

Introduction

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Hilary Amster was a Center for Law and Global Justice intern in Bangalore, India, in the summer of 2009. India has a federal government and Bangalore is in the State of Karnataka. She was assigned to the Child Protection Program run jointly by the UNICEF Child Protection Unit and the Karnataka State Women and Child Development Agency.

Ms. Amster's paper began as an assignment from her internship supervisor to analyze the Indian government's 2006 Child Marriage Prohibition Act in light of the many pieces of legislation on the same subject that had preceded it. The paper developed into a comprehensive survey of the causes and consequences, both physical and psychological, of the phenomenon of child marriage and of the many pieces of legislation that form the legal backdrop against which child marriage takes place. The author examines the little-known religiously-based Marriage Acts that govern each of India's religions, such as the Hindu Marriage Act, the Parsi Marriage Act and the laws governing Muslim and inter-faith marriage. The legal portion of the paper ends with a look at the relevant criminal laws. The paper as a whole concludes with Ms. Amster's suggestions for both legal and social action aimed at strengthening the prohibition of child marriage even beyond what the 2006 Child Marriage Prohibition Act has accomplished.

Professor Dolores A. Donovan

Child Marriage in India

Article 1 of the Convention of the Rights of the Child states, “a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.”¹ The Indian Constitution, however, does not give a precise definition of a child. It relies instead on various legislative acts relating to the status of childhood to draw the arbitrary line between a child and an adult. For example, the Indian law pertaining to child marriages defines a child as “a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age.”² It continues to define a child marriage, as “a marriage to which either of the contracting parties is a child.”³ This means that any male who is married under the age of twenty-one or any female who is married under the age of eighteen is involved in a child marriage and subject to relevant laws, both national and international.

In India, it is estimated that more than several thousand child marriages are solemnized each year, but the exact number is difficult to calculate, since many of the marriages are not recorded or registered.⁴ Child marriages throughout the world tend to be more prevalent in the rural, poor communities. “This is because rural households tend to have more entrenched traditional attitudes and customs, are less affected by external influences, and have fewer livelihood options for young women.”⁵ According to state statistics in Karnataka, in 2007-2008 50.2% of total married women ages 20-24 were married before age 18: 54.3% of the rural population and 38.1% of the urban population.⁶ These

¹ Convention on the Rights of the Child art. 1, Nov. 20, 1989, 1577 U.N.T.S. 3, ratified November 12, 1992.

² Prohibition of Child Marriage Act § 2(a), No. 06 of 2007; India Code, *available at* <http://indiacode.nic.in>.

³ *Id.* § 2(b).

⁴ Asha Krishnakumar & T.K. Rajalakshmi, *Child Brides of India*, Frontline, Jul. 2-15, 2005, *available at* <http://www.hinduonnet.com/fline/fl2214/stories/20050715006200400.htm>.

Frontline is India’s national magazine, created by the publishers of the national newspaper, The Hindu.

⁵ INTERNATIONAL PLANNED PARENTHOOD FOUNDATION AND THE FORUM ON MARRIAGE AND THE RIGHTS OF WOMEN AND GIRLS, ENDING CHILD MARRIAGE: A GUIDE FOR GLOBAL POLICY ACTION 10 (2007) [hereinafter *IPPF*].

⁶ MNISTRY OF HEALTH AND FAMILY WELFARE, GOV. OF INDIA, DISTRICT LEVEL HOUSEHOLD AND FACILITY SURVEY: KARNATAKA 3 (International Institute for Population Sciences, 2008).

numbers indicate that in spite of the national and international laws banning child marriage, it is still a prevalent phenomenon in India today.

In Jaya Sagade's book Child Marriage In India: Socio-legal and Human Rights Dimension, she explores the history of this degrading custom.⁷ During the Vedic period, around 1500-600 B.C. – when Aryans migrated to India, recording the four major Hindu scriptures and two great epics, shaping religion, culture, tradition, and society – marriages were performed when the couples attained puberty.⁸ A girl had the freedom to choose her life partner, and her consent was always sought.⁹ In the sixth and seventh centuries, a patriarchal social structure emerged, encouraging early marriages for a girl, so that she would be married off “preferably before puberty and certainly immediately after her first menstruation.”¹⁰ Some sociologists refer to the ancient erotic text the *Kama Sutra* as talking indirectly of the practice “when it warns that a girl who has ‘fully arrived at puberty’ should be avoided as a wife.”¹¹ Others trace the practice back to foreign invasions over 1000 years ago when the invaders would take young girls as war booty. To protect their daughters from sexual exploitation and to preserve their chastity, communities married their daughters off before puberty so that they belonged to some man who would protect them. This in turn became custom, and soon it became a sin to keep a daughter in her parental home after she attained puberty.¹²

Social, economic, political, and legal factors all contribute to the continued existence of child marriages. Given its complexity, the problem cannot be addressed from one angle alone. Rather, it is important to eradicate this evil from all ends through a top-down and bottom-up approach focusing on education and awareness. Creating the desire and means for change in all of society, from the government to the villagers, is the only way to stop child marriages once and for all.

⁷ JAYA SAGADE, *CHILD MARRIAGE IN INDIA: SOCIO-LEGAL AND HUMAN RIGHTS DIMENSION* (Oxford University Press, 2005).

⁸ *Krishnakumar & Rajalakshmi, supra note 4.*

⁹ *Id.*

¹⁰ SAGADE, *supra note 7*, at 9.

¹¹ *Krishnakumar & Rajalakshmi, supra note 4.*

¹² *Id.*

Part I describes the laws, both Indian and International, related to child marriages. Part II examines the socio-economic factors contributing to child marriages. Part III illustrates the negative effects of child marriages when the child is a girl. Part IV explores possible strategies for ending the practice.

I The Law

A. The Child Marriage Restraint Act, 1929

The heading under the title reads, “An Act to restrain the solemnisation of child marriage. Whereas it is expedient to restrain the solemnisation of child marriages; it is hereby enacted as follows.”¹³ As far back as 1929, the Indian Parliament (at that time under the control of the British), pressured by certain members of society, recognized and attempted to act against the horrors of the social custom of child marriage. But the original 1929 Act, meant to function as a deterrent, was hardly influential. Certain words of the Act demonstrated the Legislature’s view of the issue as trivial, low in the legal hierarchy of importance, and essentially to be ignored. While the 1929 Act prohibited the solemnization of child marriages, it did not declare the marriages void or voidable.

In the original Act, a “child” was defined as a “person who, if a male, has not completed eighteen years of age, and if a female, has not completed fourteen years of age.”¹⁴ Culturally in India, a bride is always expected to be younger than the groom, and this practice is reflected in the act.¹⁵ This is in large part due to the stereotypes of gender roles.¹⁶ Responsible for the reproductive role of society, a woman is considered ready to marry once she attains puberty.¹⁷ In contrast, a man, responsible for the productive role of society, must first gain an education and be economically stable enough to support a family before he is ready to marry.¹⁸ Thus, custom and law “explicitly excludes women’s experience

¹³ Child Marriage Restraint Act, No. 19 of 1929; India Code, *available at* <http://indiacode.nic.in>.

¹⁴ *Id.* § 2(a).

¹⁵ SAGADE, *supra* note 7, at 44.

¹⁶ *Id.* at 9.

¹⁷ *Id.*

¹⁸ *Id.*

and their perspective. Given a choice, women would also prefer to have better education and would like to equip themselves in a manner that would contribute to the enjoyment of their lives and make them more meaningful,” but society has denied them this opportunity.¹⁹ After the creation of the Indian Constitution, critics noted that having separate legal ages for marriage for the two sexes was against Article 15, which demanded equality under the law for all, regardless of sex among other things.²⁰ However, the third sub clause of art. 15 specifically allows for the creation of special laws for women and children, thus arguably justifying the age gap in the marriage law.²¹

Under the 1929 Child Marriage Restraint Act, a complaint of an offense had to be filed within one year from the date on which the offense was allegedly committed, or a court would not take cognizance of it.²² The Act provided for a punishment of “*simple*” imprisonment of up to fourteen days or one thousand rupees, or both for a male over the age of eighteen and under the age of twenty-one marrying a child.²³ For a male adult above twenty-one years of age, the punishment was simple imprisonment of up to three months or a fine or both.²⁴ The same was true for whoever performed, conducted, directed, or abetted any child marriage, or the parents or guardians that were concerned in the child marriage, either through taking affirmative steps towards the marriage, or through negligence in not preventing it.²⁵ The judgment in *Chandra Sreenivasa Rao v. Korrapati Raja Rama Mohana Rao And Another* ruled that even an act as simple as borrowing money for the purpose of celebrating the marriage indicates the guardian’s intention to encourage and pursue the child marriage, and therefore makes the guardian punishable under the law.²⁶

¹⁹ *Id.* at 45.

²⁰ INDIA CONST. art. 15.

²¹ *Id.*

²² Child Marriage Restraint Act § 7, No. 19 of 1929; India Code, *available at* <http://indiacode.nic.in>.

²³ *Id.* § 3.

²⁴ *Id.* § 4.

Simple imprisonment does not entail hard labor as opposed to rigorous imprisonment, which does.

²⁵ *Id.* §§5-6.

²⁶ *Chandra Sreenivasa Rao v. Korrapati Raja Rama Mohana Rao And Anr.*, 1952 A.I.R. 579 (Mad.) ¶ 14.

Offenses under the 1929 Act were not originally cognizable.²⁷ Jaya Sagade explains that this is because of the widespread and continuing belief that marriage is a private and personal matter, in which the law has no place.²⁸ In 1962, the government of the state of Gujarat appointed a committee to investigate suicide by young girls.²⁹ When it found a high correlation between underage married girls and suicide due to the said marriage, the state amended its Child Marriage Restraint Act to make offenses under the act cognizable.³⁰ In 1978, the National Commission on the Status of Women cited Gujarat's report and recommended an amendment in the central government's act. Parliament did in fact enact an amendment, making offenses under the Act cognizable and heightening the Act's importance, but only in a limited respect.³¹ The 1978 amendment declared any offense under the Act cognizable for purposes of investigation and other matters, but not for the arrest of a person without a warrant.³² The court was thus limited to granting injunctions to stop child marriages from occurring. After the filing of a complaint, the court was required to conduct a preliminary inquiry, notify the accused, and allow him an opportunity to rebut the need for the injunction.³³ A court then had to be satisfied that a specific known upcoming child marriage was actually about to take place, and only then could it issue the injunction.³⁴ If a person knowingly violated the injunction, he could be punished with simple imprisonment for up to three months or one thousand rupees or both.³⁵ The court had no power to grant permanent injunctions prohibiting those involved from performing the marriage of a particular child until he attained eighteen years of age, nor did it have the power to provide any sort of relief or remedy once a marriage was solemnized.

²⁷ A claim is cognizable when it meets the minimum standards of viability to be tried in a particular court. In this case, a claim for a child marriage could not be heard in any court in India.

²⁸ SAGADE, *supra* note 7, at 49.

²⁹ *Id.* at 50.

³⁰ *Id.*

³¹ Child Marriage Restraint (Amendment) Act § 7, No. 2 of 1978; India Code, *available at* <http://indiacode.nic.in>.

³² *Id.*

³³ Muzaffar Ali Sajjad and Others v. State of Andhra Pradesh and Others, (2004) 4 S.C.C. 764.

³⁴ Muthrilal And Others v. Bhup Singh, *available at* <http://indiankanoon.org/doc/495428/>, 1964.

³⁵ Child Marriage Restraint Act § 12 cl. 5, No. 19 of 1929; India Code, *available at* <http://indiacode.nic.in>.

The reason, Sagade explains, for not voiding the marriages was because it would further victimize the minor female party.³⁶ After a wedding ceremony, it would be nearly impossible for the girl to remarry, even if the marriage was considered void.³⁷ Any sort of cohabitation would insinuate her loss of virginity, making her less desirable to any other man in a culture that respects and cherishes chastity.³⁸ The court in *Manish Sing v. State Government of NCT and Others* observed, “the Legislature was conscious of the fact that if such marriages, performed in contravention of the age restriction, are made void or voidable it could lead to serious consequences and exploitation of the women who are vulnerable on account of their social and economic circumstances... any adverse fallout of any law that makes such underage marriages as void or voidable would be borne by none other than the women and their progeny.”³⁹ The issue would particularly arise if there were children born out of the marriage, as they would be considered illegitimate, and neither they, nor the mother would be entitled to inheritance or maintenance from the father.⁴⁰ Likewise, the bride would be ineligible to receive property from her own father.⁴¹ With no skills and no male to care for her, the chances of the girl leading a dignified life would be very slight.⁴² Yet it is irrefutable that there would be benefits to voiding the marriage. Doing so would cause parents to think twice before entering their children into a child marriage contract, and exemplify the government and society’s dedication and commitment to girls, taking the first step towards true equality.⁴³ In 1995, the National Commission for Women and the National Human Rights Commission drafted a new Indian Marriage Bill, which proposed to void child marriages, but it was adamantly rejected.⁴⁴

Minors who willfully married were not said to have violated the Act and were not punishable.⁴⁵

The court in *Manish Sing* talked about runaway marriages commenting, “In cases, where a minor girl

³⁶ SAGADE, *supra* note 7, at 52.

