 4. Url:

http://www.unicef.org/india/Child_Marriage_Fact_Sheet_Nov2011_final.pdf

Problems and Challenges

1. Inadequacy of law, conflicting laws and poor implementation:

The existing child marriage law is faulty both in design and implementation. The Prohibition of Child Marriage Act, 2006 requires a change to declare all child marriages null and void. As the law is formulated, only marriages resulting from use of force/threat/fraud/kidnapping or violation of an injunction order of a court to prevent such a marriage from taking place are null and void. Child marriages per se continue to be legally valid marriages unless either of the parties to the marriage wishes to nullify it, which seldom happens. As a result, it has been found, the law does not result in deterrence despite enhancement of punishment. Neither is the law being implemented by the concerned authorities as child marriages continue to be seen as a social evil instead of a crime, and indeed child marriages continue to take place.

Inability to treat child marriage as a crime is evident in the existing crime records. The number of cases of child marriage registered in the last ten years is far less than what the outdated DLHS and NFHS – 3 data suggests. The National Family Health Survey of 2005-2006 (NFHS-3) confirmed that 45% of women aged 20-24 years were married before the age of eighteen years. Of these 58.5% were in rural areas and 27.9% in urban areas.

On one hand the Annual Report of the MWCD 2012-13 states on page 73 that so far, 28 States and Union Territories have framed rules under the PCMA, on the other hand a Press Note issued by the same Ministry on 20 November 2013 puts this number at 24. Similarly, while the former report says that 28 States have appointed Child Marriage Prohibition Officers (CMPOs), latter mentions only 20 States/UTs to have appointed CMPOs. The Government further admits in the above mentioned Annual Report of the MWCD that on ground, implementation of PCMA, 2006 has not been as effective.

To make things worse, it is found that the Child Marriage Prohibition Officers hold other charges also and thus have several other responsibilities to fulfill. For example, in Haryana, Department of Women & Child Development Haryana has appointed full time Protection cum Child Marriage Prohibition Officer (PPO) on contract basis for each District to meet the requirement of the Protection of Women from Domestic Violence Act 2005 (PWDV) and Prohibition of Child Marriage Act 2006 (PCMA) in one stroke.¹⁷ In Madhya Pradesh, citing financial stringency, the District Magistrates have been designated as CMPOs and they so overburdened with other administrative responsibilities that hardly have time to deal with the issue of child marriage.¹⁸ Some states such as Andhra Pradesh have notified several categories of officers and functionaries as CMPOs.¹⁹

¹⁷ wcdhry.gov.in/special_cell.pdf

¹⁸ UNICEF, Child Marriages in Madhya Pradesh, p. 47.

¹⁹ Section 3 of the Andhra Pradesh Prohibition of Child Marriages Rules, 2012 - CMPOs may include the following:

(1) The District Collector of the concerned District is District CMPO.

(2) Revenue Divisional Officer (RDO)/Sub-Collector at the divisional level.

(3) The Child Development Project Officers (CDPOs) at the Project level covering 3-5 mandals which is under their jurisdiction.

While discussing child marriage, laws relating to sexual offences cannot be overlooked. Under the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) sexual activity with children below the age of 18 years has come to be treated as a crime, the question of consent has no meaning in the case of children, and even in a case of a 'valid child marriage', the boy can be penalized under the provisions of the POCSO Act. However, the Criminal Law Amendment Act of 2013 drafted in much haste after the 16 December (2012) gang rape case in Delhi causes confusion on the question of consent and sexual activity between minors in a valid marriage. On one hand it makes consent immaterial in the case of victims of rape below the age of 18 years, on the other hand it declares sexual intercourse by a husband with his wife only if the wife is below the age of 15 years as statutory rape. When these laws were being drafted several voices had demanded that the age of sexual consent be lowered to 16 years so that consensual sexual activity among young people does not get criminalized. Even the fact that a child marriage is per se valid under the PCMA and therefore sexual activity between young married couples should be not criminalized went unheard. These confusions must be removed to ensure that protections required by young people are not denied because of confusion in existing laws.

On registration of marriage, the experience has been all marriages, including child marriage, gets registered in states which have a law to this effect. This further validates child marriages instead of condemning them. The Central Government has made it mandatory for all states to make registration of marriages compulsory as the states are in a better position to be aware of the social structure and local condition of their respective. However, the state government of Madhya Pradesh, Uttar Pradesh, Haryana, Bihar, where child marriages are so rampant, have not taken any initiative to make registration of marriages compulsory.²⁰

Right to Free and Compulsory Education is limited to children in the 6-14 age category. Unless it is extended to all children up to the age of 18 years, attempts made to delay the age of marriage are likely to fail.

