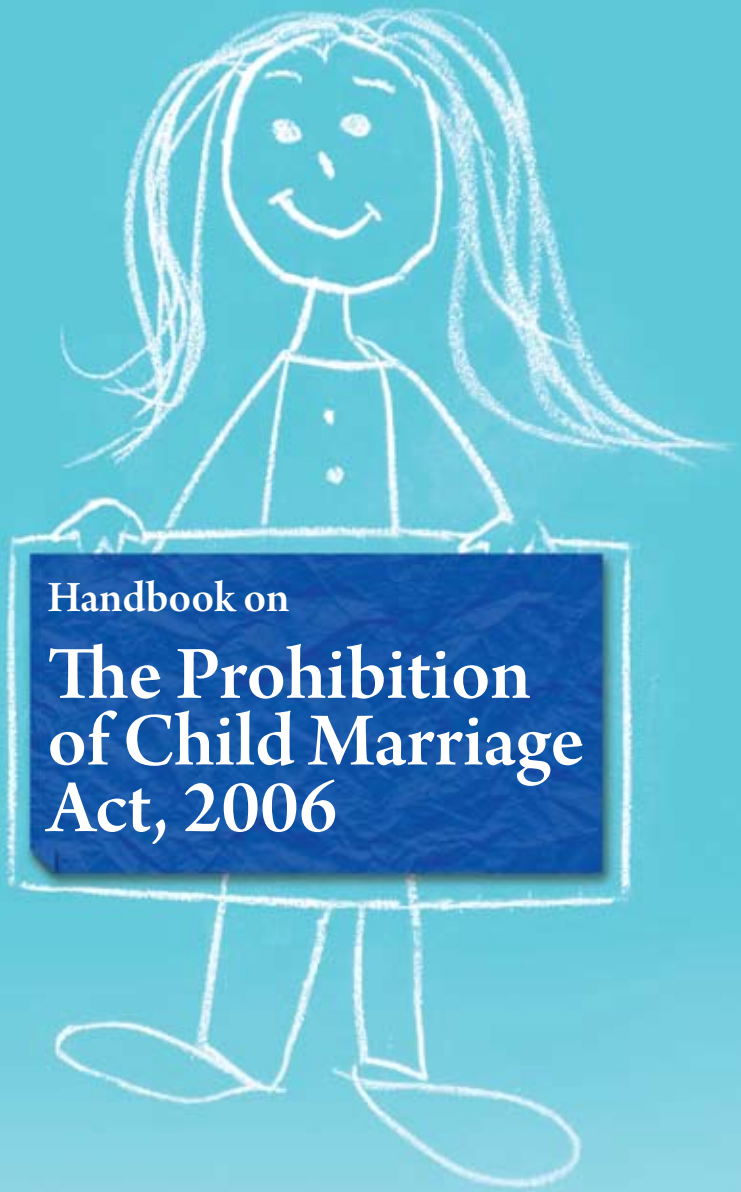

Handbook on

The Prohibition of Child Marriage Act, 2006

unicef

Ministry of Women and Child Development

HAQ Centre for Child Rights

Handbook on

The Prohibition of Child Marriage Act, 2006

Disclaimer

In this handbook, the contents and provisions of the Act have been simplified for the benefit of the user by using user-friendly language. This handbook does not in any way substitute the Prohibition of Child Marriage Act, 2006 or its provisions.

The Handbook quotes data and information from both government and non-Government sources. However, the intellectual rigour, accuracy and precision of such data has not been endorsed or authenticated.

The views expressed in the handbook may not necessarily be that of the Ministry of Women and Child Development, Government of India.

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Table of Contents

Foreword 1

Introduction 2

Part - 1 9

Part - 2 18

सत्यमेव जयते
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Foreword

One of the most important tenets of Child Rights is ensuring their basic right to good health, nutrition, education, and freedom from violence, abuse and exploitation. Child Marriage deprives the children of all these rights, denying them the opportunity to develop into fully empowered individuals.

These harmful social practices force children into a vicious syndrome of early marriage and pregnancy and is very often cited as a prime cause for high maternal and infant mortality and inter-generational cycle of malnutrition. Child Marriage also imposes certain social and decision making roles for children who are not physically, mentally or emotionally prepared to fulfill these responsibilities.

To ensure that child marriage is eradicated from within the society, the Government of India enacted the Prohibition of Child Marriage Act, 2006 replacing the earlier legislation of Child Marriage Restraint Act, 1929. This legislation is armed with enabling provisions to prohibit child marriages, protect and provide relief to victims and enhance punishment for those who abet, promote or solemnize such marriages. The Act also calls for appointment of Child Marriage Prohibition Officers for implementing the Act.

The legislation requires the support and commitment of all stakeholders for its effective and successful implementation in preventing child marriage. I am glad that the Ministry of Women and Child Development in collaboration with UNICEF and HAQ-Centre for Child Rights have developed a Handbook on Prohibition of Child Marriage Act, 2006 where the provisions of the Act and the responsibilities of stakeholders such as the Child Marriage Prohibition Officers, police, teachers, Panchayati Raj members are incorporated in a simple and user friendly manner.

I am sure that the Handbook will be extremely useful to all concerned agencies and help them in taking pro-active measures to eradicate the menace of child marriages in the country.

Krishna Tirath

Introduction

Child Marriage in India: Law and The Protocol for Action

What is a child marriage?
It is a marriage to which either of the contracting party is a child.

S2 (b) of The Prohibition of Child Marriage Act, 2006

Child or minor under this law is defined as 18 years in the case of girls and 21 years in the case of boys.

S2 (b) of The Prohibition of Child Marriage Act, 2006

Child marriage is an age-old practice that has both social and religious sanction and cuts across all sections of society. Recognising child marriage as a social evil, the Child Marriage Restraint Act (CMRA) 1929, popularly known as the Sharda Act, prohibited child marriages of girls below the age of 15 years and of boys below the age 18[1].