³⁷ *Id.*

³⁸ *Id.*

³⁹ S. Varadarajan v. State of Madras, A.I.R. 1965 S.C. 942.

⁴⁰ SAGADE, *supra* note 7, at 52.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 54.

⁴⁴ *Id.*

⁴⁵ S. Varadarajan v. State of Madras, A.I.R. 1965 S.C. 942.

after meeting her parents and/or on reflection has second thoughts about her marriage or escapade, her custody is restored to parents as in the first case. Difficulty arises in cases where the minor girl has entered into matrimonial alliance and is steadfast in her resolve to continue to cohabit with the partner of her choice. At times, the girl is even in family way. The situation becomes difficult with parents of girl either on account of caste, differences or groom not matching their social standing or expectation are bent upon breaking the alliance. They continue to press the charges of abduction or kidnapping.”⁴⁶ However the court continued to uphold the validity of such runaway marriages, despite the ambiguous consequences.⁴⁷

Various later amendments raised the age of womanhood from fourteen to fifteen and eventually to eighteen, and the age of manhood to twenty-one.⁴⁸ But raising the minimum age for marriage had little effect. The roots of the problem lay much deeper than the Law could reach.

B. The Legal Framework Surrounding and Supporting the Child Marriage Restraint Act of 1929

Even before the enactment of the Child Marriage Restraint Act in 1929, existing Indian laws indirectly banned the practice of child marriage. As India grew as a nation, it signed numerous international treaties and conventions, and enacted multiple national laws, all of which child marriage is a clear violation. This legislative history demonstrates India’s adamant policy position against the custom of child marriage, but none of this legislation proved enough to abolish the practice.

1. Personal Status Laws

Critics often allude to the country’s need for a uniform civil code, but one is not likely to be enacted. Because of India’s religious diversity, religious laws trump national laws when they come in conflict. Family and marriage are matters considered regulated by religion and not by the state. It is for

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Child Marriage Restraint (Amendment) Act, 1949, No. 3 1951 and Child Marriage Restraint (Amendment) Act § 2, No. 2 of 1978.

this reason that the government, consulted by religious leaders, created what are known as the personal status laws.

The first of these is the Indian Christian Marriage Act, 1872. Relevant to the Christians residing in the whole of India, the Indian Christian Marriage Act sets out the laws of the certification of marriage. The Act demands the immediate registration of marriage at a designated registrar.⁴⁹ After receiving notice of a marriage, the registrar must publish the notice, and in the case of a minor, must send a copy of the notice to all other marriage registrars within twenty-four hours.⁵⁰ A certificate will not be issued if one party is a minor and does not have consent from a legal guardian.⁵¹ But section 69 of the Act declares that marriages will not be certified if certain conditions are unmet, specifically if the age of the man intending to be married is under twenty-one years, and the age of the woman intending to be married is under eighteen years (amended from eighteen and fifteen respectively with the Child Marriage Restraint Amendment Act of 1978).⁵² It is unclear therefore whether a child can be certifiably married with consent from a legal guardian or cannot be certifiably married at all.

The Parsi Marriage and Divorce Act of 1936 applies to every Parsi, “whether such Parsi has changed his or her religion or domicile or not.”⁵³ A Parsi marriage is declared invalid if a male has not completed twenty-one years of age and a female eighteen.⁵⁴ Any child born out of the otherwise illegitimate marriage described above is declared legitimate.⁵⁵ The Act requires the certification and registration of marriage immediately after the solemnization of the marriage, signed by the officiating priest, the contracting parties, and two witnesses present at the marriage. The Chief Justice of the High Court is given the power and the duty to appoint a registrar in his jurisdiction.⁵⁶ The registrar must be

⁴⁹ The Indian Christian Marriage Act § 15, No. 15 of 1872; India Code, *available at* <http://indiacode.nic.in>.

⁵⁰ *Id.* § 39.

⁵¹ *Id.*

⁵² *Id.* § 69.

⁵³ The Parsi Marriage and Divorce Act § 3, No. 03 of 1936; India Code, *available at* <http://indiacode.nic.in>.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* § 7.

open for inspection and documents extractable.⁵⁷ The Act further asserts the need for every registrar to send to the Registrar General of births, deaths, and marriages copies of certificates, as directed by the State Government from time to time.⁵⁸

Section 2 of the Muslim Personal Law (Shariat) Application Act of 1937 states,

Notwithstanding any customs or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariats).⁵⁹

Nevertheless, the Indian Supreme Court interpreted the Child Marriage Restraint Act as applying to Muslims, referring to the beginning of the Act, which reads “it extends to the whole of India (except the State of Jammu and Kashmir) and it applies also to all citizens of India without and beyond India.”⁶⁰

The fear in the Muslim community was that increasing the minimum age of marriage for Muslim girls would result in lowering the total fertility rate on account of latter span on married life, but the court interjected that it would also result in more responsible parenthood and in better health of the mother and child.⁶¹ The Act has been interpreted not as voiding a marriage that took place during a Muslim girl’s minority, but only as allowing for the legal punishment of the persons who participated in the marriage.⁶²

A later Muslim act however seems to contradict all of the above findings. The Dissolution of Muslim Marriage Act of 1939 gives a woman married under Muslim law grounds to obtain a decree for the dissolution of her marriage if “she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years...provided that the marriage has not been consummated.”⁶³ Thus, Muslims were not only subject

⁵⁷ *Id.* § 8.

⁵⁸ *Id.* § 9.

⁵⁹ The Muslim Personal Law (Shariat) Application Act § 2, No. 26 of 1936; India Code, available at <http://indiacode.nic.in>.

⁶⁰ Muzaffar Ali Sajjad and Others v. State of Andhra Pradesh and Others, (2004) 4 S.C.C. 764.

⁶¹ *Id.*

⁶² *Id.*

⁶³ The Dissolution of Muslim Marriage Act § 2(vii), No. 08 of 1939; India Code, available at <http://indiacode.nic.in>.

to the Child Marriage Restraint Act, but also included provisions against Child Marriage in their personal status laws.

The Special Marriage Act of 1954 applies to the parties of marriages in which a non-Hindu is a party, and the other party is a member of any other religion. If at the time of the marriage, the male is twenty-one and the female eighteen, “provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized.”⁶⁴ The Act describes the process by which notice of a marriage intended to be solemnized must be given by the form specified to the Marriage Officer of the district in which at least one of the parties to the marriage has resided for at least thirty days immediately preceding the date on which such notice is given.⁶⁵ The Marriage Officer then must keep a Marriage Notice Book, in which all notice records are kept, which must remain open for inspection at all reasonable times, for any person desiring to inspect it.⁶⁶ The Marriage Notice must also be published in some conspicuous places in the Marriage Officer’s office.⁶⁷ The purpose of such publication is to allow for any person to object to the marriage, within thirty days, on the grounds of the marriage contravening any of the necessary conditions, including the age specification.⁶⁸ The objection must be recorded in the Marriage Notice Book, and signed by the objector or by the officer on the objector’s behalf.⁶⁹ The Officer must not solemnize the marriage until he has made a complete inquiry into the objection, (done within thirty days) and is satisfied that the solemnization can proceed, or the objector has withdrawn his objection.⁷⁰ The Marriage Officer has all the powers vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit for the purposes of summoning and enforcing the attendance of witnesses and examining them on oath, discovery and inspection, compelling the production of documents, reception of evidence on affidavits, and issuing commissions

⁶⁴ The Special Marriage Act § 4(c), No. 43 of 1954; India Code, *available at* <http://indiacode.nic.in>.

⁶⁵ *Id.* § 5.

⁶⁶ *Id.* § 6.

⁶⁷ *Id.*

⁶⁸ *Id.* § 7.

⁶⁹ *Id.*

⁷⁰ *Id.*

for the examination of witnesses.⁷¹ All proceedings before the Marriage Officer are deemed to be judicial proceedings.⁷² If after the inquiry the Officer refuses to solemnize the marriage, either party to the marriage can, within thirty days of the refusal, present an appeal to the District Court, whose decision shall be final and binding.⁷³

Before the marriage is solemnized, the parties and three witnesses must sign a declaration in the specified form, in the presence of the Marriage Officer, then countersigned by said Officer.⁷⁴ The Act also prescribes that whenever a marriage is not solemnized within three calendar months from the date on which notice is given or after the decision given by the District Court in the case of an appeal, the notice and all other proceedings are considered to have lapsed, and the Marriage Officer cannot solemnize the marriage until new notice has been given.⁷⁵ Furthermore, any other marriage celebrated other than a marriage solemnized under the Special Marriage Act, 1872 or the new Act may be registered by a Marriage Officer in the territories provided it meets certain conditions, including that “the parties have completed the age of twenty-one years at the time of registration, provided that in case of a marriage celebrated before the commencement of this Act, this condition shall be subject to any law, custom or usage having the force of law governing each of them, which permits of a marriage between the two.”⁷⁶

The Special Marriage Act also voids and nullifies the marriage if any of the previously mentioned conditions, including that of the minimum age requirement, have not been met.⁷⁷ Although the marriage is null and void, a petition presented by either party against the other is necessary for the declaration of nullity.⁷⁸ Legitimate children of an otherwise voided or voidable marriage are considered legitimate. A wife with no independent income may recover alimony and maintenance, either

⁷¹ *Id.* § 9.

⁷² *Id.*

⁷³ *Id.* § 8.

⁷⁴ *Id.* § 11.

⁷⁵ *Id.* § 14.

⁷⁶ *Id.* § 15.

⁷⁷ *Id.* § 24.

⁷⁸ *Id.*

temporarily or permanently, and child custody arising from a voided marriage is decided based on the best interest of the child. Although there is a prescribed penalty for falsely signing or attesting any declaration or certificate, the Act does not specify penalties for such matters as marrying a child.

The Hindu Marriage Act of 1955 applies to any person who is a Hindu in any of its forms or developments, including Virashaiva, Lingayat, or a follower of the Brahmo, Prarthana, or Arya Samaj, In addition to Buddhists, Jains, or Sikhs, and to “any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi, or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein.”⁷⁹

The Act prescribes certain conditions for a Hindu marriage, the third condition of which is that the bridegroom is twenty-one and the bride eighteen years of age, amended from eighteen and fifteen with the Child Marriage Restraint Amendment Act of 1978.⁸⁰ The State Government is allowed to make rules for the registration of Hindu marriages, including making it compulsory, and providing that every Hindu Marriage Register shall at all reasonable times be open for inspection and be admissible as evidence when necessary.⁸¹ It further states that the omission of such a registration shall not affect the validity of the marriage itself.⁸² Section 11 voids marriages ab initio in the absence of certain conditions but marriage under the minimum age is not one such condition. Section 12 deals with voidable marriages inter alia. The minor contracting party is given the option to avoid the marriage by a decree of nullity by bringing a petition.⁸³ The consent of the petitioner or the consent of guardian in marriage of the petitioner is required as it stood immediately before the commencement of Child Marriage Restraint (Amendment) Act, 1978.⁸⁴ Thus, only if the consent was obtained by force or by fraud as to the nature of the ceremony or to any material fact or circumstances concerning the respondent, is the

⁷⁹ The Hindu Marriage Act § 2, No. 25 of 1955; India Code, *available at* <http://indiacode.nic.in>.

⁸⁰ *Id.* § 5.

⁸¹ *Id.* § 8.

⁸² *Id.* § 5.

⁸³ *Id.* § 12.

⁸⁴ *Id.*

marriage is voidable.⁸⁵ This is further limited by the condition that no petition annulling a marriage on the said ground shall be entertained if the petition is presented more than one year after the force has ceased to operate or as the case may be, after discovery of fraud on the petitioner has with his or her full consent lived with other party as husband or wife as the case may be.⁸⁶ Without a decree of nullity, rights and obligations arising from such valid marriage cannot be avoided by not recognizing the marriage at all.⁸⁷

Although the marriage may not be voidable, a wife can move for divorce based on the ground that her marriage, whether consummated or not, was solemnized before she attained fifteen, and she has repudiated the marriage after reaching age fifteen but before reaching age eighteen.⁸⁸ In the case of a child marriage with regards to this act, the person who procures the marriage to be solemnized may be punishable by the same punishment prescribed by the original Child Marriage Restraint Act.⁸⁹ Thus, the Child Marriage Restraint Act clearly extends to Hindu marriages.