2. Deficient Policies and Plans:

Prevention of child marriage has almost always figured in policies addressing women's rights. As a result, the National Policy for Children, 2013 mentions child marriage only in one place and that too in the context of out of school children, inadvertently accepting that children will continue to be married at an early age and hence married children who fall out of the schooling system need to be tracked, rescued, rehabilitated and ensured access to their right to education.²¹

(4) The Tahsildars at the Mandal level for the villages which are under their jurisdiction.

(5) The ICDS Supervisors at the Mandal level covering their respective villages under their jurisdiction.

(6) CMPOs in Andhra Pradesh The Panchayat Secretaries of the Panchayat Raj Department and Village Administrative Officers of Revenue Department at the Village level.

²⁰ Pairvi and Madhya Pradesh Human Rights Commission, Child Marriages in Madhya Pradesh, An Incessant Infringement of Rights, A Rapid Assessment of Child Marriages in Bhind, Morena and Gwalior Districts of Madhya Pradesh, p. 47, 2009.

²¹ wcd.nic.in/childreport/npc2013dtd29042013.pdf, { (v), pg. 7 }

Child marriages remain valid in the Indian law as during the debates that went on in the Parliament while enacting the 2006 law, it was reinforced that culturally there will be no acceptance for married girls who walk out of their marriage and wish to continue living like their unmarried peers. Bringing them back into the education system has thus remained a challenge and will continue to remain a challenge unless all child marriages are declared null and void and both girls and boys are legally free to move ahead in their life. Some social change has to be enforced through appropriate legal measures. But if legal measures fail children, policies will have little effect.

If implemented, the National Strategy on Child Marriage can be a positive step forward. However, even while acknowledging that child marriage impacts both girls and boys, the focus of the strategy is on early marriage of girls. While girls are indeed more vulnerable to the consequences of child marriage than boys, it is important to develop action plans that address the issue of documenting the problems faced by boys who get married at an early age in order to create evidence and take necessary action. This loophole in the strategy document is carried forward in the draft National Plan of Action to Prevent Child Marriage, which is part of the National Strategy. It contains an array of proposed actions relating to implementation of law, capacity building of functionaries, creating a knowledge base, generating awareness at all levels including reaching out to children through the education system. But there is nothing in the present draft to address early marriage of boys.

Policy making and planning in the absence of reliable data has always been a serious concern. As with data on other indicators, data on child marriage too is old and outdated. Different sources of data, with varying methodologies, paint very different pictures as to the actual prevalence of child marriage in India. While the latest District Level Household and Facility Survey (DLHS) gives data for 2007–08, this is based on information collected from people who were between 15–49 at the time of the survey who were married below the age of 18 years. The latest National Family Health Survey, NFHS-3 also uses the same method. Both are based on sample surveys. Census of India gives data for ever-married children.

3. Programmes and Schemes are lacking:

There are no programmes or schemes directed specifically to address the issue of child marriage. A key factor is that most of the schemes intend development of the girl child and address the problem of child marriage only as an indirect benefit. The subject has largely been dealt with as part of the government's initiatives on women's reproductive health or empowerment of adolescent girls. While reproductive health is an important and significant concern, especially in case of young girls who get married at an early age, it is important to understand that women's health has never been a concern in a patriarchal set up. Hence campaigns and other actions focusing on the issue of child marriage from a reproductive health perspective have failed in their emotional appeal to the society at large. Including child marriage in the school curricula and promoting education of girls to curb such practices too has not brought the desired change. To the contrary, lack of adequate protection to girls who move out of their homes for education or employment is being used as an excuse to get them married early.

Conditional cash transfer schemes never reach those who need them the most because they require some identity proof or residence proof or lay down such other conditions for eligibility which the poor of the country are unable to fulfill.

Access to Government Schemes is not easy – a case in point

Aparti, a girl has no identity. Her illiterate tribal father Ramsingh was set back when the teacher in the school asked him to produce the birth certificate of the child. They live in Ghatmal village, which is also a *panchayat* headquarter of Nuapada district.

Ramsingh is considered one of the leaders of the tribal community in the region. Since Aparti was born at home, like all others, her birth was not recorded automatically. The nearest health worker lives in Nanagalbod village, at least 19 kms away and nobody in the village ever get any service from her.

Ramsingh then tried to obtain a birth certificate as advised by the teacher. Since the birth was not recorded within one month, she had to approach the Birth Registration Officer. He had to file a case to get her daughter a certificate. Since the Sinapali additional tehsildar didn't entertain such cases, he had to travel to district headquarter town of Nuapada 100 kms away. The lawyer charged him Rs1000 and he had to spend another 500 for travel and incidental expenses. When the proceeding of the case was given to the Birth Registration Officer at Sinapali hospital, he was advised to make a treasury challan of Rs 7 towards the cost of certificate.