This law applied to all citizens of India. 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. However, despite the law, child marriages continued to take place.

There are many marriages in which both the girl and the boy are children. In others the girls are children/minors who are married off to much older men, or sometimes even sold into marriage.

More than half of the women in India are married before the legal minimum age of 18. By contrast, men in the same age group get married at a median age of 23.4 years. Sixteen percent of men aged 20-49 are married by age 18 and 28 percent by age 20.
Source: Summary of Findings, NFHS-3

In yet another attempt to deal with the problem, the government passed **The Prohibition of Child Marriage Act, 2006.**

Reasons Why Child Marriages Continue

- A girl child is generally considered to be a burden, and traditionally the attitude of the society has been to get her married as early as possible.
- The justification used by parents and the community is that of having to pay lower dowry when the bride and the groom are young. What they seem to forget is that giving or receiving dowry is a crime under the Dowry Prohibition Act, 1961.
- The demand for a younger bride creates an incentive for families to marry the girl child early and avoid high dowry payments for

1 Asha Bajpai Child Rights in India. Oxford University Press. New Delhi 2003. p.220

older girls. Child marriages are also the easy way out for parents who want their children to accept their choice of partner[2].

- Safety of the girl child from sexual violence and the inability of parents to guarantee such safety is yet another justification for child marriage. There is a belief that child marriage is a protection for girls against unwanted male attention and promiscuity. Early marriage is a way to ensure chastity and virginity of the bride.
- Parents see marriage as a way to secure the girl's future socially and economically.
- Lack of education and awareness about the consequences of child marriage, poor implementation of the law and lack of will and action on the part of the administration are important reasons for the continuation of child marriage[3].

Consequences of Child Marriage

- All children have a right to care and protection; to develop and grow into a complete and full individual, regardless of their social and economic situation. Child marriage is a blatant violation of all these rights.
- Child marriage denies children their basic rights to good health, nutrition, education, and freedom from violence, abuse and exploitation.
- When the persons in the marriage are children, their body and mind are put to grave and heinous danger. Most often the child is not even aware of what really awaits her/him as a consequence. Marriage by its very institution imposes certain social responsibilities on the persons in it. It also provides

Domestic violence is more common among women who had been married as children. India has the highest rate of domestic violence among women married by 18 with a rate of 67 per cent.

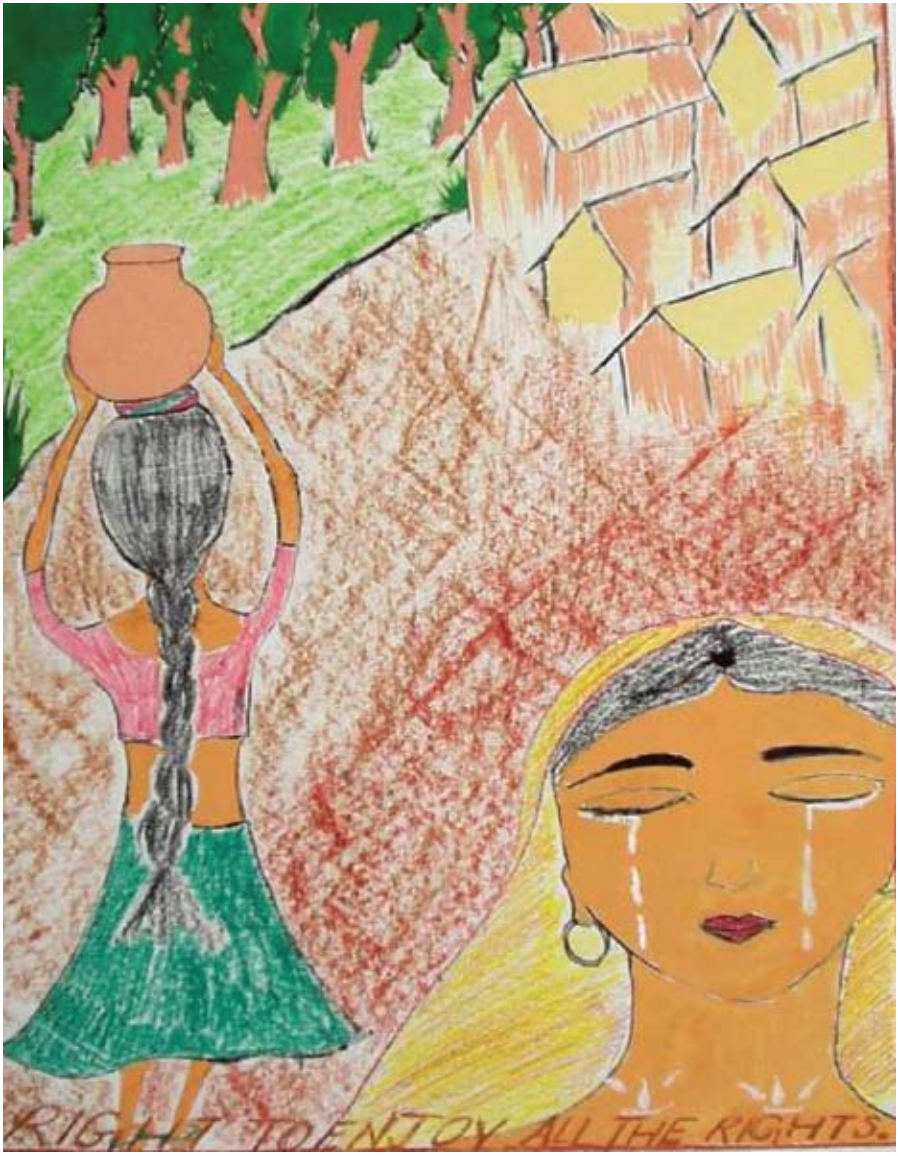
UN Children's Fund (UNICEF). Early Marriage: A Harmful Traditional Practice, UNICEF: Florence (2005), p.22

2 Government of India. Law Commission. Proposal to Amend the Prohibition of Child Marriage Act 2006 an other Allied Laws. Report 205. February 2008.