In the case of a void marriage, any would-be legitimate children are considered legitimate.⁹⁰ The court determines the custody of the children as well as which party is liable for their maintenance and education.⁹¹ A party to the marriage who has no independent income may apply for the expenses necessary to cover the proceedings, as well as temporary or permanent maintenance.⁹² The court can make any just and proper provisions in the order with respect to any property jointly owned by the husband and wife.⁹³

The Foreign Marriage Act of 1969 is relevant for all marriages of citizens of India outside of India. It too provides that the bridegroom must be twenty-one years old and the bride eighteen years old

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Gajara Naran Bhurav Kanbi Kunverbai Parbat, 1997 A.I.R. 185 (Guj) ¶ 6.

⁸⁸ The Hindu Marriage Act § 13, No. 25 of 1955; India Code, *available at* <http://indiacode.nic.in>.

⁸⁹ *Id.* § 18.

⁹⁰ *Id.* § 16.

⁹¹ *Id.* § 26.

⁹² *Id.* § 24.

⁹³ *Id.* § 29.

at the time of marriage for solemnization.⁹⁴ The Act prescribes the processes by which an intention of marriage must be notified to the Marriage Officer and published, which are the same as those prescribed by the Special Marriage Act, 1954.⁹⁵ Similarly the processes of declaration by parties and witnesses, certificates of marriage, new notice after a marriage is not solemnized within six months of notification, and registration of the marriage are explained, are essentially identical to those in the Special Marriage Act.⁹⁶

The Foreign Marriage Act allows for the punishment prescribed by the Child Marriage Restraint Act to be imposed on any person contravening the minimum age requirement. The Act further prescribes the punishment of imprisonment of up to three years and a fine for a false declaration or signing a false notice or certificate.⁹⁷ Particular to this Act, a wrongful Marriage Officer, “who knowingly and willfully solemnizes a marriage under this Act in contravention of any of the provisions of this Act shall be punishable with simple imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.”⁹⁸

Under the Foreign Marriage Act, a marriage officer may, for reasons to be recorded in writing, refuse to solemnize or register a marriage on the ground that in his opinion the marriage is inconsistent with local laws, international law or the comity of nations, but this may be appealed to the Central Government.⁹⁹ Therefore, since child marriages are contrary to international law, a marriage officer can legally refuse to solemnize them.

2. Other Domestic Legislation Impacting on Child Marriage

The concept of child marriage restraint is prevalent throughout the *laws* of India, if nowhere else. The Constitution of India, 1949 has multiple provisions providing especially for children. The stress on education, the lack of which is a cause and a result, and the enforcement of which is a prevention and

⁹⁴ The Foreign Marriage Act § 4, No. 33 of 1969; India Code, *available at* <http://indiacode.nic.in>.

⁹⁵ *Id.* §§ 5-10.

⁹⁶ *Id.* at §§ 12, 14, 16, 17.

⁹⁷ *Id.* at § 21.

⁹⁸ *Id.* at § 22.

⁹⁹ *Id.* at §§ 11, 17(3-4).

cure for child marriage, is evident through multiple articles. For example article 21A prescribes that the State shall provide free and compulsory education to all children of the age of six to fourteen. Article 39 also restates the need for States to encourage and provide education for children between six and fourteen years old. Finally, in Article 51, part of the 86th Amendment Act, 2002, the constitution further stresses the importance of education by making it the duty of every citizen of India “who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.”

Other articles that prove useful to prevent child marriage include article 15(3), which allows the states to make specific rules to protect women and children. In article 47, the constitution directs the state to regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as a primary concern. As part of the directive articles, Article 39 provides

The State shall, *in particular direct its policy towards securing...* that the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength...that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.¹⁰⁰

In *Kanooni Salah Kendra v. State Of Gujarat And Others*, Gujarat, which originally had programs to encourage education and awareness of certain issues including child marriage to the tribes of that state, later cancelled the programs.¹⁰¹ The district where the tribes resided decided to continue the programs at its own cost and the State brought suit to try and stop them.¹⁰² The Supreme Court of India held that “States are encouraged to consider the welfare and fundamental directive laws of the constitution and could not take away the district’s well-founded efforts to provide dance troupe programs creating awareness to the backward classes,” and upheld the constitutional spirit of creating initiatives to preserve fundamental rights.¹⁰³

Thus, although not explicitly prohibiting child marriage, the constitution addresses the issues that

¹⁰⁰ INDIA CONST. art. 39: amended by the Constitution (Forty-second Amendment) Act, 1976.

¹⁰¹ *Kanooni Salah Kendra v. State Of Gujarat And Others*, available at <http://indiankanoon.org/doc/655005>, 2001.

¹⁰² *Id.*

¹⁰³ *Id.*

are most important both as reasons and consequences of child marriages; it directs the states to provide education to children at least until they are fourteen; it orders the states to take health care, standard of living, and the improvement of public health – all issues necessary to ameliorate at least the consequences of child marriage – seriously; it demands that the states create laws against economic exploitation, one of the major reasons given for the practice of child marriages: it further demands the states to enact laws that will secure child welfare, prohibiting acts that will restrict physical and mental development, freedom and dignity, and the child’s right to childhood and youth, all fundamental rights immediately lost when a child is married.

In 1976, the state of Karnataka enacted the Karnataka Marriage Act, an act to provide for a uniform law for registration of marriages, requiring compulsory registration of marriages. The Act dealt a great deal with the issue of dowry, but also other issues sought to be eliminated or ameliorated by simply imposing compulsory registration of marriages, such as bigamy and child marriage. It declared that every marriage contracted in the state must be registered in the manner provided by the Act.¹⁰⁴ The state was allowed to appoint as many registrars of marriages as deemed necessary per area.¹⁰⁵ The Act created the memorandum of marriages, a memorandum prepared and signed by the parties to the marriage, to be sent to the registrar within thirty days, along with a small processing fee.¹⁰⁶ The memorandum includes information concerning the date and place of the marriage, the name, age, address, status, and signature of each of the parties, the name, age, address, and signature of the father of each of the parties, as well as the name, address, father’s name, and signature of each of the witnesses.¹⁰⁷ In addition, the memorandum must be signed, dated, and sealed by the Registrar.¹⁰⁸

The Registrar is commanded to file the memorandum, send a duplicate copy to the Registrar General, and issue a marriage certificate.¹⁰⁹ Should the parties to a marriage not submit the

¹⁰⁴ Karnataka Marriages (Registration and Miscellaneous Provisions) Act, 1976 § 3, No. 2 of 1984.

¹⁰⁵ *Id.* at § 4.

¹⁰⁶ *Id.* at §§ 5-6.

¹⁰⁷ *Id.* at Schedule A.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at § 5.

memorandum within thirty days, the Registrar may suo motu¹¹⁰ issue notice to the parties to appear and have the memorandum signed and delivered within a prescribed time.¹¹¹ As in other acts, the register is to be open for public inspection at all reasonable times, and all documents to be extracted with a fee and admissible as evidence.¹¹² Despite the compulsory nature, a marriage cannot be invalid solely because it was not registered.¹¹³

Although a marriage is not considered void for failure to register it, the penalty for omission to deliver or send or make false statements of the memorandum is imprisonment of up to three months or fine, or both.¹¹⁴ The Registrar or any officer authorized by the State Government may prosecute for any of the above offenses.¹¹⁵ In addition, a Registrar who willfully fails to file a memorandum or to make entries required by other sections may be punished with imprisonment of up to three months or a fine of up to five hundred rupees or both.¹¹⁶ Any person who secretes, destroys, or dishonestly or fraudulently alters the memorandum or the register or any part thereof may be punishable with imprisonment of up to two years and a fine of up to two thousand rupees.¹¹⁷ These offenses, except those regarding the registrar himself, are cognizable and non-bailable.¹¹⁸ However, any person acting in good faith shall not be prosecuted or have other legal proceedings instituted against him.¹¹⁹

The Juvenile Justice (Care and Protection of Children) Act of 2000 is applicable not only to juveniles in conflict with the law but also to children in need of care and protection. The Act is to provide for proper care, protection, and treatment by catering to a child's development needs through various institutions established under the Act. A victim of a child marriage often falls into the category of a child in need of care and protection. The Act defines this as a child, among other possibilities,

¹¹⁰ "Suo Motu" is a Latin phrase frequently used in Indian legal publications. Similar to the English legal term "sua sponte," it means on its own motion.

¹¹¹ Karnataka Marriages (Registration and Miscellaneous Provisions) Act, 1976 § 6, No. 2 of 1984.

¹¹² *Id.* § 7.

¹¹³ *Id.* § 8.

¹¹⁴ *Id.* § 17(1).

¹¹⁵ *Id.* § 17(2).

¹¹⁶ *Id.* § 18.

¹¹⁷ *Id.* § 19.

¹¹⁸ *Id.* § 26.

¹¹⁹ *Id.* § 28.

“who is found without any home or settled place or abode and without any ostensible means of subsistence; who does not have parent and no one is willing to take care of or whose parents have abandoned him; who is being or is likely to be grossly abused, tortured, or exploited for the purpose of sexual abuse; who is found vulnerable and is likely to be inducted into drug abuse or trafficking; who is being or is likely to be abused for unconscionable gains.”¹²⁰ With respect to the act, a juvenile is any person under eighteen years of age.¹²¹

The main function of the act is to set up the Child Welfare Committee, a group consisting of a Chairperson and four other members as the state government sees fit, of whom at least one is a woman, and another an expert on child matters.¹²² The purpose of the committee is to oversee those over whom the Act extends.¹²³ Thus the committee initiates investigation into complaints regarding child matters, even when the child has ceased to be a juvenile.¹²⁴ During this time, it may pass an order to send the child to a children’s home, and if it finds need after completion of the inquiry, allow the child to remain in the children or shelter home until suitable rehabilitation is found for him or he reaches eighteen.¹²⁵

The second major function of the Act is to facilitate rehabilitation and restoration. It does so by the creation of children’s homes, “for the reception of child in need of care and protection during the pendency of any inquiry, and subsequently for their care, treatment, education, training, development and rehabilitation.”¹²⁶ In addition it creates shelter homes, which “function as drop-in centers for the children in the need of urgent support.”¹²⁷ The Act and the homes aim towards the restoration of and protection for a child.¹²⁸ Generally this is accomplished through restoring the child to his parents,

¹²⁰ Juvenile Justice (Care and Protection of Children) Act § 2, No. 56 of 2000; India Code, *available at* <http://indiacode.nic.in>.

¹²¹ *Id.* § 2(k).

¹²² *Id.* § 29(2).

¹²³ *Id.* § 29(1).

¹²⁴ *Id.* §§ 3, 33.

¹²⁵ *Id.*

¹²⁶ *Id.* § 34.

¹²⁷ *Id.* § 37.

¹²⁸ *Id.* §§ 39-40.

adopted parents, or foster parents, or arranging for adoption, foster care, sponsorship, or sending the child to an after-care organization.¹²⁹

Lastly, in addition to the Karnataka Marriage Act, Karnataka enacted its own state amendment to the Child Marriage Restraint Act in 2004. It reads “It is considered necessary to provide for prevention of child marriages, by appointment of child marriage prevention officer under the child marriage Restraint Act, 1929 (Central Act 19 of 1929) by amending the central Act and to empower the state government to make rules for the above purpose. Hence the Bill.”¹³⁰ The amendment added what was later to be made part of the Prohibition of Child Marriage Act, 2006, child marriage prevention officers, who are considered to be public servants within the meaning of section 21 of the Penal Code of 1860.¹³¹ The duties of an officer include “preventing marriages being performed in contravention of the provisions of the Act by taking such action as he deems fit” and “collecting evidence for the effective prosecutions of persons contravening provisions of this Act.”¹³² The amendments ordered the officer to discharge other functions assigned to him, and vested in him powers of a police officer as may be specified in a notification by the state government.¹³³ It also associated a non-official advisory body consisting of up to five social workers, of which at least two must be women known in the jurisdiction, for the purposes of advising and assisting the Officer in his duties.¹³⁴ Contrary to the later Prohibition of Child Marriage Act, the Karnataka Amendment only granted legal immunity to the Child Marriage Prevention Officers in respect of anything done in good faith, limiting abuse and corruption.¹³⁵

3. International Treaties to which India is a Party

India’s commitment to human, women’s, and children’s rights is most clearly exemplified through its entry into international treaties protecting those rights. Several of these demand the protection of children, especially against the evils of practices like child marriage.

¹²⁹ *Id.*

¹³⁰ Child Marriage Restraint (Karnataka Amendment) Act, No. 31 of 2004.

¹³¹ *Id.* at § 13(A).