Since there is no treasury in the block headquarter, he had to travel to Khariar, 30 kms away to deposit Rs 7 in the treasury. He had the option of depositing Rs 300 with the clerk issuing the certificate for all these expenses. After a one month ordeal, now Ramsingh is convinced that these government procedures are in place to harass tribals like him. Now his community members have urged the teachers not to insist on birth certificate at the time of admission as none of his tribesmen can afford such an expensive certificate. Fearing closing down of the school for lack of students, the teacher has also agreed not to insist on the certificate.

Source: Citizen's Report on State of Rights of the Child in Orissa, 2007-08 OACRC (Orissa Alliance on CRC)

The only child protection scheme, capable of addressing child marriage too fails to do so. The target group for ICPS does not mention victim of child marriage or potential child marriage explicitly. As per the report the beneficiaries of ICPS for Rehabilitation & Reintegration Services are 75,052 for 2012-13 (up to 13.03.2013)²². There is a huge scope of including victims of child marriage for rehabilitation and reintegration through sponsorship and foster care programmes under ICPS. The other major components of ICPS like advocacy, public education and communication, training and capacity building can also be used to prevent child marriage, and address the protection of child marriage victims. The ICPS also provides for general grant-in-aid for need based /innovative interventions, which is yet to be used for supporting child marriage interventions.

²² http://wcd.nic.in/publication/AR201213_english.pdf

Most importantly, laws, policies, action plans, programmes and schemes without adequate budget allocation and time frame cannot have much impact on the lives of children.

As percentage of the total union budget, in 2013-14, the budget share of various child rights sectors is as follows:

• Child health – 0.16%	• Child Development – 1.10%
• Education – 3.34%	• Child Protection – 0.04%

Underutilisation of available funds is also a concern to which very little attention is being paid. A look at utilization of funds under Sabla as given in MWCDs Annual Report 2012-13 at page 174 speaks volumes. The figures are in lakh (1 lakh = 100 thousand).

Annexure -V

State wise funds released/utilised and beneficiaries covered under Sabla in 2010-11, 2011-12 and 2012-13.

Sl. No.	States/UTs	2010-11			2011-12			2012-13		
		Funds released (₹ in lakh)	Funds Utilised as reported by States/UTs (₹ in lakh)	Beneficiaries covered for nutrition	Funds released (₹ in lakh)	Funds Utilised as reported by States/UTs (₹ in lakh)	Beneficiaries covered for nutrition	Funds released (₹ in lakh) (as on 15.03.2013)	Funds Utilised as reported by States/UTs (₹ in lakh) (as on 31.12.2012)	Beneficiaries covered for nutrition as on 31.12.2012)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1	Andhra Pradesh	1963.3	0	NR	3259.7	908.90	618975	508.63	1911	528191
2	Arunachal Pradesh	119.58	13.18	NR	79.56	106.40	14226	135.26	0	
3	Assam	1018.79	0	NR	1592.98	2611.58	385276	1944.4	1566.49	385276
4	Bihar	2773.77	0	NR	5081.73	2953.48	1305200	1442.76	2264.59	1602769
5	Chhattisgarh	938.71	0	NR	1472.72	298.05	0	179.15	397.155	342550
6	Goa	79.81	0	NR	207.98	221.50	34556	135.36	68.03	32448
7	Gujarat	1357.68	676.24	119570	2647.22	3606.43	538980	2625.6		
8	Haryana	405.22	3.99	NR	701.44	534.29	78341	455.38	581	141915
9	Himachal Pradesh	307.18	182.24	90016	550.34	436.28	90016	595.68	474.63	99161
10	Jammu & Kashmir	290.55	0	NR	453.64	467.65	92186	282.56	91.52	47509
11	Jharkhand	754.27	0	NR	1493.32	1230.71	357177	1244.03	0	0
12	Karnataka	711.68	33.89	54234	3053.55	3578.42	432227	2438.8	2273.51	427447
13	Kerala	881.73	512.55	249730	1284.66	1348.16	442321	852.56	29.42	237909
14	Madhya Pradesh	2470.64	497.72	800000	4069.18	5560.80	800758	6623	3896.29	901000
15	Maharashtra	2568.49	0	NR	3957.22	1549.28	793042	1550.81		
16	Manipur	116.29	63.09	33647	152.76	142.88	33647	121.23		
17	Meghalaya	142.48	113.04	47105	306.76	247.88	47105	179.16		49797
18	Mizoram	73.32	73.32	14782	78.24	75.92	14781	84.94	0	16879
19	Nagaland	87.05	87.05	19804	147.49	147.49	28387	183.6	73.23	35000
20	Orissa	1553.44	0	NR	2382.98	2521.68	571114	2404.9	1500	627265
21	Punjab	591.3	95	144232	874.8	231.11	152615	538.53	258.79	153504
22	Rajasthan	1777.37	982.78	552146	3369.05	4283.85	656733	3931	3137.76	613212
23	Sikkim	41.8	1.12	368694	66.05	68.58	9116	19.99	30.9	7306
24	Tamil Nadu	1271.8	371.8	NR	2686.32	3236.78	368694	2174.03	1420.75	369233
25	Tripura	240.35	0	0	455.06	688.23	54933	447.88	274.53	64352
26	Uttar Pradesh	4689.86	1347.035	1934000	11749.9	14212.19	1934000	12975.2	8888.06	1934000
27	Uttaranchal	355.49	125.24	NR	511.48	192.94		333.23	0	
28	West Bengal	1647.06	0	NR	2758.74	0.00	75422	2621.14	363.55	114874
29	Andaman & Nicobar	31.76	26.32	7263	51.99	40.00	9424	93.61	43.85	9207
30	Chandigarh	32.94	6.12	6229	48.78	22.92	1291	0	2.79	1612
31	Daman & Diu	12.66	0	1222	16.44	10.14		0	0	
32	D & NH	18.19	0	NR	24.98	NR	2166	16.46		2132
33	Delhi	333.68	0	NR	496.36	561.73	130205	579.77	450.49	127947
34	Lakshdweep	6.61	0	NR	8.94	NR		0		
35	Pondicherry	8.56	0	NR	19.02	27.14	4449	28.59	17.61	4480
	Total	29673.41	5211.725	4442674	56111.4	52202.95	10077363	47747.2	30015.9	8876975