3 ibid

the legal sanction for engaging in sexual activity and procreation. This amounts to sanction for child sexual abuse and rape.

- For girls early marriage is the beginning of frequent and unprotected sexual activity which has serious health consequences. It exposes



Falling Number of Girls Leading to Trafficking of Girls as Brides

- In rural Punjab, where the shortage of women is most pronounced, a desire to keep rural family holdings intact is now driving a trend towards polyandrous unions where one woman, often 'purchased' from poorer regions or from lower castes, is forced to be 'wife' not only to her husband, but also to the husband's brothers and even, according to some reports, her own father-in-law.
- Boys from North Gujarat district, which is notorious for its preference for the male child and has the lowest sex-ratio of 798 girls per 1000 boys in the state, buy brides from within the state and from other states.

them to early motherhood, reproductive tract infections and sexually transmitted diseases, including HIV/AIDS[4]. It also means frequent pregnancies and abortions.

- Early marriage resulting in early motherhood means placing both the young mother and her baby at risk. It lead to increase in the rate of infant mortality and maternal mortality and birth of babies who have low birth weight, malnutrition and anaemia.
- Early child marriage violates the child's right to education. Children remain illiterate and unskilled, which in turn limits their opportunities for economic employment and economic independence as an adult.
- Child brides often experience a sudden decline in their social networks, leaving them with few friends and peers if any. Such social isolation pose a host of other challenges that limit their ability to promote their health, development and well-being.
- Parents justify early marriage as a way to protect the girl child from violence. However, parents do not understand that child marriage actually opens the door to an endless and vicious cycle of domestic violence and abuse. Marriage is also often used as the first step to trafficking for commercial sexual exploitation, forced labour or any other purpose[5].
- Son preference leading to female foeticide adds to the woes of the girl child. It results in fall in the number of girls available

4 ibid

5 Government of India. Law Commission. Proposal to Amend the Prohibition of Child Marriage Act 2006 an other Allied Laws. Report 205. February 2008

- Girls are trafficked from Orissa to Uttar Pradesh and Madhya Pradesh. Organisations working in the Balasore district of Orissa have reported an increasing trend of girls belonging to poor families being lured by middlemen to Eastern Uttar Pradesh with promises of a good dowry-less marriage.
- Girls from Assam and West Bengal, even Bangladesh, are sold to boys in Haryana.
- Girls from Kunjimangalam in Kannur district of Kerala are trafficked into marriage to boys from Hissar in Haryana.

Source: CACT Diary 2005,

HAQ: Centre for Child Rights, Status of Children in India Inc. 2005,

HAQ: Centre for Child Rights, Child Trafficking in India, Reprint, September 2001

for marriage and hence buying of young brides, particularly in states with a skewed sex ratio. Some girl children are victims of "fake marriages" after which they are trafficked for sexual expoitation or as labour. Reports from Haryana, Punjab, Gujarat, Madhya Pradesh, Uttar Pradesh and Rajasthan bear testimony to this.

Both, National Laws and International Legal Instruments Ratified by India Clearly Spell out its Legal Obligation to Protect its Children and their Basic Human Rights

The Constitution guarantees basic rights to every child irrespective of her/his socio economic condition, and cultural and geo-political situation.

The National Plan of Action for Children, 2005, Ministry of Women and Child Development aims to eliminate child marriages by 2010.

At the international level, India is signatory to several international human rights instruments that protect children from all forms of abuse and exploitation and ensure them the right to dignity and childhood. These include the UN Convention on the Rights of the Child (UNCRC), Convention on Elimination of Discrimination against Women (CEDAW) and International Covenant on Economic Social Cultural Rights (ESCR).

Shortcomings of Child Marriage Restraint Act, 1929

- The Act aimed only at restraining solemnisation of child marriages in the country and not its prevention or prohibition.
- The procedures laid down under this law to act against solemnisation of child marriages were very cumbersome and time consuming.
- It did not identify authorities responsible for preventing child marriages.

To overcome the shortcomings of Child Marriage Restraint Act, the Government of India enacted the Prohibition of Child Marriages Act, 2006 (PCMA), which received the assent of the President of India on 10 January, 2007. The Act came into effect from 1 November, 2007.

This handbook has been developed with an objective to spell out the various nuances of the PCMA in a simple language and also make it usable as a tool in training and capacity building of various functionaries. The handbook is in two parts.

i. Part I provides introduction to the Prohibition of Child Marriage Act, 2006 and what the law contains e.g. procedures prescribed for prevention of child marriage, annulment of a child marriage, protection of victims of such marriages and prosecution of offenders.
ii. Part II details out different roles and capacities of various functionaries to prevent child marriages.

Part - 1

The Prohibition of Child Marriage Act, 2006

The Prohibition of Child Marriage Act, 2006 (PCMA, 2006) was notified on 10 January 2007 to overcome the constraints of the former legislations in effectively dealing with the problem of child marriages in India and to put in place a comprehensive mechanism. It came into force on 1 November 2007.

Whom Does it Apply to?

- It applies to all citizens of India irrespective of religion, without and beyond India.
- It however, does not apply to the State of Jammu and Kashmir.
- It excludes the Renoncants of the Union Territory of Pondicherry from its application. For them the French Civil Laws are applicable as they are treated as citizens of France.

What Does this Law Provide for?

The basic premise of the law is:

- To make a child go through a marriage is an offence[6].
- Child or minor is a person up to 18 years in the case of girls and 21 years in the case of boys[7].