¹³² *Id.* at § 13.

¹³³ *Id.* at §§ 13(2)(iii)-14(1).

¹³⁴ *Id.* at § 14 (2).

¹³⁵ *Id.* at § 13 (B).

The first of the international treaties to which India is a signatory is the Universal Declaration of Human Rights of 1948.¹³⁶ Article 16 of the Declaration declares that men and women of full age have the right to marry, but “marriage shall be entered into only with the free and full consent of the intending spouses.” When children are not of age, they simply are not entering into a marriage with free and full consent. Article 25 sub-section 2 demands special care and assistance to mothers and children. Lastly, article 26 grants the right to education to all, requiring free education at least in the elementary and fundamental stages, and stipulating compulsory elementary education. It further states, “education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.” Child marriages are not only a violation of this right, as they often prevent children from finishing their education, but in encouraging these rights to education, it is certain that child marriages can be at least curtailed, if not entirely prevented.

In 1960, India signed the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956.¹³⁷ Article 1 asserts

Each of the States Parties to this Convention [to] take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention signed at Geneva on 25 September 1926...any institution or practice whereby... a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family, or any other person or group.

Although recognized as custom, the practice of dowry is a clear form of consideration for marriages, and given the widely accepted justification behind child marriages of economic necessity, the practice clearly falls into this category of slavery, and therefore must be abolished in all its forms.

India signed the International Covenant on Economic, Social, and Cultural Rights, 1976 in 1979. In relevant part is Article 12 which recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and orders the State Parties to achieve the full

¹³⁶ Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess, 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948).

¹³⁷ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery Sept. 7, 1956, 18 U.S.T. 3201, 266 U.N.T.S. 3.

realization of this right, including those necessary for the provision of the reduction of the stillbirth-rate and of infant mortality and for the health development of the child. Again, child marriage is a violation of this right, as it does not allow for a girl to attain her highest physical and mental health, and results in large rates of infant-mortality.¹³⁸

The most important of all of the international laws to which India is a signatory is the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), 1979, signed by India in 1980.¹³⁹ Article 2 demands that States Parties condemn discrimination, specifically “to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices, which constitute discrimination against women.” The phenomenon of Child Marriages is one such discriminatory custom that must be abolished. Additionally, article 16 prescribes that states parties take appropriate measures to eliminate discrimination against women in all matters relating to marriage and family, particularly ensuring the same right to enter into marriage, the same right freely to choose a spouse and to enter into a marriage only with their free and full consent, the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education, and means to enable them to exercise those rights. It further asserts that the “betrothal and marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.” Although India has begun to take such action, child marriages are still only void on petition, and marriage registration is not yet nationally compulsory. This constitutes a violation of CEDAW, and of the rights of the female children.

The most recent international treaty relating to children is the Convention on the Rights of the Child, 1989, which India signed on December 11, 1992. The first article defines a child as every human being below the age of eighteen years. The convention orders that States Parties ensure to the maximum extent possible the support for survival and development of a child. “They must take all appropriate

¹³⁸ See “Consequences of Child Marriage,” *infra*.

¹³⁹ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

measure to ensure that the child is protected against all forms of discrimination on the basis of...beliefs of the child's parents, legal guardians, or family members."¹⁴⁰ Despite an explicit freedom of religion, the CRC allows for limitations prescribed by law necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.¹⁴¹ Additionally it provides that, "States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation."¹⁴² In all such actions, the best interests of the child are the primary concern.¹⁴³

The CRC insists that children are registered immediately after birth.¹⁴⁴ A child should not be separated from his or her parents against their will except in accordance with applicable law and procedures.¹⁴⁵ The CRC states "a child who is capable of forming his or her own views shall be assured the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."¹⁴⁶ It further protects the child's right to freedom of expression, including freedom to seek, receive, and impart information and ideas of all kinds.¹⁴⁷ It guarantees the child access to information and material from a diversity of national and international sources, especially those aimed at the promotion of a child's social, spiritual, and moral wellbeing, and physical and mental health.¹⁴⁸ To further this, State Parties must

Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article; encourage international co-operation in the production, exchange and dissemination of the information and material from a diversity of cultural, national and international sources; encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous; encourage the development of appropriate guidelines for the protection of the child from information and

¹⁴⁰ Convention on the Rights of the Child, *supra* note 1.

¹⁴¹ *Id.* art. 14(3).

¹⁴² *Id.* art. 4.

¹⁴³ *Id.* art. 3.

¹⁴⁴ *Id.* art. 7.

¹⁴⁵ *Id.* art. 9.

¹⁴⁶ *Id.* art. 12.

¹⁴⁷ *Id.* art. 13.

¹⁴⁸ *Id.* art. 17.

material injurious to his or her wellbeing.¹⁴⁹

The convention further suggests the appropriate assistance to parents and legal guardians with respect to child-rearing responsibilities, through the development of institutions, facilities, and services for the care of children, to guarantee and promote the aforementioned child rights.¹⁵⁰

The convention emphasizes the protection from physical and mental violence, injury or abuse, and maltreatment or exploitation, including sexual abuse while in the care of parents, guardian or any other person.¹⁵¹ Article 34 preserves the right to protection from all forms of sexual exploitation and abuse. Article 36 creates a right to protection from all forms of exploitation prejudicial to any aspect of the child's welfare. The convention prescribes protective measures such as the establishment of social programs to provide child support and care, as well as other forms of identifying, reporting, and treating of such instances, in addition to judicial intervention.¹⁵²

Article 24 recognizes the right to the highest standard of health and correlating facilities. It specifically seeks to diminish infant and child mortality, ensure necessary medical assistance and health care to all children with emphasis on the development of primary health care, pre and post-natal health care for mothers, access to education and support in the use of basic knowledge of child health, and develop preventive health care, and guidance with regards to family planning education and services.¹⁵³ Most relevant, "States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children."¹⁵⁴

States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.¹⁵⁵ They agree to take appropriate measures to assist those responsible for children to implement this right, providing material assistance and support,

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* art. 18(2).

¹⁵¹ *Id.* art. 19(1).

¹⁵² *Id.* art. 19(2).

¹⁵³ *Id.* art. 24(2).

¹⁵⁴ *Id.* art. 24(3).

¹⁵⁵ *Id.* art. 27(1).

particularly with regard to nutrition, clothing, and housing.¹⁵⁶ The Convention recognizes the right to education, and the necessity for free and compulsory education.¹⁵⁷ Article 31 speaks to the right of simply being a child, enjoying rest and leisure, playing and engaging in recreational activities appropriate to the age of the child, and the duty of the state to respect and promote the right of the child to the equal opportunity to participate in artistic and cultural life, and recreational and leisure activities. Finally, the Convention provides “States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.”¹⁵⁸

Child marriage is an infringement on most, if not all of these rights. Children are deprived of a childhood, education, health, safety, and protection from sexual exploitation. India cannot remain a party to a convention such as the CRC and permit child marriages to occur.

4. The Current Status of Indian Law Relating to Child Marriage

In 2006, the federal government of India passed the Prohibition of Child Marriage Act repealing the original Act and its subsequent amendments. While the 2006 Act creates many positive changes, multiple underlying problems persist.

The new act is without a doubt an improvement over the 1929 Child Marriage Restraint Act. The first major development is that the Act specifically makes child marriages voidable. “Every child marriage, whether solemnized before or after the commencement of this Act, shall be voidable at the option of the contracting party who was a child at the time of the marriage.”¹⁵⁹ The feared consequences of such a provision with regards to further victimizing the female child are addressed in the subsequent sections. These sections legitimize any child born out of the child marriage, allow for custody to be determined based on the best interest of the child, and demand maintenance for both the children and the female contracting party, at least until she is remarried.¹⁶⁰ The new Act intensifies the prescribed punishment for those adults marrying, planning, supporting, or encouraging the marriage of a child, and

¹⁵⁶ *Id.* art. 27(3).

¹⁵⁷ *Id.* art. 28.

¹⁵⁸ *Id.* art 42.

¹⁵⁹ Prohibition of Child Marriage Act § 3(1), No. 06 of 2007; India Code, *available at* <http://indiacode.nic.in>.

¹⁶⁰ *Id.* §§ 5-7.

solemnizing a child marriage. Instead of the simple imprisonment of up to three months or a fine of 1000 rupees or both, the offender is now subject to rigorous imprisonment,¹⁶¹ of up to two years and a fine of up to one lakh rupees.¹⁶² The provision also allows for the punishment of “any member of an organisation or association of persons,” meaning anyone attending or organizing the wedding has committed an offense.¹⁶³

In addition, offenses under the act are cognizable and non-bailable, a further implication of the gravity of the law.¹⁶⁴ Any person or organization can provide the court with information of an upcoming child marriage and move for an injunction, or the court can sua motu take cognizance of the offense and issue an injunction.¹⁶⁵ A knowing violation of the injunction is also punished with up to two years imprisonment or one lakh rupees or both, and the marriage is declared void.¹⁶⁶

Section 16 is perhaps the greatest improvement, as it directs the state governments to appoint Child Marriage Prohibition Officers to aid in the prevention, prohibition, and legal proceedings of child marriages. The duties of these officers include taking any necessary action to prevent the solemnization of child marriages, collecting evidence for prosecution, creating awareness of the evils and sensitizing the community on the issues of child marriages, moving for injunctive relief or a nullification on behalf of a child in a marriage contract, and to aid in the research and data gathering of child marriages for the government.¹⁶⁷ These public servants can be awarded powers of police officers subject to certain conditions, and are to discharge all other functions and duties and focus solely on the issue of child marriage in the prescribed jurisdiction.¹⁶⁸ The Act also allows for the state government to request the services of social workers, officers of the Gram Panchayat¹⁶⁹, local municipality, NGOs, or other members of the government or public sector to assist the child marriage prohibition officers in their

¹⁶¹ Rigorous imprisonment entails hard labor where as simple imprisonment does not.

¹⁶² Prohibition of Child Marriage Act § 3(1), No. 06 of 2007; India Code, *available at* <http://indiacode.nic.in>.

¹⁶³ *Id.*

¹⁶⁴ *Id.* § 15.

¹⁶⁵ *Id.* § 13.

¹⁶⁶ *Id.* § 14.

¹⁶⁷ *Id.* § 16.

¹⁶⁸ *Id.*

¹⁶⁹ The Gram Panchayat is the local government of small towns in villages in India.

duties.¹⁷⁰ The District Magistrate is appointed the child marriage prohibition officer “for the purpose of preventing solemnization of mass child marriages on certain days such as Akshaya Trutiya.”¹⁷¹ He is also granted the power to take all appropriate measures and force to stop or prevent the solemnization of a child marriage.¹⁷²

Despite its progress, the Act is still flawed in many ways. It remains quite unclear how to carry out the act, and whether it is supposed to restrain, punish, or prohibit child marriages. The law seems to want to void the marriages but attempts to find a balance to better protect the rights of both parties. Of course this results in issues similar to those under the Child Marriage Restraint Act of 1929 with regards to implementation and enforcement.

Perhaps the biggest criticism of the new Act is that it does not void a child marriage *ab initio*, but requires a petition instead.¹⁷³ The second half of the provision in which a marriage is made voidable states “provided that a petition for annulling a child marriage by a decree of nullity may be filed in the district court *only by* a contracting party to the marriage who was a child at the time of the marriage,” or, if she is still a minor, her legal guardian.¹⁷⁴ (Emphasis added.) It is further restricted by allowing a petition to be filed only within two years of attaining majority according to the act.¹⁷⁵ In other words, a girl’s power to nullify the marriage ends when she reaches twenty, and a boy’s when he reaches twenty-three. While it is necessary to require the legal procedure, so as to ensure certain rights like custody, alimony, and maintenance, given the social pressures surrounding such marriages, it is unlikely that any petition will be filed. Even more limiting, the petitioning party can only get the marriage annulled under certain circumstances, that is, if he or she was taken or enticed out of the keeping of the lawful guardian, compelled by force or deceitful means to go from any place, or sold for the purpose of marriage or

¹⁷⁰ Prohibition of Child Marriage Act § 3(1), No. 06 of 2007; India Code, *available at* <http://indiacode.nic.in>.

¹⁷¹ *Id.* § 13(4). Akshaya Trutiya is a Hindu holiday considered to be an auspicious day for weddings, thus lending itself to mass marriages. See “Problems behind Child Marriage – Society,” *infra*.

¹⁷² *Id.* § 13(5).

¹⁷³ *Id.* § 3(1).

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* § 3(3).

trafficked or used for immoral purposes after the marriage.¹⁷⁶ Therefore, even if a child does have enough courage to bring a petition, he or she cannot have the marriage nullified simply because it is a child marriage, but must first satisfy one of the three conditions.