Annexure

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- c) **Policies, projects and measures undertaken at national and sub-national levels, including by United Nations agencies, funds and programmes, civil society and other relevant stakeholders to promote the elimination of child, early and forced marriage specifically including action taken to address the issue in practicing communities, and to address or mitigate its impact, making specific reference to the outcomes of such policies, projects and measures;**

The existing interventions to prohibit child marriage are limited in variety and the coverage and dependent on projects being run by the civil society, mainly supported by international organisations.

There are many projects being implemented by civil society groups around the issue. The major strategy is working with adolescent girls and community members through the health, education and livelihood programmes. All of them directly or indirectly also engage with governance.

Childline:

The MWCD supports a child help line service (Toll free number 1098) to reach out to children in distress. Of late, as per media reports, it has increasingly started receiving calls informing about possible child marriages. Childline services has prevented close to 500 such child marriages across Tamil Nadu from April 2012 to March 2013.²³ This system can be strengthened further especially with increasing early marriages in urban areas, which was until recently a rural phenomenon.

Some State Governments initiatives in partnership with UNICEF and other NGOs:

UNICEF has been working on the issue of child marriage in different states in partnership with the state governments as well as other agencies. While the success of these initiatives is not known, they do reflect on the possibility of innovation in dealing with the age old practice of child marriage in different parts of the country.

Unicef, in partnership with the HALO Foundation in Maharashtra, identified child marriage as a critical issue in the project villages. As part of the project, community action was initiated by targeting women and adolescent girls as well as the local school authorities. The project worked around changing opinion of key stakeholders at the village level in order to address the issue of child marriage.

Unicef Rajasthan has also supported the Rajasthan government's initiative promoting awareness on the ill effects of marrying girls at an early age i.e. before they attain 18 years. It helped in developing messages and materials for the initiative. The State Government of Rajasthan has been carrying forward awareness drives against child marriage.²⁴ In 2007, the

²³ http://articles.timesofindia.indiatimes.com/2013-11-25/chennai/44448619_1_child-marriages-childline-india-foundation-child-development

²⁴ http://www.unicef.org/india/child_protection_3822.htm

Education Department of the State, with a view to generating awareness amongst school children on the rights of the child and the legal age of marriage has inserted colored illustrations with messages on the back cover of text books (Class III to Class VIII). These illustrations are catchy vibrant and appealing to children. 57 messages on a set of 47 books have been printed on about 40 million text books.

Another medium put to good use by the government has been the panels of state run buses of the State Transport Department which ply across the length and breadth of the vast state. The Government of Rajasthan has issued directives making it mandatory to print messages on 'Right Age at marriage' on the body of commercial vehicles (buses auto rickshaws trucks etc). 95, 502 such messages were painted on 75, 990 commercial vehicles till October 2007.

UNICEF also supported the creation of a 'cancellation stamp' containing messages on preventing child marriage for stamping all mails in and out of Jaipur. This cancellation stamp were used from 25th December 2007 to 1st January 2008, when there is maximum rush of mails during the festive season²⁵.