The provisions of this law can be classified into three broad categories:

A. Prevention
B. Protection
C. Prosecution of Offenders

A. Prevention

The law seeks to prevent child marriages by making certain actions punishable and by appointing certain authorities responsible for the prevention and prohibition of child marriages. These persons are responsible for ensuring that the law is implemented. It is also the responsibility of the community to make use of the law.

More specifically, under the law:

1. The solemnisation of child marriages is a cognisable and non-bailable offence[8].
2. Child Marriage Prohibition Officers (CMPOs) are to be appointed in every state to prevent child marriages, ensure protection of the victims as well as prosecution of the offenders[9].
3. The Courts have the power to issue injunction for prohibiting child marriages from taking place[10].

6 Sections 10, 11 and 15 of the Prohibition of Child Marriage Act, 2006 (PCMA, 2006)
7 Section 2 (a), PCMA 2006
8 Section 15, PCMA 2006
9 Section 16, PCMA 2006
10 Section 13, PCMA 2006

4. Child marriages will be declared null and void if the injunction prohibiting a child marriage from taking place is violated/ contravened or, if the child is taken away from their lawful guardian by enticement, force or use of deceitful means or, is sold or trafficked for the purpose of marriage[11].
5. The law lays down penal provisions for those who solemnise child marriages[12].
6. The CMPO and District Collector are responsible for sensitisation and awareness creation in the community[13].

The Prohibition of Child Marriage Act, 2006, under section 11 provides punishment for those who permit and promote child marriages. Hence, it is necessary that every individual who is aware of any child marriage that is going to be conducted or is being conducted or has been conducted, to make sure that he/she does not permit or promote the child marriage by not reporting about it. He/she can be made liable under the present law and also the Indian Penal Code for abetting the offence.

11 Sections 12 and 14, PCMA 2006
12 Section 10, PCMA 2006
13 Sections 13 (4) and 16 (3) (d), PCMA 2006

B. Protection

1. The law makes child marriages voidable by giving choice to the children in the marriage to seek annulment of marriage[14].
2. It provides for maintenance and residence of the female contracting party[15].
3. It gives a legal status to all children born from child marriages and makes provisions for their custody and maintenance[16].
4. The law provides for all support and aid including medical aid, legal aid, counselling and rehabilitation support to children once they are rescued[17].
5. The Child Marriage Prohibition Officer has been empowered:
   - to provide necessary aid to victims of child marriage[18]
   - to provide legal aid[19]
   - to produce children in need of care and protection before the Child Welfare Committee or a First Class Judicial Magistrate, where there is no Child Welfare Committee[20].

C. Prosecution of Offenders

1. The law provides for punishment for an adult male above 18 years of age marrying a child[21].
2. It also lays down punishment for those performing/conducting/abetting a child marriage[22].
3. It prescribes punishment for promoting or permitting solemnisation of child marriage, including for parents, guardians or any other person/association/organisation[23].
4. The law clearly states that women offenders in any of the above categories cannot be punished with imprisonment. However, they can be penalised by way of imposition of a fine[24].
5. ***Mechanisms under the law***
   The authorities identified for prohibiting child marriage under the present law are:

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14 Section 3(2) and 3(3), PCMA 2006
15 Section 4, PCMA 2006
16 Sections 5 and 6, PCMA 2006
17 Section 16 (3) (g), PCMA 2006
18 Section 16 (3) (g), PCMA 2006
19 Section 16 (3) (g), PCMA 2006
20 Section 32 of Juvenile Justice (Care and Protection of Children) Act 2000, as amended in 2006.
21 Section 9, PCMA 2006
22 Section 10, PCMA 2006
23 Section 11, PCMA 2006
24 Provison to Section 11 (1), PCMA 2006

1. Child Marriage Prohibition Officer
2. District Magistrate
3. First Class Judicial Magistrate or Metropolitan Magistrate
4. Police
5. Family Courts
6. Any person(s) called upon by the State Government to assist the Child Marriage Prohibition Officer. These could include - a respectable member of the locality with a record of social service, officer of the Gram Panchayat or Municipality, officer of the government or public sector undertaking, office bearer of any non-governmental organisation.

6. Reporting Child Marriages

Any person can report an incidence of child marriage before or after it has been solemnised. An immediate report needs to be made to:

- The Police
- The Child Marriage Prohibition Officer or such persons as may be appointed to assist him/her
- First Class Judicial Magistrate or Metropolitan Magistrate
- Child Welfare Committee or a member of the Child Welfare Committee set up under the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006
- Child Line
- District Magistrate

A First Class Judicial Magistrate is empowered to take *suo moto* cognisance of any reliable report of information of child marriage.

The Child Marriage Prohibition Officers are also responsible for reporting and preventing child marriages.

In case of mass marriages the District Magistrate is also deemed to have the powers of a Child Marriage Prohibition Officer and therefore has the powers to stop or prevent solemnisation of child marriages.

7. Complaint

A complaint can be filed by any person, including those who report an incidence of child marriage. Such persons may include:

Case Study

Bhanwari Devi, a village women's development worker in Rajasthan was punished with rape for complaining against child marriage. And more recently, Shakuntala Verma, an Anganwadi worker from Madhya Pradesh, had her arms cut off for daring to protest. Clearly complainants need protection!

1. A person who has reason to believe that a child marriage is likely to take place.
2. A person who has personal information.
3. School teachers, doctors, ANMs, anganwadi workers, village level workers, SHG members, village elders, neighbours etc.
4. A parent or guardian of the child.
5. The Child Marriage Prohibition Officer or persons appointed to assist her/him.
6. A non-governmental organisation having reasonable information.

It is critical that concerted efforts are made towards creating awareness that motivates and empowers all community members to assume a pro-active role in curbing child marriages without fear. It is also important to ensure protection for the complainants to avoid repercussions that could defeat the purpose of social justice.