Some such as the Law Commission condemn the continued age gap between males and females with respect to the legal age of marriage.¹⁷⁷ The argument is that it is against articles 14 and 15 of the Indian Constitution, which stipulate the fundamental rights of equality under the law and against discrimination for any reason, including gender. Article 15(3) however does allow for special laws for the better protection of women and children. The Law Commission's proposal to equalize the legal age of marriage is criticized on the grounds that it will exacerbate the child marriage issue. The age gap is socially accepted because it allows for men to mature to a point where they are more economically, socially, and mentally prepared to support a family.¹⁷⁸ But this reasoning only feeds into the patriarchal and stereotypical gender roles that cause the problem from the outset.

Others still find problems with the Act's silence on the compulsory registration of marriage, its granting of immunity to child marriage prohibition officers, and its insistence of punishment on what is an already poor and uneducated community. The 2004 Right to Education Act in Karnataka gave rise to similar objections. The Act aimed to punish the parents of children who, though legally required to be in school, were not. In so doing, not only the impoverished parents were affected, but the helpless children as well. With their parents in prison or heavily fined, the children were left in a worse position, fending for themselves with nowhere to turn. The punishments dictated in the Prohibition of Child Marriage Act, 2006, would yield a parallel result. If the parents or the often-older husband are imprisoned or fined, only the young girl (and perhaps her children should she have any) is truly victimized, as she is left alone, with no money or skills, and no home.

Additional measures to alleviate the Act include various states "Compulsive Registration of

¹⁷⁶ *Id.* § 12.

¹⁷⁷ Law Commission Report 205 Proposal to Amend 2006 Act and Other Allied Laws (2008).

¹⁷⁸ Interview with Anuradha Saibaba Rajesh, Assistant Professor and Faculty Coordinator of the National Institute on Human Rights, National Law School of India University, in Bangalore, India (June 17, 2009).

Marriage Act,” and a pending central bill. The purpose, as stated on the 2006 bill is “to provide for the compulsory registration of all marriages solemnized in the country so as to prevent child marriages, check bigamy or polygamy, help women to exercise their rights of maintenance from husband and custody of children, enable widows, to claim inheritance and to serve as deterrent to husband deserting their wives and for matters connected therewith or incidental thereto.”¹⁷⁹ Through compulsory registration, local governments can monitor the age of the parties to be married and thus take appropriate measures to prevent the marriage from taking place. The Compulsory Registration of Marriage Act mandates that a husband must register his marriage within 60 days of its solemnization.¹⁸⁰ All marriages not registered or complying with the act are declared null and void.¹⁸¹ The State has the power to appoint certain officers and authorities and create appropriate state registrars and laws.¹⁸² The prescribed punishment for failing to register or falsifying any documents is a fine of up to five thousand rupees.¹⁸³

In 2005, responding to a public litigation lawsuit brought by the Forum for Fact Finding, Documentation, and Advocacy, the Supreme Court of India issued an order directing district collectors and superintendents of police to take all necessary measures to stop child marriages. It also directed the State Human Rights Commissions to look more seriously into and take more stringent action against the illegal marriages.¹⁸⁴ In 2006, despite its admonition that “it is not practical in a vast country like India with its variety of customs, religions and level of literacy to make registration of marriage compulsory,” the Supreme Court examined the importance and necessity of compulsory registration of marriages.¹⁸⁵ It noted that Maharashtra/Gujarat, Karnataka, Himachal Pradesh, and Andhra Pradesh already had

¹⁷⁹ Compulsory Registration of Marriages Bill, 2006.

¹⁸⁰ *Id.* at § 3.

¹⁸¹ *Id.* at § 5.

¹⁸² *Id.* at § 4.

¹⁸³ *Id.* at § 6.

¹⁸⁴ AVANI MEHTA SOOD, LITIGATING REPRODUCTIVE RIGHTS: USING PUBLIC INTEREST LITIGATION AND INTERNATIONAL LAW TO PROMOTE GENDER JUSTICE IN INDIA 73 (Center for Reproductive Rights, 2006).

¹⁸⁵ *Seema v. Ashwani Kumar*, Arijit Pasayat, (2006) 2 S.C.C. 578.

applicable laws in place.¹⁸⁶ Assam, Bihar, West Bengal, Orissa, and Meghalaya had provisions for voluntary registration of Muslim marriages.¹⁸⁷ Policy in Uddar Pradesh provided for compulsory registration of marriages by the Panchayats¹⁸⁸ and maintenance of its records relating to births and deaths. In addition, the Special Marriage Act, 1954, The Indian Christian Marriage Act, 1872, the Parsi Marriage and Divorce Act, 1936, the Hindu Marriage Act, 1955, and the Foreign Marriage Act, 1969 all contained provisions requiring the registration of marriages.¹⁸⁹ In its judgment, the Supreme Court stated “accordingly, we are of the view that marriages of all persons who are citizens of India belonging to various religions should be made compulsorily registrable in their respective States, where the marriage is solemnized.”¹⁹⁰ It further ordered the procedure for registration to be notified and put into force by the states not already containing rules making marriage compulsory within three months.¹⁹¹ The Court directed the states to appoint officers to register the marriages after obtaining specifically the age and marital status of the parties, and to create punishments for noncompliance.¹⁹² Under Article 141 of the Indian Constitution,” the law declared by the Supreme Court binding on all courts within the territory of India.”¹⁹³

Unfortunately, problems still persist. While Christian marriages are registered at the church and Muslim marriages, being a contract, are often in writing, there is no incentive for Hindus to register.¹⁹⁴ There is no benefit for the man to register his marriage, and it may even prove detrimental to his desires, as it would prevent him from child marriages, bigamy, and illegal activities.¹⁹⁵ While the legal benefits to the woman are very high, she often lacks both the knowledge of the law and the means to insist on

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ Panchayats are the local government officials in villages or small towns.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ INDIA CONST. art. 141.

¹⁹⁴ Interview with Anuradha Saibaba Rajesh, Assistant Professor and Faculty Coordinator of the National Institute on Human Rights, National Law School of India University, in Bangalore, India (June 17, 2009).

¹⁹⁵ *Id.*

compliance by her husband.¹⁹⁶ The truth remains that even where there are such laws, for example, in Karnataka, close to half of married couples do not register their marriage, or find it easy to present false documents or pay off the officer to look the other way.¹⁹⁷ Finding those who have not complied is difficult, and punishment is futile.¹⁹⁸

II Problems Behind Child Marriage

A. Patriarchy as the Primary Cause of Child Marriage

“Evidence suggests that children in need of special protection belong to communities suffering disadvantage and social exclusion such as scheduled castes and tribes, and the poor. The lack of available services, as well as the gaps persisting in law enforcement and in rehabilitation schemes also constitutes a major cause of concern.”¹⁹⁹ It is impossible to identify one single factor responsible for the perpetuation of child marriages. It is a custom multifaceted, deeply embedded in economic, social, educational, and governmental issues intertwined in a complex system.

The deepest root of the problem, however, is clearly identifiable: patriarchy. Custom, tradition, and religious texts have identified women solely as daughter, sister, mother, and wife, whose single purpose is to produce and keep the family. Without patriarchy, none of the sub-issues would persist, and child marriage, in conjunction with many other human rights violations affecting women especially, would disappear. It is patriarchy, which allows the elders in the family to make decisions for all of the younger generations.²⁰⁰ It is patriarchy that allocates the roles of the sexes in society.²⁰¹ It is patriarchy that allows men to define which resources are more important and valuable, placing women’s roles and contributions at the bottom most rung and therefore limits a woman’s access to key resources.²⁰² It is

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ Jyoti Rao & Anupam Srivastava, *Early Marriage: A Childhood Interrupted* (UNICEF, 2006), available at http://www.unicef.org/india/child_protection_1536.htm.

²⁰⁰ Sagade, *supra* note 7, at 3.

²⁰¹ *Id.* at 8.

²⁰² *Id.*

patriarchy that dictates that a woman is not to be left independent but must always remain under the care of her father, husband, or sons.²⁰³ It is patriarchy that teaches a daughter that her only purpose in life is to become a wife and a mother, and that her own interests are subordinate to those of the family unit.²⁰⁴ And finally, it is patriarchy that denies a “woman’s autonomy, her ability to obtain information and use it as true basis for making decisions about her private concerns and personal matters.”²⁰⁵

B. Economic Hardship

When poverty is high and resources are low, evils ensue. Most of the occurrences of child marriage are found in the rural poor environments, where schools are few and far between, medical resources are 10 kilometers away, modes of transportation and technology are virtually non-existent, and the average daily salary is 5-25 Rupees.²⁰⁶ For a farmer who makes maybe 100 Rupees a month in a country where the GNI per capita is \$952, or approximately 1/50 that of the United States, marrying off a daughter at roughly 80,000 Rupees is simply too expensive.²⁰⁷ “To spend less than that is impossible as it is a question of prestige in the village community even for the poorest of individuals,” explains one farmer.²⁰⁸ Because weddings are so expensive, the common practice is to marry off all of the daughters in one ceremony when the first reaches puberty.²⁰⁹ As the bridegroom gets older and more educated, his bride’s dowry increases, so it is economically beneficial for the bride’s family to marry his daughter while the boy is still young.²¹⁰

It is imperative that these fathers marry off their daughters, as each girl in the family is considered a burden. Because women are not income generators and have no responsibility later in life to care for their parents or siblings, parents are relieved to pass the duty to care for a daughter off to a

²⁰³ *Id.*

²⁰⁴ *Id.* at 10.

²⁰⁵ *Id.*

²⁰⁶ KIRAN KAMAL PRASAD, IN SEARCH OF AN IDENTITY; AN ETHNOGRAPHIC STUDY OF THE SIDDIS IN KARNATAKA (Jobna Jagrati Prakashana, 2005).

²⁰⁷ World Bank Statistics of 2007, (World Bank Group, 2007).

²⁰⁸ T.K. Rajalakshmi, *Reluctant to Act*, Frontline, Jul. 2-15, 2005, available at <http://www.hinduonnet.com/fline/fl2214/index.htm> [hereinafter *Reluctant to Act*].

²⁰⁹ *Id.*

²¹⁰ SAGADE, *supra* note 7, at 11.

son-in-law and his family.²¹¹ Conversely, marriage of a boy ensures an additional worker in the household and economic rewards such as dowry as well.²¹²

In addition, it is poverty and lack of resources that creates the educational problem that will be discussed later. Parents cannot afford to send their children to far away schools, and many parents cannot afford to send their children to school past a certain age, as they need them to contribute to the family income, or watch the younger children and care for the house while the parents work.²¹³

C. Society and Gender Inequality

In feudal society, women were traditionally little more than child bearers. The feudal background limited the mass's access to education, especially for girls, preventing them from learning any other skills except those involving their biological makeup.²¹⁴ There is a feudal idea called *Nagnika*, whereby it is believed that brides under 8 years old are the best.²¹⁵ Post-puberty unmarried girls are often viewed as nothing more than "ticking time-bombs," whose worth is measured by their ability to bear children.²¹⁶ In order to maximize a girl's reproductive lifespan, and attain full utilization of her fertility and childbearing capacity to create a large family, she must be married off at if not before she reaches puberty. According to Rajeev Gupta, Professor of Sociology in Rajasthan University, in feudal times, parents were made to believe that if they did not get their daughters married off before puberty, they would go to hell.²¹⁷ "Though, historically, this may have existed in all communities, with the advent of modernity, the ruling classes gradually gave up this practice. With Sanskritisation [the process by which castes placed lower in the caste hierarchy seek upward mobility by emulating the rituals and practices of the upper or dominant castes], the oppressed classes and castes began emulating feudal

²¹¹ *Id.*

²¹² CENTRE FOR SOCIAL RESEARCH, A STUDY OF CHILD MARRIAGE IN INDIA - SITUATIONAL ANALYSIS IN THREE STATES RAJASTHAN, MADHYA PRADESH & UTTAR PRADESH, 2007, available at http://www.csrindia.org/depart_comp_project_childmarriage.html.

²¹³ Mrinal Pande, *Child Marriages: Some Whys and Wherefores*, Livemint.com at The Wall Street Journal. March, 2009. <http://www.livemint.com/2009/03/23210841/Child-marriages-some-whys-and.html>

²¹⁴ CENTRE FOR SOCIAL RESEARCH, *supra* note 212.

²¹⁵ *Reluctant to Act*, *supra* note 208.

²¹⁶ Pande, *supra* note 213.