Support for girls' education is one of the major areas of UNICEF's work in Bihar. This is recognizing the fact that most of the girls who are married off early seldom get education. The girls who did not get an education as children, were provided with an opportunity to study when Nari Gunjan, one of UNICEF's partners in education, led by Sister Sudha Varghese, winner of the Padmashri medal, started a learning centre in their village. According to Unicef Bihar, these girls can now read and write but have lost many precious years. The question they ask however, is that will they be the skilled workers of tomorrow in a world of growing opportunities, or will they be only wives and mothers?²⁶

In Bihar, UNICEF is also building the capacity of local faith-based leaders and kathavachaks on child marriage and creating a fleet of Yuvacharyas to act as door messengers at the village level.²⁷

After the worst ever floods in 2008 affecting vast areas in the northern parts of the state of Bihar, floods Save the Children (Bal Raksha Bharat) initiated a project on child protection in Khagaria district of the state. The most important component of the project was preventing child marriages in 50 out of 85 villages. This was being carried out in partnership with the Government of Bihar, and non-governmental organizations "Kissan Vikas Trust" and "Nidan". Project outreach cover reaches out to 26000 children and 7000 adults, and key target groups include children, parents, religious leaders, Panchayati Raj Insitutions (PRI) members, teachers and community members.

²⁵ http://www.unicef.org/india/child_protection_3822.htm and http://www.unicef.org/india/Child_Marriage_Fact_Sheet_Nov2011_final.pdf

²⁶ http://www.unicef.org/india/child_protection_1542.htm and http://www.unicef.org/india/Child_Marriage_Fact_Sheet_Nov2011_final.pdf

²⁷ UNICEF Information Sheet, Child Marriage, p. 4. Url: http://www.unicef.org/india/Child_Marriage_Fact_Sheet_Nov2011_final.pdf

Some of the important facets of the project are:

- Advocacy for effective implementation of laws against child marriage and gender equity,
- Creating a holistic environment that supports, builds capacity and empowers individuals, community stakeholders and organizations to change attitudes and cultural norms that perpetuate child marriage.
- Supporting awareness-raising and public education programmes about the negative effects of child marriage to help change attitudes and strengthen duties of parents, guardians and the community to protect vulnerable girls
- Establishing Child Protection Committees to empower community groups to play a key role in child protection

“There is little doubt that Information, Education and Communication (IEC) and Behavioural Change Communication by Save the Children (Bal Raksha Bharat) to prevent child marriage at multiple levels is singularly responsible for generating awareness about child marriage and, in turn, creating tremendous social pressure amongst communities against child marriage. These efforts span across stakeholders, and include parents, relatives, *panchayat* members, police, NGOs, social workers, district magistrates, Community Based Organisations (CBOs), school teachers, *Aganwadi* workers and Accredited Social Health Activist (ASHAs) ... The Child Protection Committees is village level committee which jointly take decisions in preventing child marriages in villages, with the consent of the village community. As soon as a marriage is reported, Bal Panchayat children and Child Protection Committees members visit the bride/bridegroom’s family to persuade them to call off the marriage”.²⁸

To reduce the incidence of child marriage, socially valued roles for women must expand beyond those of being a wife and mother. Broadening opportunities for women makes it meaningful for parents to invest in a girl’s education. Plan Bangladesh appoints young women in the community as teachers in their child development centres and Plan-supported schools, thus creating new pathways for women to develop and achieve their aspirations²⁹. This is one of the successful strategies adopted by Plan in Bangladesh, India and Nepal to delay the marriage of children and prevent early marriages of girls.

Other NGO initiatives

HAQ: Centre for Child Rights is implementing a project on Strengthening Existing Systems for Prevention of Child Marriage. The overall aim of the project is to work towards prevention of child marriage through mobilizing community action and strengthening governance. The project is being implemented since 2012. The strategies include: **I.** Rapid Assessment/ Appraisal **II.** Setting up of Task Force / Committee **III.** Panchayat Level Interventions **IV.** Engaging with religious/community leaders **V.** Empowering adolescents and youth and **VI.** Building capacities and activating the existing government structures for necessary action. The project is being implemented in two endemic districts each in the States of West Bengal

²⁸ Save the Children (Bal Raksha Bharat), Child Marriage: Robbing Children of Innocence, Good Practices in Preventing Child Marriage, Bihar, pp 10-11 and 18, 2010.

²⁹ Plan’s Asia and ICRW, Asia Child Marriage Initiative: Summary of Research in Bangladesh, India and Nepal, January 2013.

and Andhra Pradesh through local NGOs Jabala and MV Foundation respectively. At national level sharing is done and avenues of advocacy are utilised. The communication package of ill effect on health of girl children, discontinuation of education along with the potential legal implications seems to have proved to be effective in the initial phase of the project. When the communities understand and realize that government will certainly take action if they break law (PCMA) there is free flow of information on potential child marriage. Visits to the families where marriage is being planned way before the proposed date of solemnisation of child marriage has started showing results in stopping such marriages. Besides the project area child marriages are now also being stopped in other parts of the states. 163 potential or about to be conducted child marriages have been identified so far. As immediate output 94 of them could be stopped. The impact of these interventions on children mainly girls whose marriage are stopped is not known fully but follow up is going on. The challenges faced are several e.g. non-cooperation of many duty-bearers, phone calls from politicians to the NGO workers pressurizing them to withdraw, transfer of concerned officials, offers of bribe to the project team for not intervening in a child marriage, remoteness of the location and above all a collective sanction from the community for child marriage.