8. Where to File a Complaint?

Since arranging or solemnising a child marriage is a cognisable offence, a complaint has to be made in the nearest police station. The police must make a DD entry (an entry in the Daily Diary Register maintained at every police station) and register an FIR (First Information Report) based on such complaint.

A complaint can also be filed with a Judicial Magistrate of First Class or a Metropolitan Magistrate.

Complaints can be either oral or written, in the form of a phone call, a letter or a telegram, e-mail, fax or a simple handwritten note duly signed by the complainant.

A Quick Recap of Important Provisions

Child Marriage - An offence

- Child marriage is an offence punishable with rigorous imprisonment, which may extend to 2 years, or with fine up to Rs.1 Lakh, or both.
- Courts can issue injunctions prohibiting solemnisation of child marriages **(Section 13, PCMA 2006).**
- Offences under the Act are cognisable and non-bailable **(Section 15, PCMA 2006).**

Persons Who can be Punished Under the Law Include

- Whoever performs, conducts or directs or abets any child marriage **(Section 10, PCMA 2006)**
- A male adult above 18 years marrying a child **(Section 9, PCMA 2006)**
- Any person having charge of the child, including –
  - parent or guardian
  - any member of organisation or association, promoting, permitting, participating in a child marriage or failing to prevent it **(Section 11, PCMA 2006).**

Offenders could Include Amongst Others

- The guardians/parents of both parties
- Priests
- Relatives/friends of both parties
- Neighbours of both parties
- Community leaders who give patronage to such marriages
- Marriage bureaus/persons responsible for fixing marriages
- Traffickers
- The bridegroom if he is over 18 years of age
- Caterers and other service providers

Annulment and Voidability of Child Marriage

- Child Marriages are voidable and can be annulled **(Section 3 (1), PCMA, 2006).**
- The annulment of child marriage can be sought within a period of 2 years after the child who was a party to the marriage has attained majority **(Section 3(3), PCMA 2006).**

- Only the children in the marriage themselves can file a petition for voidability or annulment of marriage. And if the petitioner is a minor as per PCMA, the petition can be filed through a guardian or the next best friend of the married child (who must be an adult of 18 years or more), along with the Child Marriage Prohibition Officer (CMPO) **(Section 3 (2), PCMA 2006).**
- The District Court can grant nullity of marriage. The District Court includes the Family Court and Principal Civil Court of Original Jurisdiction, and any other civil court specified by the State Government **(Sections 3 and 2(e), PCMA 2006).**
- Under certain circumstances, child marriages can be declared null and void by the Courts. These include:

Illustration 1

Munni was married when she was just 8 years old. Her husband was then 16 years old. They were both minors at the time of marriage. Their marriage can be declared void or can be annulled if they wish. However they cannot file an application for annulment or voidability of marriage on their own as long as they are minors. This application will have to be filed by their parent/guardian or an adult friend/well-wisher, along with the Child Marriage Prohibition Officer.

If their marriage could not be annulled or declared void while they were minors, Munni will have to wait till she is 18 years old, while her husband, till he is 21 years old, to file an application on their own. Either of them can file an application for annulment or voidability of marriage with the District Court. But this application must be filed within 2 years of attaining majority as per PCMA.

Munni cannot apply for maintenance from her husband because he too is a minor. However, if he had been an adult at the time of marriage, he would be liable to pay maintenance to Munni as well as face criminal action.

Munni's children in both cases are legitimate and entitled to maintenance from their father or his parent/guardian in case he is a minor as per PCMA.

- where a marriage has been solemnised despite an injunction order passed under section 13 to prevent the child marriage from taking place **(Section 14, PCMA 2006)**
- where the child is taken away from their lawful guardian by enticement, force or use of deceitful means **(Section 12 (a) and (b), PCMA 2006)**
- when the child is sold or trafficked for purpose of marriage or through marriage **(Section 12 (c), PCMA 2006).**

Maintenance and Custody

- The CMPO is empowered to provide support and all possible aid including medical and legal aid to children affected by child marriages **(Section 16 (3) (g), PCMA 2006).**
- The adult husband must pay maintenance to the minor girl until her re-marriage. In case the husband is a minor at the time of marriage, his guardian will pay maintenance **(Section 4 (1), PCMA 2006).**
- Children born from a child marriage are entitled to custody and maintenance because the law considers such children legitimate for all purposes even after the marriage has been annulled **(Sections 5 and 6, PCMA 2006).**
- A District Court is empowered to add to, modify or revoke any order relating to maintenance and custody of children born from a child marriage **(Section 7, PCMA 2006).**

Any decision regarding the child affected by the marriage must be determined by the principle of best interest of the child. This would include children who are in the marriage as well as children born from the marriage (Sections 4(2), 5(2) and 5(3), PCMA 2006)

Part - 2

Role of Stakeholders and Overriding Principles for All Action

Overriding Principles that must Govern any Action Concerning Children

1. Respect for the child's dignity and privacy.
2. Ensuring that no action leads to further or multiple victimisation of the child physically, psychologically or emotionally.
3. All actions must be determined in the best interest of the child.
4. There shall be no discrimination based on caste, religion, ethnicity and gender as well as physical or mental disability.
5. Every child must be given the opportunity to express her/his opinion and concerns in determining any action for rescue, rehabilitation and restoration.
6. Legal procedures shall be child-friendly, from the time of first intervention by the police or concerned state government officials till the prosecution of offenders is completed.
7. Safety of the child shall be at the core of every action.
8. All citizens are responsible for ensuring that child marriages do not take place.
9. Ensuring co-ordination between the implementation mechanisms set out in the Prohibition of Child Marriage Act and the juvenile justice system already in existence for any action against child marriage.
10. Involvement of Panchayats and Municipal bodies for generating awareness and reporting on child marriage.
11. Caste Panchayats are not adjudicators or judicial mechanisms recognised by law to deal with crimes. Hence, they should not be called upon to play any role in deciding the legal course of actionand the fate of the victims.