²¹⁷ *Id.*

social practices and were encouraged to do so by the landed castes.”²¹⁸ Although the upper classes abandoned the tradition, the lower classes continued it.²¹⁹

Gupta also believes “the reasons for child marriage today go beyond custom and poverty. The oppressed classes and castes, with the encouragement of the landed castes, emulate this feudal social practice as it ensures a source of cheap family labor for the wealthy. He believes that it is in the interest of the dominant classes to keep this system going,”²²⁰ so that the lower-caste members marry within their caste as opposed to mixing with the higher-castes. In his view, the caste factor is most evident in community marriages held on Akshaya Trutiya, a Hindu festival and an auspicious day for marriages. In places such as Tonk, Jodhpur, Jaisalmer, Ajmer and Bhilwara districts of Rajasthan, villages accommodate easy, quick, and multiple marriages, including child marriages. Gupta claims these mass ceremonies are “organized by the well-to-do among the dominant castes for the purpose of marrying off the poorer members in their community. Philanthropy aside, these marriages are caste mobilization opportunities and ensure that the poor are forever obliged to the rich in their community. Caste identities get reinforced and it becomes a ground for the glorification of caste leadership.”²²¹

In modern times, social groups follow rituals and practices of forefathers without questioning their relevance to the present.²²² The expensive marriage ceremony is often considered an unpleasant social obligation of the parents, who rely on religious scripture, which they are told prescribe early marriages as a simple way to fulfill the obligation.²²³ It is also a much easier task while the girl is young since she is less likely to object, and more easily molded into a subservient wife. In addition is society’s emphasis on chastity and purity. As a girl gets older, she is more likely to be coerced into a sexual relationship and have pre-marital liaisons. This often results in unwanted pregnancies, elopements,

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ Krishnakumar & Rajalakshmi, *supra* note 4.

²²¹ Gupta, Rajeev in *Reluctant to Act*, *supra* note 208.

²²² CENTRE FOR SOCIAL RESEARCH, *supra* note 212.

²²³ *Id.*

deaths from botched abortions, family dishonor, beatings, and being sold into a brothel.²²⁴ When one daughter is dishonored, it is believed that the entire family has been dishonored, and it makes it difficult to marry off any remaining daughters.²²⁵ Even if it is not the girl's behavior that is at risk, there is a common fear for her safety. If, in performing her domestic duties, she is out of the house unsupervised, she is vulnerable to sexual assault and rape. By marrying their daughters early, parents are ensuring a male guardian, in hopes that he will protect her from the abuse and assault of other men.

Another contributing factor is the age-old custom of son preference. There is a social stigma attached to having daughters, and female feticide is a persisting problem in India.²²⁶ In one village, it was said that son preference led to a deficit of girls, having 1000 boys to 700 girls, leading to the practice of child marriage.²²⁷

D. Education

By far the biggest cause of injustices such as child marriages is a lack of education. A UNICEF statistical study found that in 47 countries, girls aged 15–19 who had higher levels of education were less likely to be in any marriage union. Only in a small number of countries were girls with secondary education equally likely to be married.²²⁸ According to the UNICEF paper “Social Protection in the Informal Economy: Home Based Women Workers and Outsourced Manufacturing in Asia,”

There is evidence that an educated girl is likely to marry later than a girl who remains without any education – this is especially true if the girl's education extends to at least junior secondary level and she engages in economic activity outside the home. Independent research has also established that an educated girl will have fewer children, will seek medical attention sooner for herself and her children, and is likely to provide better care and nutrition for herself and her children – thereby reducing the probability of morbidity through disease and hence survival of her children beyond the age of 5. Over time, the survival of her children will change the behavioral pattern of the family in respect of fertility and contraception thus lowering the overall fertility rate.²²⁹

²²⁴ Pande, *supra* note 213.

²²⁵ *Id.*

²²⁶ Reluctant to Act, *supra* note 208.

²²⁷ *Id.*

²²⁸ UNICEF, *Early Marriage: A Harmful Traditional Practice: A Statistical Exploration* (2005).

²²⁹ Santosh Mehrotra & Mario Biggeri, *Social Protection in the Informal Economy: Home Based Women Workers and Outsourced Manufacturing in Asia 6* (UNICEF Innocenti Research Centre, 2002).

In India as in other places where child marriages are prevalent, there are three main issues with regard to education. First, there is not enough. There are not enough secondary schools within a reasonable distance to most villages, and transportation being bad, it would take too long or be too dangerous to send villagers to them.²³⁰ When there are secondary schools, they are unaffordable to the average farmer, in the opportunity cost of having the children help work, if nothing else.²³¹ In India, a very low percentage of children in rural areas go onto high school or university.²³² 50% of girls in rural areas do not even make it to secondary school.²³³ In states like Bihar, Mizoram, Rajasthan and Uttar Pradesh, 60 per cent or more girls dropped out before completing their five years primary education.²³⁴ In Karnataka in 2007-2008, 46.1% of married rural women were illiterate.²³⁵ Only 16.6% of married rural women had received more than 10 years of education.²³⁶ In all of India, the literacy rate for adults in 2007 was only 66%.

Second, the quality of education is poor. There are too few teachers for too many students.²³⁷ The teachers can only work a few hours because of distance and transportation.²³⁸ There is no or little sex education. It is considered to be “against the culture” as sex in general is a taboo topic, rarely discussed, but rather understood as a woman’s unquestioned duty to her husband (hence the clear absence of marital rape laws).²³⁹ Few school-age children know about STIs, HIV, and contraceptives.²⁴⁰ About 36% of males 15-24 have a comprehensive knowledge of HIV and AIDS.²⁴¹ In Karnataka,

²³⁰ Krishnakumar & Rajalakshmi, *supra* note 4.

²³¹ *Reluctant to Act*, *supra* note 208.

²³² UNICEF, Statistics of India (2004). http://www.unicef.org/infobycountry/india_statistics.html.

²³³ Krishnakumar & Rajalakshmi, *supra* note 4.

²³⁴ Rao & Srivastava, *supra* note 199.

²³⁵ DISTRICT LEVEL HOUSEHOLD AND FACILITY SURVEY: KARNATAKA 3, *supra* note 6.

²³⁶ *Id.*

²³⁷ Krishnakumar & Rajalakshmi, *supra* note 4.

²³⁸ *Id.*

²³⁹ Interview with Anuradha Saibaba Rajesh, Assistant Professor and Faculty Coordinator of the National Institute on Human Rights, National Law School of India University, in Bangalore, India (June 17, 2009).

²⁴⁰ DISTRICT LEVEL HOUSEHOLD AND FACILITY SURVEY: KARNATAKA *supra* note 6, at 5.

²⁴¹ UNICEF, Statistics of India (2004). http://www.unicef.org/infobycountry/india_statistics.html.

unmarried women over the age of 18 have a much higher rate of both knowledge and use of contraceptives, as they are more educated than their married contemporaries.²⁴²

The greatest education problem however is the attitude of the parents with respect to schooling. Education is seen as pointless.²⁴³ Even those who are literate have a hard time finding jobs, and therefore, there is no need to leave the home to go to school, when a child can be useful in helping around the house or in the fields. The persisting view is that this is how it has been and this is how it will continue to be.²⁴⁴ When people are married as children, their chance at education is that much more stifled, and its importance is that much more diminished. Illiterate and uneducated parents lead to illiterate and uneducated children, and the cycle cannot be broken unless the circumstances change.

E. The Government and Implementation of the Child Restrain and Prohibition Acts

In an interview with Brinda Karat, the vice president of the All India Democratic Women's Association, after the assault on an anganwadi worker trying to stop a child marriage, Karat claimed, "The law is essential – it can provide a basis for action – but it cannot on its own deal with a social crime."²⁴⁵ She further claimed the laws regarding issues such as child marriage, female feticide, and dowry are all connected, very much economic problems (as opposed to social), and the least implemented by the government.²⁴⁶ In India, the government simply does not take women and children issues seriously. Even after the passing of the Juvenile Justice Act, 2000, child protection is allocated less than 0.1% of the union budget, as of 2007-2008.²⁴⁷ The legislative penalties for child marriage offenses are not stringent.²⁴⁸ District judges are supposed to know about every instance of child marriage in their jurisdictions, but very rarely do they actually take cognizance until one of the

²⁴² DISTRICT LEVEL HOUSEHOLD AND FACILITY SURVEY: KARNATAKA 3, *supra* note 6, at 5.

²⁴³ Asha Krishnakumar, *Krishnagiri's "Distinction,"* Frontline, Jul. 2-15, 2005, available at <http://www.hinduonnet.com/fline/fl2214/index.htm>.

²⁴⁴ *Id.*

²⁴⁵ T. K. Rajalakshmi, *It is a Question of Political Will,* Frontline, Jul. 2-15, 2005, available at <http://www.hinduonnet.com/fline/fl2214/index.htm> [hereinafter *Question of Political Will*].

²⁴⁶ *Id.*

²⁴⁷ Interview with Anuradha Saibaba Rajesh, Assistant Professor and Faculty Coordinator of the National Institute on Human Rights, National Law School of India University, in Bangalore, India (June 17, 2009).

²⁴⁸ *Id.*

contracting parties files a petition.²⁴⁹ The government literally passes its roles and duties with respect to child marriages to the underpaid and overworked welfare center (anganwadi) workers, who make an average monthly salary of about 1000 Rupees or \$20 US dollars.²⁵⁰ When *they* try to intervene on behalf of the victimized children, they are faced with abuse and even rape.²⁵¹ One anganwadi worker was injured after, pursuant to instructions from the sub divisional Magistrate, she asked a family for proof of age for three [underage] daughters who were to be married off in a mass marriage.²⁵² Family members threatened her, and a person armed with a sword later came to her house and began slashing her, severing her hand, and severely damaging the other.²⁵³

In 2003 the Supreme Court of India directed the State Human Rights Commissions to look into the matters of child marriage in their states, and as of 2005, still nothing had happened. The government prefers to turn a blind eye. There are multiple situations in which “people in positions of responsibility and power have actively colluded to conduct child marriages and have gone scot-free, when they were brought to the notice of the District Administration, the District police and the media.”²⁵⁴ Ministers and MLAs are found attending child marriage ceremonies.²⁵⁵ When approached about the issue, many government officials give resigned responses such as the following response to an attack on an anganwadi worker trying to stop child marriage: “Madhya Pradesh Chief Minister Babulal Gaur announced that ‘no serious action’ would be taken against those who conduct child marriages. ‘Social customs are stronger than laws,’ he said.”²⁵⁶ After another attack on an anganwadi worker trying to stop a child marriage in Adarsh Indira Nagar, “Chief Minister Babu Lal Gaur created a stir by stating that the government or the law-enforcing machinery could not prevent child marriages from taking place. He said the practice was a scourge like liquor consumption and untouchability, which would only disappear

²⁴⁹ *Id.*

²⁵⁰ Krishnakumar & Rajalakshmi, *supra* note 4.

²⁵¹ Pande, *supra* note 213.

²⁵² Krishnakumar & Rajalakshmi, *supra* note 4.

²⁵³ *Id.*

²⁵⁴ DAMODAR ACHARYA, THE CONCERNED FOR WORKING CHILDREN, PETITION TO CHIEF MINISTER OF KARNATAKA, INDIA (2005).

²⁵⁵ *Question of Political Will*, *supra* note 245.

²⁵⁶ Krishnakumar & Rajalakshmi, *supra* note 4.

after awareness increased among people.”²⁵⁷ Local police are often unresponsive or even detrimental in actions and statements to the media especially because “they have daughters too.” What is worse is that officials, including the newly designated Child Marriage Prohibition Officers, have complete immunity under the law. Thus, they face no repercussions for not enforcing the Act, failing to enforce registration laws, and even failure to report incidents. Some state governments do take preventive measures around the time of Akha Teej by publishing advertisements in papers asking the public to report incidences of child marriage and exploring some of the issues and consequences of child marriage.²⁵⁸ But who are these advertisements reaching, since, as has already been discussed, most of the people involved are illiterate. Either way, there are ways to camouflage a child marriage, for example by printing a different name on invitations, holding ceremonies at other peoples’ houses, and performing the ceremony the day before the Akha Teej.²⁵⁹

The reasons behind the government action or inaction are three-fold. First, government is but an extension of the population, and therefore, as society continues to view women and children as belonging to the lowest rung on the social status ladder, so do the individual government officials.²⁶⁰ Despite the many domestic laws and ratified international treaties, the sad truth remains that custom and tradition perpetuate the inferior status of women and children.

Second, and closely related, government officials are politically motivated.²⁶¹ The rural population committing child marriage offenses is a large vote bank. By infringing on this age-old custom, officials know they are inviting backlash from the community.²⁶² Should officials enforce the

²⁵⁷ T.K. Rajalakshmi, *Costly Intervention*, Frontline, Jul. 2-15, 2005, available at <http://www.hinduonnet.com/fline/fl2214/index.htm>.

²⁵⁸ *Reluctant to Act*, supra note 208.