An intense campaign was undertaken in two blocks of Malda, West Bengal namely Englishbazar & Manikchak to build awareness on prevention of early marriages between April and May, 2010 by i-land informatics Limited with support of UNICEF. The two popular forms of folk drama. Domni and Gambhira, were used to communicate on the issue. Sixty such shows were held. Question-answer sessions were held after the shows. All respondents could say that child marriage is illegal and minor girls who become pregnant at an early age are at a greater risk as they are not physically fit for motherhood. 93% said that it is the parents' duty to educate the girl child. 80% said that education empowers girls for earning their own living. 93% said that they would contact the Panchayat if they learn about child marriage. 87% felt that they will work for building awareness among people on problems of child marriage³⁰.

It is important to mention that though not reported in any media, there has been a new trend observed in Gujarat at village and district levels wherein the representative of various political parties belonging to same castes/communities are organising mass marriages to become popular. In this competition, a high number of mass weddings are taking place under their patronage and many children are also getting married through initiatives. This is worrisome. It seems that political parties may not be involved directly in organizing these mass marriages, but the local representatives have made it a matter of fame and pride. Similar trends were found in northern parts of Karnataka also, where organizations like KIDS-Dharwad and CACT have actively intervened to take legal action to stop such mass marriages as well as to raise awareness among the communities.

It is difficult to list all initiatives. Hence it would suffice to say that there are several projects being undertaken by NGOs in the northern and backward districts of Karnataka, in Andhra Pradesh, West Bengal, Rajasthan and Bihar to prevent child marriages. However, many other states need to be studied as every state has pockets where child marriages are endemic. Most initiatives make an entry through the softer issues like health and education.

³⁰ Report on Social Mobilisation and Communication on prevention of Child Marriage, 2010,

These initiatives need to scale up and also bring the use law into their projects and advocacy with all levels of governance.

d) Surveys, assessments and studies carried out at national and sub-national level on the prevalence of child, early and forced marriage and/or its impact on the human rights of women and girls and other affected groups;

DLHS, NFHS and Census surveys are macro level surveys carried out periodically by the Government of India to assess the situation of child marriage. However, often enough these surveys do not provide latest and updated information. The Last District Level Health Survey (DLHS III) is dated 2007-08 and NFHS 3 is dated 2005-06. The 2011 Census figures are still not available or rather difficult to access.

On the other hand various micro and mini-micro surveys and baseline surveys or rapid assessments, which serve a very limited purpose. In rapid assessment under the project by HAQ: Centre for Child Rights, it was found that in Mahabubnagar District within the 6 Gram Panchayats 317 marriages took place in two calendar years i.e. 2011 and 12. Out of them 101 marriages are identified to be child marriages (32%). In Warangal District, the problem very severe as out of a total of 147 marriages, 92 were identified to be child marriages in the 6 Gram Panchayats, i.e., 63% of marriages are child marriage.

A division bench of the Himachal Pradesh High Court took suo motu cognizance of a baseline survey conducted by an NGO and asked the Deputy Commissioner of Sirmaur District to file a status report on child marriages, infant and child deaths, child labour and school dropouts.³¹ This brings the need to pay attention to low prevalence states like Assam, Himachal Pradesh and Kerala to identify the pockets of child marriage. We also need to be able to capture new trends of child marriage prevalence in ever fast changing society.

As an offshoot of “Understanding Adolescent Poverty in Tamil Nadu”-A Macro Level Study on child marriage was done among 112 girls who were married off before the age of 18 years in 10 districts of the State³². Following are the findings:

- * The age of respondents of early marriage study ranges from 15 to 29 at the time of data collection in Dec. 2012. 82.25% are drawn from 15 to 21 years.
- * 49% of the respondents are from dalit families.
- * 76% of biological families and 67% marital families are nuclear in nature.
- * 49% of the girls were dropped out and got married at the age of 15-17 years while or just after school education.
- * 50% of the respondents are first born and 33% are second born who got married off early. The brunt of being first born girl in a marginalised section of society still holds a strong impact on their lives.
- * 71.4% of mothers and 60.7% of fathers of the respondents who were married early are never been to school. The education of parents, especially, mothers plays a role in various factors

³¹ http://zeenews.india.com/news/himachal-pradesh/child-marriages-still-prevalent-in-himachal-admits-govt_867360.html

³² Littles – A centre for Children, Madurai, Samakalvi Iyakkam, Tamil Nadu & CRY, Understanding Adolescent Poverty in Tamil Nadu-A Macro Level Study Report, 2013.

determining the education of the children.