Role of Stakeholders that have been Identified in the Law is as Follows:

1. Child Marriage Prohibition Officer

As a Child Marriage Prohibition Officer (CMPO), you are the most critical person for ensuring prohibition of child marriages in your district. The CMPO has the power to intervene and petition before a child marriage takes place as well as after the marriage on behalf of the child who is the victim.

A) If a Child Marriage is About to Take Place in the Near Future, the CMPO must:

- Visit the home of both the contracting parties, and make the parents aware that child marriage is a punishable offence under the law and advise them not to conduct the marriage.
- Speak to the guardians/relatives/community elders and make them aware and try and convince them against the child marriage.
- Try and speak to the child in order to make him/her aware of child marriage and its ramifications. Help the child understand the situation and tell the child that it is his/her right not to get married.
- Seek the assistance of the panchayat, the local leaders, the teachers, government officials/public servants or a local NGO to convince the parents against child marriage.
- Monitor the situation closely.
- Complain to the police and with the assistance of the police get the offender arrested. The police have powers under section 151 of the Criminal Procedure Code to make arrests in order to prevent the commission of a cognisable offence.
- File a complaint to a First Class Judicial Magistrate if parents refuse to concede, seeking an injunction order under section 13 to prevent a child marriage from taking place.

B) If the Marriage is Currently Taking Place, the CMPO must:

- Report immediately to a Judicial Magistrate for him/her to issue an injunction to prevent a child marriage.
- Collect evidence of the marriage taking place (such as photographs, invitations, receipts of payments made for marriage purposes)
- Make a list of offenders who are responsible for arranging, performing, supporting, encouraging and helping in the marriage or attending it.
- Complain to the police and with the assistance of the police get the offenders arrested. The police have the powers under section 151 of the Criminal Procedure Code to make arrests in order to prevent any cognisable crime from taking place.
- If the child is at risk of being forced, threatened or enticed into child marriage, or if there is a risk to the child's life, provide immediate protection and aid to the child by producing the child before the Child Welfare Committee or before the First Class Magistrate where there is no Child Welfare Committee. Till such time the child can be kept in a children's home/drop-in-centre/short stay home recognised by the state government.

- Provide all support and aid including medical aid, legal aid, counselling and rehabilitation support to children once they are rescued.

C) If a Child Marriage has Already Taken Place, the CMPO must:

- Collect evidence of the marriage that has taken place (such as photographs, invitations, receipts of payments made for marriage purposes, witnesses)
- Make a list of offenders who were responsible for arranging, performing, supporting, encouraging and helping in the marriage or attending it.
- Complain to the police and with the assistance of the police get the offenders arrested.
- Remember that women involved in such offences are also offenders although they cannot be punished with imprisonment. Therefore arrests should be made where necessary. It is for the courts to decide on the penalty to be imposed on women offenders.
- Produce the child before the nearest Child Welfare Committee as required under the Juvenile Justice (Care and Protection of Children) Act 2000, immediately or latest within 24 hours.

Till such time the child can be kept in a children's home/drop-in-centre/short stay home recognised by the state government.

- In case no Child Welfare Committee is available, produce the child before a Judicial Magistrate of First Class for appropriate decision regarding his/her safety, care and protection. At no point should the child be kept in a police station.
- Ensure that the child is not subjected to having to repeat her/his statement before different authorities at different points of time causing re-victimisation.
- Ensure that the child is not subjected to unwarranted gynaecological examination and medical tests and every test conducted on the child is after informing the child and her/his parents/guardians/next best friend as the case may be, and on taking their consent.
- Provide all support and aid including medical aid, legal aid, counselling and rehabilitation support to children once they are rescued.
- Do not make the child appear in the court repeatedly; both evidence and cross-examination take place the same day as far as possible.
- The State Government can assign the CMPO various duties and functions to discharge. The CMPO must therefore act pro-actively to assess the infrastructural needs and other systemic needs that can enable justice for victims of child marriage as well as ensure prosecution of offenders. One such task can be supporting the establishment of fast track courts to ensure speedy justice. The CMPO may have to make up a case for the State Government to seek establishment of fast track courts if required.
- Make regular follow up visits if a child continues to stay with her/his parents. Removal of the child from home should be the last resort, only taken in the best interest of the child.
- Involve local NGOs/CBOs for follow-up assistance to the child, if required.
- Ensure investigation into the commission of any other offence against the child/victim under any other law.

2. Police

On receiving a complaint, as a police person you should follow the procedures laid down in the Code of Criminal Procedure, 1973:

- Register an FIR and investigate. No police can refuse to accept the complaint, which may be made orally or in writing. All complaints must be converted into an FIR without delay.
- Report the matter to the Child Marriage Prohibition Officer (CMPO) for him/her to gather evidence about the instance of a child marriage.
- Report the matter to the District Magistrate for her/him to issue an injunction.
- Accompany the CMPO or the appointed person[25] for investigation.
- Arrest the offender as offences under the law are cognisable and non-bailable.
- Do not arrest or handcuff the child.
- In case of non-availability of CMPO or the appointed persons, visit the scene of crime (i.e. where a child marriage is being conducted/or has been conducted) and take necessary action, including rescue of the minor(s) if necessary.

25 Any person/s can be called upon by the State Government to assist the CMPO. These could include a respectable member of the locality with a record of social service, officer of the Gram Panchayat or Municipality, officer of the government or public sector undertaking, office bearer of any non-governmental organisation.

The Code of Criminal Procedure in India clearly provides that cognizable offences brought before the police shall be recorded in the form of an FIR and due investigations shall be carried out by the police for ensuring legal action against the offenders.

When a case of arranging or solemnizing a child marriage is reported to a First Class Judicial Magistrate, the Magistrate should ensure that such incidences are investigated into and monitored, and the Prohibition Officer be made responsible for it.