²⁵⁹ *Id.*

Akha Teej is a day considered auspicious for marriages in India.

²⁶⁰ Interview with Anuradha Saibaba Rajesh, Assistant Professor and Faculty Coordinator of the National Institute on Human Rights, National Law School of India University, in Bangalore, India (June 17, 2009).

²⁶¹ *Id.*

²⁶² *Id.*

child marriage, dowry, and female feticide laws or speak out against the traditions, they would surely lose highly desirable politically support.²⁶³

The third reason is ignorance of the law.²⁶⁴ Officials are not always aware of the laws pertaining to children especially. For example, an older Juvenile Justice Act defined a juvenile as someone being under sixteen years of age, but the 2000 Act changed the status to encompass all children under eighteen years of age.²⁶⁵ Nine years later, most officers honestly believed that a juvenile was a child under sixteen, not eighteen.²⁶⁶ This lack of awareness can be attributed equally to the individual officers who are obviously responsible for knowing the law, and the states for not ensuring that the officers are well trained and informed. Again, everything is interrelated, for if the people in charge of enforcing the laws are ignorant as to their existence or substance, it cannot be expected of the general public to obey them.

III Consequences of Child Marriage

Child Marriage is a violation of Human Rights on so many levels. Its prevalence in India has set the country back on the international scale of progress. Although child marriages affect both a male and female child, it indisputably more negatively impacts the female child, for she is usually younger than her husband, and almost never physically, mentally, or emotionally prepared for marriage and all that it entails. This section of the paper will focus on the consequences of child marriage for the female child in particular. Though the consequences are separated into subcategories, each is so interconnected to the others that the separation seems futile.

A. The Psychological Consequences of Child Marriage

Although child marriage often refers to marriage between teenagers, or one teenager and an adult, the minor child can be and has been as young as a toddler.²⁶⁷ In many cases, a young girl is married off to a much older man, while she is still a child. “Child marriages must be viewed within a

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ Krishnakumar & Rajalakshmi, *supra* note 4.

context of force and coercion, involving pressure and emotional blackmail, and children that lack the choice or capacity to give their full consent.”²⁶⁸ Often, the young bride, who is not ready for the responsibilities of being a wife and a mother, experiences emotional damage and problems in mental development.²⁶⁹ There is a constant pressure to reproduce as soon as the girl attains puberty, and even more pressure to produce a boy. Often, she is forced early into sexual intercourse, even before menstruation and throughout adolescence.²⁷⁰ Because of the age gap, the girl loses all control over family planning, contraceptive use, decision-making, and even movement.²⁷¹ The girl becomes a slave or “unpaid servant” to the family, vulnerable to all sorts of physical and mental abuse not just from the men of the family, but the mother-in-law as well.²⁷²

Child brides are also subject to domestic violence, sexual assault, and marital rape. “Domestic violence thrives in an environment where women feel powerless and lack access to vital resources and decision-making powers. Child marriages tend to create a multitude of conditions that make affected young women vulnerable to violence.”²⁷³ The International Center for Research on Women (ICRW) concluded that those married under the age of eighteen were twice as likely to be abused by their husbands compared with women married later; they were also three times more likely to report marital rape.²⁷⁴ The ICRW also reported that child brides often showed signs of child sexual abuse and post-traumatic stress.²⁷⁵

B. The Physical Consequences of Child Marriage

Due to the pressures surrounding fertility, a child bride often becomes with child within the first year of her marriage. Because she is so young and her body unable to sustain the pregnancy, the child or

²⁶⁸ INTERNATIONAL HUMANIST AND ETHICAL UNION, CHILD MARRIAGE: A VIOLATION OF HUMAN RIGHTS (2007), <http://www.iheu.org/child-marriage-a-violation-of-human-rights>.

²⁶⁹ *Id.*

²⁷⁰ IRIN: Humanitarian News and Analysis, Broken Bodies – Broken Dreams; Violence against Women Exposed: Child Marriage Part 2 (2006), Wordpress.com, <http://brokendreams.wordpress.com/category/child-marriage>.

²⁷¹ INTERNATIONAL HUMANIST AND ETHICAL UNION, *supra* note 267.

²⁷² Krishnakumar & Rajalakshmi, *supra* note 4.

²⁷³ IPPF, *supra* note 5, at 11.

²⁷⁴ U.S. BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, 2008 HUMAN RIGHTS REPORTS: INDIA (U.S. Dept. of State, 2009).

²⁷⁵ *Id.*

the mother or both suffer. The lack of physiological development leads to complications such as obstructed labor or anemia, prevalent among young girls and one of the most common contributing causes to maternal deaths. Pregnancy and childbearing complications are the leading cause of death for girls 15-19 years old and those aged less than 15 years are five times more likely to die than those aged over 20.²⁷⁶ Infant deaths are also twice as high in babies of very young mothers.²⁷⁷ According to a 2005 report from the Office of the Registrar General of India, 240 girls died every day due to pregnancy-related complications in early child marriages.²⁷⁸ Miscarriage and infant mortality rates are also high among young girls. In India, about 54 of every 1000 births end in infant mortality, and 72 out of every 1000 end in under-five mortality.²⁷⁹

These issues are due at least in part to a lack of medical resources. In Karnataka, there are low levels of antenatal care, especially in rural areas; health centers are often distant, more than 10 km away; the number of staff and services are low; and less than ½ the villages have their own health and sanitation committee.²⁸⁰ Good prenatal care can reduce these risks, but “but in many instances, due to their limited autonomy or freedom of movement, young wives have no access to health services, which aggravates the risks of maternal complications and mortality for pregnant adolescents.”²⁸¹

Other complications include fistula, HIV/AIDS, and other STIs. One studied reported,

For every woman who dies in childbirth, some 15 to 30 survive but suffer chronic disabilities, the most devastating of which is obstetric fistula. Fistula is an injury to a woman’s birth canal that leaves her leaking urine and/or faeces. Young women under age 20 are especially prone to developing fistulas if they cannot get a Caesarean section during prolonged obstructed labor. Prevalence is highest in impoverished communities in Africa and Asia.²⁸²

Additionally, a combination of older husbands having more sexual partners and experience and the hormones and biological make up of young girls cause the child brides to be more susceptible than most

²⁷⁶ *Id.*

²⁷⁷ UNICEF, *Early Marriage: Child Spouses* (UNICEF Innocenti Research Centre, 2001).

²⁷⁸ U.S. BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, *supra* note 273.

²⁷⁹ World Health Organization, WHO Statistical Information System *available at* <http://apps.who.int/whosis/data/Search.jsp>. Compare these numbers to more developed nations, the infant and under five mortality rates are between 1 and 7 deaths per 1000 births in 2006.

²⁸⁰ DISTRICT LEVEL HOUSEHOLD AND FACILITY SURVEY: KARNATAKA 3, *supra* note 6, at 6.

²⁸¹ INTERNATIONAL HUMANIST AND ETHICAL UNION, *supra* note 267.

²⁸² UNFPA, *Child Marriage Advocacy Programme: Fact Sheet on Child Marriage and Early Union* (2004).

to HIV and AIDS.²⁸³ Due to her little control because of age, limited experience, and lower status, a girl cannot persuade her husband to use contraceptives, preventing the spread of HIV and other sexually transmitted diseases. The International Planned Parenthood Federation describes the normal strategy to protect against HIV and sexual diseases as ABC: abstinence, being faithful, and condoms.²⁸⁴ But the limited knowledge, limited negotiating power, the age gap, and unfaithful husbands make this approach improbable.²⁸⁵

C. Future Losses Arising from Child Marriage

Perhaps the greatest and most lasting loss a girl faces due to child marriage is the loss of education and development. A girl is taken out of school either because she is being married or in order to be married. This leads to numerous negative results, especially a lack of the autonomy necessary to make personal decisions about her life. The loss of formal education also “makes the smooth transition from adolescence into adulthood for the majority of married girls very problematic. Where the transition to adulthood is managed and supported, the majority of young women and girls become more empowered to effectively play their future roles as women, mothers, wives, wage earners and active citizens of their country.”²⁸⁶ Boys forced into marriage early may also suffer, as they are faced with a heavy economic burden that may curtail their education sooner than hoped.²⁸⁷ “However, while boys can leave their wives at their parents’ homes and seek employment opportunities elsewhere, this option is not available to the majority of young wives.”²⁸⁸ Completely sheltered from the outside world, the married girl is left to fend for herself with no social network, no self-esteem, and no skills. Her lack of education leads to a reduction in employment and income generating options, as well as impairing her

²⁸³ IPPF, *supra* note 5, at 12.

²⁸⁴ *Id.* at 12.

²⁸⁵ *Id.*

²⁸⁶ *Id.* at 14.

²⁸⁷ *Id.* at 16.

²⁸⁸ *Id.*

ability to absorb and utilize information.²⁸⁹ Low literacy levels, lack of skill, and low self-esteem result in a self-perpetuating cycle of women's powerlessness, dependency, and vulnerability to poverty.

An obvious loss to both the male and the female parties to marriage is childhood. Article 31(1) in the Convention on the Rights of the Child specifically recognizes "the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts."²⁹⁰ This is denied in every respect when a child is made to become a spouse and parent at such a tender age. At a time when she should still be under her parent's care, a girl has to learn to care for herself, her husband, and any children she might have. This is only further exacerbated by poorly spaced pregnancies, so that often girls of twenty, who have been married for eight to twelve years already, have four to eight children.²⁹¹

All of the above-mentioned consequences can be summed up in a general loss of freedom and dignity on the part of the child bride. If she wants to flee the situation, she has nowhere to go, no money to use, and no skills or education with which to earn money. A girl who tries to escape early or abusive marriage receives retribution from her husband, her family, and the community.²⁹² She may experience beatings, even killing, and definitely shame.²⁹³ Divorce from or death of the husband are common ends to child marriage.²⁹⁴ Families might pressure their sons to divorce and remarry should they find a new, younger girl who offers a higher dowry.²⁹⁵ In some cases, the groom's family pressures the bride's to pay them up to 2500 rupees to have the marriage "annulled" by the Panchayat, should they find a new bride for their son.²⁹⁶ This is because although it is socially acceptable for a boy to remarry after divorce, in many cases it is not socially acceptable for a girl to remarry after divorce or death of her

²⁸⁹ *Id.* at 14.

²⁹⁰ Convention on the Rights of the Child, *supra* note 1, art. 31(1).

²⁹¹ Krishnakumar & Rajalakshmi, *supra* note 4.

²⁹² IRIN, *supra* note 269.

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ Question of Political Will, *supra* note 245. It should be noted that the bride's parents pay a dowry to the groom's parents as a sort of compensation for the amount they have spent on his education and upbringing. In contrast is a bride-price, which is paid by the groom's parents to the bride's parents as a compensation for the amount they have spent on her education and upbringing. Hence, when a girl is more educated, the bride-price is higher.

²⁹⁶ *Id.*

husband, but if the marriage is annulled, the girl can start a new life.²⁹⁷ However, due to her lack of education, illiteracy, lack of property rights, and extreme poverty, the homeless divorced or widowed girl is vulnerable to exploitation.²⁹⁸

IV The Future of Efforts to Stamp out Child Marriage in India

In a case questioning the government's efforts to stop child marriages on Akha Teej (a holiday similarly auspicious for weddings as Akshaya Trutiya) the High Court of Rajasthan wrote in dicta,

In fact this social evil can be eradicated only if the people of Rajasthan themselves revolt against this age-old custom, which is primitive in nature and cannot be justified by any civilized society. However, before parting with this case, I would like to mention that the Government should consider the feasibility of constituting District/Block/Village level committees comprising of social workers, officers of the Revenue/Development Department, who should hold regular seminars at village levels to educate the people about the demerits and consequences of child marriages. The Government should also utilize its media i.e. T.V., Radio, News-papers, Magazines etc. for condemning this 'social evil' but this condemnation should not be confined only on the occasion of "AKHA TEEJ" but planned and sustained campaign should be launched throughout the year in whole of Rajasthan for discouraging the people from performing such child marriages.²⁹⁹

The best way to deal with a social issue such as child marriage is to attack it from both ends. The laws are in place, but are not enough. The political will is what is lacking. The people need to want to change and the government needs to want to enforce and facilitate it. This requires a combination of bottom up and top down approaches, with a mutual goal of reaching a compromise. Spreading awareness and implementation of the law go hand in hand. It is important to address the root causes that create the demand for child marriages, provide for the consequences of child marriage to implement effective prohibition and punishment.

A. In the Government – From the Top Down

The government must “play a role...with the inclusion of the key elements of a multi-pronged approach including the enforcement of law, withdrawal, mainstreaming, and retention in education,

²⁹⁷ *Id.*

²⁹⁸ IRIN, *supra* note 269.