- * 76% of the early married girls responded that they have no access to High schools and 82% said no access to Higher secondary school that pushed them into early marriage.
- * 50% worked before marriage and 20% still continue the same work.
- * 62% of the respondents are married to their own relatives and for 90%, their marriage is solemnized by the village head/ temple priest in the presence of their parents, relatives and friends.
- * 33% of the drop out working children expressed willingness to continue their education.
- * 76.3% aspired for better skill, better profession and better life and still hope for better future.

A study carried out in Puducherry³³ during April 2012 to May 2013 found that in the recent past 67 child marriages has taken place in the Union Territory of Puducherry and among the 67, sixty two are girls and five are boys below 18 years of age.

Following an analysis of existing interventions, there emerged the possibility of looking at men and boys as agents of change not just in the early marriage context, but also as champions of women's empowerment. In addition, the less focused area of gender rights and sexuality was recommended as a possible entry point to bring about a change in mind-set among communities where early marriage is currently seen as the accepted norm³⁴.

The Centre for Development and Population Activities (CEDPA) has been implementing the pioneering Better Life Options Program (BLP) for adolescents in India through its partner organizations since 1989.³⁵ A cross-sectional comparative impact study was conducted to assess the impact of CEDPA's Better Life Options Program on the decision making and reproductive health behavior of adolescent alumnae girls who graduated from the program. The study found significant differences between the controls and BLP alumnae in terms of education, vocational skills, economic empowerment, autonomy and mobility, self-confidence, reproductive health and child survival behavior, and health seeking. BLP alumnae were significantly more likely to be literate, to have completed secondary education, to be employed and to have learned a vocational skill. More BLP girls traveled outside their village and went to a health center alone in the last six months. In addition, BLP alumnae were more likely to make autonomous decisions about going to the market, spending what they earned and deciding when to marry. These differences in autonomy were significant even after controlling for education of girls and their parents.

e) Recommendations on or examples of good practices regarding possible appropriate measures and strategies to prevent and eliminate child, early and forced marriage

1. **Child marriage has yet to receive the attention it deserves as a violation of human rights of children.** For example, the fact that even within the government of India, child marriage is dealt with under the umbrella of women's welfare and not the section

³³ HOPE and CRY, Status of Children Between 15 and 18 years in Puducherry and Karaikal, 2013.

³⁴ Praxis and Breakthrough, Marriage Can Wait, Our Rights Can't – A Study Exploring Causes, Impacts And Resistance in the Context of Early Marriage In Bihar And Jharkhand, April 2012.

³⁵ The Centre for Development and Population Activities (CEDPA), Adolescent Girls in India Choose a Better Future: An Impact Assessment, September 2001.

dealing with children, shows lack of its recognition as child rights issue. This is true of initiatives by civil society too. As a result, child marriage or early marriage is addressed primarily as a health issue and interventions and programmes are implemented largely to address it as such under the umbrella of reproductive and sexual health initiatives. **It is time that child marriage is seen to be a violation of the right to protection of children. It must be recognized that it leads to the denial of right to childhood, education etc. and makes them vulnerable to abuse and exploitation, apart from the long term health implications.**

2. **There is very strong need for law change. The laws as they exist send out contradictory messages.** This has even led to courts giving different interpretations of the provisions of the Prohibition of Child Marriage Act, 2006 (PCMA). As long as these anomalies exist, child marriage will continue. Hence these need attention:
 - Despite India having adopted the definition of child as person up to the age of 18 years in most laws and policies concerning children, the child in the PCMA has differential definitions for boys (up to 21 years and girls 18 years). **There is a need to correct this anomaly and define both boys and girls as persons up to 18 years.**
 - **If child marriage is to be addressed, the PCMA Act must make child marriage illegal. It must over ride all personal laws and all laws dealing with age of consent and rape have to be brought in harmony.** The POCSO Act, the new provisions on age in the IPC, the PCMA and the Personal laws contradict each other and this needs to be corrected. The personal laws allow for child marriage, which means that once married, sex with a child becomes legal and is no longer a sexual offence. The rape law on one hand declares penetrative sexual assault on every minor as statutory rape and on the other hand in case of husband and wife it only makes penetrative sexual assault statutory rape if the wife is below the age of 15 years. The law addressing child sexual abuse (The Protection of Children from Sexual Offences Act, 2012 (POCSO ACT)) makes any sexual act with child below the age of 18 years an offence. PCMA prohibits a marriage from taking place, but does not declare an under- age marriage that has been already solemnized, illegal or void. It is merely voidable. In other words it is a valid marriage, until the parties involved choose to ask for it to be annulled. As minors, children do not have the agency to move the court, they cannot enter into a legal contract with a lawyer to file their case. On attaining majority they get two years to nullify their marriage, which is unlikely to happen. This would mean that children under the age of 18 years would be engaged in sex with their married partners.
 - A Uniform Civil Code will go a long way in dealing with children equally.
3. Because of the social sanction that child marriage receives, it is yet to be recognized as a crime. This is evident from a very low number of cases that get recorded in the crime data available. **There has to be a growing awareness of the criminality of forcing children into marriage.**