- Avoid being in uniform when dealing with children to make them more comfortable and less intimidated.
- Ensure presence of a lady police officer in dealing with a girl child along with a female social worker/teacher/anganwadi worker/ANM/ child's next friend (a person trusted by the child). Only in case there is NO LADY officer available immediately, should a male police person interact with the girl child, but in the presence of a female social worker/teacher/anganwadi worker/ANM/child's next friend.
- Produce the child/minor before the nearest Child Welfare Committee within 24 hours or before a Judicial Magistrate of First Class where such Committee is not available. Victims of child marriage are also children in need of care and protection under the Juvenile Justice Act and the rules made for its implementation.

Special Juvenile Police Unit mandated under the Juvenile Justice (Care and Protection of Children) Act, 2000 are meant to be created to engage with children who need care and protection under this law.

The functions of a Special Juvenile Police Unit are also important in preventing child marriages.

- They are specifically trained and created to deal with children in need of care and protection.
- They should coordinate with the regular police and make sure that children rescued from child marriages are taken to the Child Welfare Committee/Judicial Magistrate of First Class as the case may be.

- Removal of children from the custody of parents/legal guardians must be the last resort and taken only in the best interest of the child. No such child shall be placed in police lock-up or police custody. Such child can only be placed in a fit institution recognised and registered under the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006.
- In addition to using the PCMA, you can use every other relevant law to ensure protection of children and prosecution of offenders. Chapter XX of the Indian Penal Code (IPC) for instance contains legal provisions on offences relating to marriage, which can be brought into use for booking a case[26].

3. District Magistrate

As the District Magistrate, you are the prohibition officer with regard to section 13 (4) i.e. when mass child marriages are taking place. You are responsible for enforcing an injunction under section 13.

Section 13 of The Child Marriage Prohibition Act, 2006

Identifying areas of "intense necessity", means identifying those rituals that promote child marriages, and steps should be taken to moderate the effect of these rituals in promoting child marriages. For example Akshaya Trutiya and similar events have been recognised as customs which promote child marriages. The District Magistrate has been empowered to act as a prohibition officer during such occasions and issue injunctions, which provides her/him with the authority to issue notifications to the effect that such occasions cannot be used for the purpose of organising or solemnising child marriages.

A strict monitoring of such occasions and the result that is achieved due to such monitoring should be recorded.

The Prohibition Officer, in this case, the District Magistrate, be made answerable for failure to regulate such occasions.

26 Examples of the provisions under IPC: Provisions relating to wrongful confinement, wrongful restraint, criminal force and assault, criminal intimidation, cheating and fraud, forgery, rape, buying or disposing of any person as a slave, exposure and abandonment of a child under twelve years by a parent or a person having care of the child - are some of the other legal provisions under the IPC that could be used depending on the case.

Along with these powers, you are answerable for the enforcement of the legislation.

- Take *suo motu* cognisance of offences under the Act.
- Educate Panchayat Members on their role to prevent child marriage and encourage their involvement in reporting and filing of complaints.
- Set up necessary child helpline centres that provide assistance to children in need of care and protection, including children who want to resist child marriage and children rescued from child marriage.

4. Panchayat Members

As members of the gram panchayat/gram sabha you are closest to the community and also have the constitutional mandate to perform functions of the legislature. It is imperative that you play a leading role in preventing child marriages, protecting the victims as well as supporting the concerned authorities in evidence building so as to prosecution of the offenders.

- Assist the Child Marriage Prohibition Officer in preventing child marriages as per section 16 (2) of the Act. This could be done

When Neighbours Can, Panchayats Must!

19 arrested for child marriage

NINETEEN PEOPLE were arrested in Sahibabad for forcing a 12-year-old girl into marriage on Saturday night.

Police said Guddu Pandit, a tour operator was getting his 12-year-old daughter married to Vijay Sharma (21) from Nadgram in Ghaziabad.

"We received a complaint from Raheesa Begum, a neighbour, around midnight. When the police reached the spot, they found that the ceremony was being held." said Circle Officer (Border) Happy Guptan.

They were arrested and booked under sections of the Child Marriage Act. "We arrested the groom, his family members, the minor's parents and relatives." the officer said.

–Peeyesh Khandelwal

The Hindustan Times, Metro, Pg.3, 1 June 2009

by convincing parents against conducting child marriages, educating parents and the community on the implications of child marriage for a child, providing information about the law, ensuring that children have access to education and their attendance and retention in schools is promoted.

- Assist the Child Marriage Prohibition Officer or the police in enforcing the law by providing necessary support and information.
- Ensure that no member of the gram sabha or gram panchayat is involved in promoting child marriages.
- For offenders within the gram panchayat, apart from legal action according to the law, their membership must be revoked. Other elected representatives in the panchayat must ask the Member Secretary to take necessary action in this regard.
- Create awareness within the community about the law and educate the community about the implications/consequences of early marriage for their child such as early childbearing, poor maternal health and mortality, poor infant health and mortality, and higher risk of HIV infection, lower levels of education, lower economic status and livelihood opportunities, higher likelihood of domestic violence and less decision-making power at home, especially for girls. Encourage the

parents to wait for their children to reach the age of maturity (i.e. age 18 for girls and 21 for boys) before they are married.

- Assist enrolment and retention of all children, especially of girls, in school by making the village Education Committee aware of the issue of child marriage and enabling them to play a vigilant role in preventing child marriages. This could be done by keeping track of dropout out children and ensuring their enrolment and retention in schools, and making education accessible to all.
- Set up a Child Protection Committee within the Panchayat to create awareness and monitor child protection issues such as child marriage.

5. Teachers

Every school teacher has been made liable under section 16 to provide assistance to the Child Marriage Prohibition Officer to prevent child marriages. School teachers can play a key role in preventing child marriages.