²⁹⁹ Smt. Sushila Gothala v. State Of Rajasthan And Others, 1995 A.I.R. 90 (Raj.) ¶ 10.

social mobilization, and community participation.”³⁰⁰ One of the first necessary measures is to address the flaws of the newest act when creating state rules. Any person who has reason to believe that a child marriage has been, is being, or is likely to be solemnized should have the power to inform a child marriage prohibition officer, who should have the power to stop and void any child marriages taking place, especially if one of the parties is under fifteen. The government should reconsider voiding child marriages ab initio because of the unlikelihood of the child or her guardian actually filing a petition of nullity. Related laws such as those regulating dowry and prohibiting trafficking should be tightened.

The duties of the child marriage prohibition officer should be clearly outlined, as is already done by the Maharashtra Prohibition of Child Marriage Rules, 2008.³⁰¹ Maharashtra require the officer to record all information given by a reliable source regarding child marriages in a child marriage incident report, and give a copy to the complainant.³⁰² He is also responsible for: providing information about the rights of the aggrieved person and her relatives, providing legal aid to the aggrieved through the State Legal Aid Services Authority; informing the aggrieved about and if necessary making arrangements with shelter homes for the purpose of safety; assisting the aggrieved in filing an application in the court; keeping vigilance in the area under his jurisdiction for eliminating the possibility of solemnization of child marriage; informing police authorities if he comes to know of the solemnization of any child marriage; using media, lectures of experts in medicine, law, social work, psychology, etc., awareness drives and campaigns, making visits to educational institutions, and local meetings to encourage awareness and sensitization; maintaining a record and copies of the relevant documents submitted to the courts; and assisting, if requested by either or both the parties to the child marriage, in preparing a list of money, valuables, ornaments and gifts received on occasion of the marriage by them from the other side for placing it before the District Court during the proceeding of annulment of child marriage.³⁰³

³⁰⁰ HAQ: CENTRE FOR CHILD RIGHTS, OUT OF WORK & INTO SCHOOL; INITIATIVES IN INDIA 61 (2006).

³⁰¹ A. M. Shindekar, *Maharashtra Prohibition of Child Marriage Rules, 2008*, Mah. Govt. Gazette, May 9, 2008, at 691.

³⁰² *Id.*

³⁰³ *Id.*

The government should set up community registers to monitor the movement of children with birth registration, birth certifications, immunizations, nutritional inputs, and anganwadi enrollment.³⁰⁴

Village accountants should be appointed to register all marriages, and registration should be implemented “in a simple and user-friendly manner. Registration facilities should be provided at the lowest rung of the administrative structures in the rural areas and in urban slum dwellings.”³⁰⁵

Equally as important, the government must improve enforcement through personal awareness and accountability. Officials, police, and NGOs must be given gender-sensitizing training programs emphasizing the importance of primary and secondary education for girls, the evils of child marriage, and the laws and Supreme Court judgments in place to prevent them. Lawyers and counselors should also be trained on women’s issues including child marriage and made to create women’s self help groups, and hold professional conduct workshops for police and religious leaders.

Once government officials are made aware of the issues and laws surrounding child marriage, the only way to enforce implementation is to hold each official personally accountable. Punishing the poor will do nothing; more would be accomplished by making examples of the politicians who endorse the practice. The District Commissioner and the Superintendent of Police should be held accountable and penalized for every child marriage that takes place within their jurisdiction.³⁰⁶ Every government official, including but not limited to the headmasters of High Schools and Higher Primary Schools, anganwadi supervisors, PHC Doctors, etc., who have knowledge of an upcoming child marriage and fail to prevent it from taking place shall be stringently punished.³⁰⁷ Labor and Education inspectors who are presently empowered to monitor child related violations should also be responsible for monitoring and arresting those involved in the practice of child marriage in their jurisdiction.³⁰⁸

³⁰⁴ MAGADI MAKKALA DHWANI, GOVERNMENT OF KARNATAKA, UNICEF, CONVERGING FOR CHILDREN: TOWARDS THE ELIMINATION OF CHILD LABOUR IN MAGADI 19 (Karnataka Department of Labor, 2006).

³⁰⁵ CENTRE FOR SOCIAL RESEARCH, *supra* note 212.

³⁰⁶ Acharya, *supra* note 254.

³⁰⁷ *Id.*

³⁰⁸ *Id.*

In addition, there should be regular, consistent, routine enforcement, involving government agencies, such as the Department of Women and Child Development or the State Children Commission, remaining active with regards to roles and responsibilities and to the implementation of the Act in terms of prosecution and conviction.³⁰⁹ Periodic reviews and reports in addition to raids also prove beneficial in enforcing implementation of the laws.³¹⁰

Aside from being the enforcer, the government must also play the role of the nurturer, providing for means by which to prevent the solemnization of child marriages from happening and protect the victims of those that have. More resources must be used in the areas of education, health care, especially maternal, and rehabilitation. Compensation should be provided by the state to children who have been subjected to child marriages.³¹¹ Shelter and observation homes should be improved. As a whole, children's issues need to be addressed with more fervor, passion, and understanding. The government agencies must work closely with each other, various NGOs, and the general population if they hope to ever make child marriages an evil phenomenon of the past.

B. At the Root – From the Bottom Up

The history of the Child Marriage Restraint Act has proven that laws are futile if the people are not aware of or do not believe in them. This issue must be met with a holistic approach that involves empowering individuals, women, and communities, to create the desire for change.³¹² To make a Prohibition of Child Marriage Project work, the communities must take ownership of all programs. Punishing the poor is not the answer. The emphasis must be on sustainability, with a constant reminder that the purpose is to aid the community to help itself.³¹³ The Indian Courts have recognized with respect to child marriage that “Social legislation, without the community's militant backing, is often a

³⁰⁹ MAGADI MAKKALA DHWANI, *supra* note 303, at 20.

³¹⁰ *Id.*

³¹¹ Acharya, *supra* note 254.

³¹² IPPF, *supra* note 5, at 20, 21.

³¹³ *Id.*

flop.”³¹⁴ Therefore, all stakeholders must be sensitized and convinced about the negative impact of child marriage on children.³¹⁵

The first step in the process is to improve education. This should be done in the form of literal education, as in schools, and in the form of awareness of the harm caused by child marriage to children, parents, and communities as a whole. One of the best ways to implement such awareness is through use of the media.

The denial of education to child brides results in a denial of other human rights.³¹⁶ The first thing that must be done is to encourage education at least until the minimum of age of fourteen, as prescribed by law. What is really needed are more schools, especially in remote villages. Existing schools must be strengthened and supported by providing volunteers and funding.³¹⁷ Advisory committees should be set up in conjunction with public schools to teach about the risks of child marriage and encourage girls to go and stay in school.³¹⁸ In one small village, Thirtham, a remote village in Krishnagiri district of Tamil Nadu, most children do go to an NGO run school “mainly because they get at least one meal a day.”³¹⁹ This knowledge should be used to better the system, providing at least one meal a day as an incentive for poor parents to send their children to school. The International Planned Parenthood Federation suggests “introducing scholarships and other incentives to enable girls from poor and vulnerable communities to access education. Review[ing] and amend[ing] school policies that discriminate against married and pregnant girls. In addition, train[ing] teachers to deal sensitively with at-risk girls and provide assertiveness advice for girls and support parents to send girls to school.”³²⁰ Any improvement in schools and education is an improvement in the quality of choice, and quality of life.

³¹⁴ A. Yousuf Rawthery Sowramma, 1971 A.I.R. 261 (Ker.) ¶ 4.

³¹⁵ CENTRE FOR SOCIAL RESEARCH, *supra* note 212.

³¹⁶ IPPF, *supra* note 5, at 20.

³¹⁷ HAQ: CENTRE FOR CHILD RIGHTS *supra* note 299, at 13-14.

³¹⁸ Centre for Social Research, *supra* note 212.

³¹⁹ Krishnakumar & Rajalakshmi, *supra* note 4. In 2001, the Supreme Court of India directed all state governments to provide cooked midday meals in public primary school in *People’s Union for Civil Liberties v. Union of India & Ors*, Writ Petition (C) No. 196 of 2001.

³²⁰ IPPF, *supra* note 5, at 21.

Without awareness, child marriage laws are useless. People will not want to stop an age-old tradition if they do not understand its negative consequences. Awareness is the root of progress. “Experience has shown that effective interventions are long term and must engage community and religious leaders, women, men, and adolescents, and be reinforced by messages about the risks of child marriage.”³²¹ Community and religious leaders can help relay the information to their communities and congregations. It is imperative to use community outreach workers to spread the message, but also to train village level activists to deal with resistance from the community so as to avoid any attacks such as those reported on the anganwadi workers.

Through the help of the community and religious leaders, awareness must spread to the parents and the rest of the community. This cannot be done through confrontation but rather must be accomplished through moral persuasion via village level communities. Community meetings should be implemented in which the risks of child marriages, sex education, and the existing laws are discussed. Discussions about the importance of education as a means of progression and escaping poverty, with a particular emphasis on including women, are imperative.³²² Beyond discussion forums, community monitors, staffed from the community itself, help to make change last.³²³ Groups of women can create pressure by raising awareness, and participating in various social and developmental activities.³²⁴ Families who delay their children’s marriage should be supported and encouraged, and take part in community-based individual and collective interventions to prevent others.³²⁵

The most malleable group is of course the youth. By teaching the youth, they can be mobilized to join in the efforts. Rescued children persuade their counterparts, educated children persuade their parents, and groups of children address village meetings and conduct street plays, presentations, and rallies.³²⁶ One way to facilitate this is to set up adolescent centers and programs supporting the

³²¹ USAID Global Health Issues Brief on Child Marriages, Preventing Child Marriage: Protecting Girls’ Health 1 (2006).

³²² *IPPF*, *supra* note 5, at 21.

³²³ HAQ: CENTRE FOR CHILD RIGHTS, *supra* note 299, at 28, 35.

³²⁴ *Id.* at 26-27.

³²⁵ *IPPF*, *supra* note 5, at 21.

³²⁶ HAQ: CENTRE FOR CHILD RIGHTS, *supra* note 299, at 36.

education of children in the area of adolescent sexuality rights, including gender, anatomy, reproduction, physiology, HIV/AIDS, condom use, contraceptives and its significance.³²⁷

One of the most effective tools for awareness and sensitization is the media. Up until now, it has been inconsistent, only writing about child marriage to sensationalize the stories, and violating the anonymity rules of child victims along the way. The media is not held accountable or is charged with a small inconsequential fine because it claims ignorance of the laws. But the media can be used in a positive manner. In an effort to create awareness about child marriage in Nepal, one NGO created radio dramas focusing on delaying first pregnancies, which raised consciousness of the dangers of child marriages and especially the health consequences of young girls becoming pregnant and giving birth before their bodies are mature enough.³²⁸ Anganwadi workers, grass roots organizations, street plays, photography, and posters have all proved effective means for raising awareness and sensitization.³²⁹

In addition, but also connected to education, is the deeply rooted issue of poverty. There must be means by which to support communities through livelihood initiatives so that the parents can be economically empowered to financially support their family, children, and especially daughters.³³⁰ It is imperative to provide economic activities for parents in the form of skills training, health training, and alternative educational, economic, and social opportunities, especially for women.³³¹ Social mobilization is accomplished when communities are aware of the long-term positive effects of education. The daughters need skills training too, so as to be considered valuable by their parents and their future husbands.

The problem of child marriage is serious. It greatly affects the physical, psychological, and mental well being of young girls. The issue is born out of ingrained religious, social, economic, and political roots. Therefore change will not come about through one part of society or another doing all

³²⁷ CONCERNED FOR WORKING CHILDREN, ANNUAL REPORT OF THE CONCERNED FOR WORKING CHILDREN (2003).

³²⁸ USAID GLOBAL HEALTH ISSUES BRIEF ON CHILD MARRIAGES, PREVENTING CHILD MARRIAGE: PROTECTING GIRLS' HEALTH 2 (2006).

³²⁹ HAQ: CENTRE FOR CHILD RIGHTS, *supra* note 299, at 15.

³³⁰ *Id.* at 13.

³³¹ USAID GLOBAL HEALTH ISSUES BRIEF ON CHILD MARRIAGES, PREVENTING CHILD MARRIAGE: PROTECTING GIRLS' HEALTH 2 (2006).

the work. Instead, it is important for the government, NGOs, international society, as well as the community level to work together to fight to abolish this evil. Even though child marriage is a social custom that will take time to eradicate, it is important to begin now. Because so many of the female-related issues in India are interconnected, the potential benefits from the abolition of child marriages, far outweigh any other costs the government or individuals must pay en route. Every child has a right to a full, free, and dignified life, and it is a global responsibility to provide for it.