4. Often people hesitate to report child marriage not just because of reluctance to challenge social norms, but also because of threat to their life. There is a need to establish a **protective mechanism for people reporting child marriages**.
5. There are several government as well as civil society initiatives being implemented to prevent child marriage. These must **have a commonality of understanding and focus so that the same message is clearly sent out**.
6. Measures to curb child marriages have to address the **existing power equations of the society**. They have to understand and challenge existing patriarchal, social and cultural structures, class, religion, and customary practices. There is thus a need for comprehensive government measures, including measures to provide genuine development opportunities to girl children.
7. The retention of girls in school has emerged as one of the most significant ways of ensuring delay of marriage. However, the current law on right to education only covers children upto the age of 14 years. **The Right to Free and Compulsory Education 2009 must be changed so that all children, especially girls can continue in school up to 18 years, and the education must be affordable and accessible**.
8. **Engagement with religious leaders** has emerged as one of the most effective ways to address child marriage and this needs to be upscaled and taken to the whole country.
9. Work on the ground is showing that it is not always lack of awareness of the law that leads to child marriage, but pressure of social norms and the lack of needing to be accountable, and the ability to use the gaps in the law. In this context, **compulsory registration of marriages may be a deterrent to child marriages**. Law enforcement towards compulsory registration of marriages is necessary. There is no universal law for compulsory registration of marriages in India.
10. It is now been demonstrated that **the most significant deterrent to child marriage is the involvement of the communities in preventing it**. And the most important strategy has been to address the argument that child marriage protects the girl from abuse. Once it is demonstrated to communities that in reality child marriage does not protect children, instead it makes children more “unprotected”, communities work to prevent child marriages.
11. **Economic empowerment of women needs to be ensured in true sense** as women often have role in financial decision making and control over their earnings or savings. Among Recommendations for savings programs for adolescent girls and young women, researchers suggested that programs should be created to sensitize parents on the need to foster within the home an environment that encourages their daughters to learn to manage finances, make financial decisions, and operate savings accounts³⁶.

³⁶ Kalyanwala, Shveta, The Population Council, Inc., Influencing girls’ lives: Acceptability and effectiveness of a livelihoods skill building intervention in Gujarat, Brief no. 18, Updated July 2007.

12. **Communication campaigns** can help create circumstances in which it can be discussed and traditional beliefs about marriage can be examined. To **foster behavioural change** from within communities, human rights should be emphasized, particularly those of women – including equality, access to education and freedom from exploitation and discrimination.
13. **The most important and neglected area is building evidence on child marriage through both macro and micro level studies and maintain up dated data bases.** For instance, on one hand, there is social acceptance of marriage between adolescents amongst the Santhals (Bihar) and Bhils in (Madhya Pradesh). On the other hand, there are cases of street children in West Bengal practicing early marriage due to their social context. Among the Konyak tribe in Nagaland, it is possible to reserve an unborn girl for marriage. Not all practices find place in policy or programme interventions³⁷.
14. **Investing in monitoring and evaluation of programmes strengthens the way forward.** The joint effort with Lawyers Collective Women's Rights Initiative (LCWRI) on monitoring and evaluation of the Protection of Women from Domestic Violence Act, 2005 resulted in a guideline for states and the centre to conduct regular stock taking of the status of implementation of the PWDVA in India. Similar guidelines for monitoring and evaluation and such other tools need to be developed for the PCMA.
15. There is no sponsorship programme as such in the country to support children and families at risk. Conditional cash transfers are almost always seen as replacements for sponsorship programmes. India needs to invest in sponsorship and such other schemes to strengthen families and prevent children from falling out of the social security and protective nets.
16. The most crucial is the need to **back political commitments with financial commitments.** The Government must allocate budgets specifically for child marriage elimination programmes. The **state cannot abdicate its responsibility** by trying to bring in UN agencies and other international organizations to support child marriage initiatives. **It must have distinct programmes and schemes of its own to deal with the problem.**
17. Since birth certificates are most authentic documents of identity, India must accelerate its initiatives to ensure 100% birth registration along with ensuring that birth registration necessarily leads to possession of a birth certificate also. This alone can help people access benefits of the existing programmes and schemes, without hindrance and will also go a long way in ensuring people their every other fundamental right.

³⁷ Compiled by Malika Basu, Resource Person and Dhivya David, Research Associate, Solution Exchange for the Gender Community Discussion Summary - Good Practices against Child Marriage, Issue Date: 18 January 2010, Child Protection Unit, UNICEF India Country Office, New Delhi