- Inform the nearest police station as soon as you know that a child marriage is being performed or is about to be performed.
- Visit the nearest Judicial or Executive Magistrate to record a complaint, if it is not feasible to go to the police station or if the police fail to record your report.

Illustration 2

Five girls from Harsinghpur, Karnal got the National Bravery Awards on 26 January 2004 for having stopped the marriage of 2 minor girls in their village. They were enthused to act by their class teacher. He then supported them to file a police complaint and take the matter up with the Panchayat, which was completely against the girls. In fact the teacher even convinced the parents of the girls to allow them to travel to Delhi to collect the awards. Without the support of this teacher the girls would not have been able to save their peers. The district administration has since then been actively taking up child marriage issues.

Source: CACT Diary 2005

- Make a phone call or write to the nearest police station/SP (Superintendent of Police)/Child Line/Child Welfare Committee/ the Department of Women and Child Development or the Social Welfare Department in the state, etc. in case the police station is far away or there are no Courts in the vicinity. You could also solicit support from the nearest non-governmental organization working with children
- Keep a direct check over the children in school who could be potential victims of child marriage, by keeping regular attendance at school.
- Make immediate visit to the house of the child if his/her absence is alarming and there is a potential of the child being married.
- Talk to the parents and try to convince them not to marry off their children early by informing them about its negative consequences.
- Inform parents about the law against child marriage, that the law declares child marriage an offence and lays down the legal consequences for parents who get their children married.
- Educate the children in school that child marriages are barred under the law.
- Educate children in school on their rights and availability of these to every child irrespective of their gender, caste, ethnicity or religion.
- Encourage participation of children in voicing their concerns and views about child marriages through different ways such as drawings, writings, plays and discussions.
- Conduct special sessions and invite members of the police and the CMPO to talk about child marriage.

Convergence of Action and Services

All States should Frame their own Rules for Implementation of the PCMA.

While implementation of the PCMA is the nodal responsibility of the Ministry of Women and Child Development, the objectives of the law can best be met through convergence of action and services provided by other Ministries and Departments also.

The role of the Child Marriage Prohibition Officer, the Police, the District Magistrate/District Collector, Members of Gram Panchayats and School Teachers is specified in the Act.

However, other government functionaries whose assistance can be sought include:

- Child Development and Panchayat Officers (CDPO)
- District Child Protection Officers (DCPO)
- District Welfare Officers (DWO)
- Members of Child Welfare Committees
- Auxiliary Nurse Mid-wife (ANM)
- Anganwadi worker
- ASHA-health worker

Clearly, along with the Departments of Rural Development, Panchayati Raj and the Department of Education, the Health and Family Welfare Department too have a critical role to play while reaching out to women through its health programmes. For example, ASHA (Accredited Social Health Activist) is a health activist in the community who creates awareness on health and its social determinants, and mobilises the community towards local health planning as well as increased utilization of existing health services. They could thus play a very key role in promoting good practices that help establish a higher age at marriage at the community level. The ANMs and the ASHA-health worker for example, can include in their mandate an awareness drive to highlight the effects of early marriage on the health of young girls and early child bearing.

Some other schemes that can have an impact on child protection include crèche services provided through the ICDS and the Rajiv Gandhi National Crèche Scheme, which enables girl children to go to school and reduces

the risk of trafficking and marriage. Vulnerability of the girl children can also be reduced by enabling access to benefits under existing schemes such as Balika Samriddhi Yojana, Integrated Child Development Scheme, Kishori Shakti Yojana, the Nutrition Programme for Adolescent Girls, Dhanalakshmi Pilot Scheme on Conditional Cash Transfers and National Programme for Education of Girls at Elementary Level.

It could be valuable to develop a convergent "Anti-Child Marriage Action Plan" in the districts whereby the roles and responsibilities of all the stakeholders are clearly spelt out.

Other Possible Actions at the District/State/National Level

- As part of awareness drives, campaigns against child marriages be taken up by various Ministries/Departments, kiosks be created, and messages against child marriages be sent out through the means of print and electronic media, folk theatre, puppetry, traditional forms of art or other forms of literature, for the necessary devolution of information.
- The Department of Education to make the education process responsive to the needs of this Act, which will also make it clear that teachers necessarily need to assist in the prohibition of child marriage. A curriculum focused approach be introduced which spreads information about the consequences of child marriages.
- The National and State Commissions for the Protection of Child Rights as well the National Human Rights Commission and the National Commission for Women have been given powers to monitor child welfare measures and also the implementation of laws that are meant to protect the rights of children. These statutory bodies therefore need to direct and monitor the implementation of the anti-child marriage law too.
- Publication of periodic and post-judicial data, which provide necessary information about the measures undertaken and results achieved, also becomes important because the conviction rate under the earlier legislation was low. The prohibition officer under the present legislation has already been entrusted with the duty to furnish such periodical returns and statistics as the state government may direct.
- Enforcement of Article 21A of the Indian Constitution, which provides for compulsory education, can be highlighted to ensure that children are not left without the benefits of education.

- When the States make their rules for implementation of the Act, ensuring convergence on empowerment initiatives that are undertaken by the government for the benefit of children can be enlisted within the duties of the Prohibition Officer.
- At the panchayat level, efforts need to be made to include within the list of legislative powers made available to the panchayats under the 73rd amendment of the Indian Constitution, measures to educate the members of the gram panchayat to secure the help of the prohibition officer in cases involving child marriages. Such grams sabhas be targeted and made accountable where there is evidence that child marriages are rampant. It is important to create child help line centres across various levels where it is thought that the need for child protection is necessary.
- Reducing marginalisation and vulnerability of families through social and economic empowerment is an important preventive measure that must find its way into all policy and action. Such vulnerable families must be identified for accessing benefits under the poverty alleviation programmes and development schemes of the government. The Department of Women and Child Development and the Department of Rural Development must collaborate to achieve this end.

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24 जनवरी/January

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