

**GRASSROOTS  
EXPERIENCES OF USING  
THE PROHIBITION  
OF CHILD MARRIAGE  
ACT, 2006**



**PARTNERS FOR LAW IN DEVELOPMENT**

**NUMBER 2  
ADOLESCENT SEXUALITY AND EARLY MARRIAGE SERIES**

Partners for Law in Development (PLD) is a legal resource group founded in 1998 that facilitates realization of social justice and women's rights by relating law to contexts of marginalization shaped by gender, sexuality, culture and poverty, to tackle intersecting systems of oppression. We use three complementary strategies of knowledge creation, developing capacities and engaging in sectoral debates to shape state, civil society institutions and social policy perspectives, both domestically and globally.



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The **Adolescent Sexuality and Early Marriage Series** comprises of research studies, consultation reports and analysis by Partners for Law in Development (PLD), that bring out the complex interplay between the age of sexual consent, early marriage and structural inequalities in the lives of adolescents and youth from marginalized populations in India. Using a socio-legal lens, this series reveals ways in which deterrence approaches and criminalization render this population more vulnerable to harm and less able to access rights protection.

# ACKNOWLEDGEMENTS

A bottom up view of the girl's encounter with the law tells us what it means to approach the law from a position of compounded powerlessness. Vulnerable and voiceless within the family, the community and the state, how does a girl exercise her statutory right to prevent or exit a forced marriage? Complex accounts by grassroots organisations who work with women and girls in rural and semi urban contexts in this report, tell a story of negotiation balanced with a strategic and cautious use of law that sometimes but not always, serves to postpone forced marriages. Two key sources were the basis of this report: detailed case studies based on a pre-set template that were submitted by grassroots organisations, along with in-depth discussions over two days with a wide range of grassroots stakeholders whose experience served to corroborate the accounts from the case studies. Our foremost thanks therefore to all those who submitted detailed case studies. This includes, Mahila Jan Adhikar Samiti (Rajasthan), Social Action for Knowledge-building and Awareness Raising (Uttar Pradesh), Rubi Social Welfare Society (Maharashtra), TALASH – Society for Inner Strength, Peace and Equality (West Bengal), Rajsamand Jan Vikas Samiti (Rajasthan), Nishtha (West Bengal), Sahiyar Stree Sangathan (Gujarat) and Vikalp Sansthan (Rajasthan) whose detailed case studies are included in this report; as well as Astitva Samajik Sansthan (Uttar Pradesh), Bhumika Women's Collective (Andhra Pradesh and Telangana), ANANDI Area Networking and Development Initiatives (Gujarat), HUMSAFAR (Support Centre for Women in Crisis)(Uttar Pradesh) and Mahila Sarvangeen Utkarsh Mandal (Maharashtra) whose case studies, though not included in the annexures, brought out a similarity of patterns across diverse contexts. Our gratitude to the 55 participants from the 25 organisations who keenly participated in the discussions over two days, to consolidate an understanding of what 'using the law' from a position of vulnerability means, especially when it is sought to be enforced against those on whom the claimant's well-being and security depends.

We acknowledge with appreciation Mrinalini Ravindranath for rapporteuring and preparing minutes of the two-day consultation on December 12 - 13, 2018 and for translating the case studies from Hindi to English; to Prashastika Sharma, Udit Chakrabarti and Swaranjali Agrawal for their inputs. And finally, thanks to Madhu Mehra for preparing a report and to Rimli Borooah for the support with copy editing.



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# LIST OF ABBREVIATIONS

<b>BDO</b>	Block Development Officer
<b>CEM</b>	Child/Early Marriage
<b>CMPO</b>	Child Marriage Prohibition Officer
<b>CPO</b>	Child Protection Officer
<b>CRC</b>	Convention on the Rights of the Child
<b>CSE</b>	Comprehensive Sex Education
<b>CWC</b>	Child Welfare Committee
<b>DPO</b>	District Provincial Officer
<b>FIR</b>	First Information Report
<b>ICDS</b>	Integrated Child Development Services Scheme
<b>MTPA</b>	Medical Termination of Pregnancy Act 1971
<b>NFHS</b>	National Family Health Survey
<b>NGO</b>	Non-governmental Organization
<b>PCMA</b>	The Prohibition of Child Marriage Act 2006
<b>POCSO</b>	The Protection of Children from Sexual Offences Act 2012
<b>RKSK</b>	Rashtriya Kishor Swasthya Karyakram
<b>SDG</b>	Sustainable Development Goals
<b>SDM</b>	Sub-Divisional Magistrate
<b>SHO</b>	Station House Officer (police)
<b>SJPU</b>	Special Juvenile Police Unit
<b>TC</b>	Transfer Certificate
<b>VLCPC</b>	Village Level Child Protection Committee



## CHAPTER 1

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# INTRODUCTION

In 1992, a frontline worker, Bhanwari Devi, was violently assaulted (in Bhatari village near Jaipur, Rajasthan) for invoking the law to stop a child marriage – that of a nine-month-old girl infant from a dominant caste family in her village.<sup>1</sup> While her efforts resulted only in pushing the child’s wedding to the next day, Bhanwari Devi had to endure gang rape in retaliation for her intervention. Her story is a stark reminder of the risks that frontline workers and organizations run, without any state protection, in attempting to assert the law against power structures and entrenched social practices. In the wake of calls to nullify all underage marriages, without exception, as a step towards eliminating child/early marriage (CEM), Bhanwari Devi’s case serves as a ringing warning to first look at how the law plays out in the lives of girls who seek help and the community workers who intervene to support the girls. Accounts from the field, such as Bhanwari Devi’s, compel us to ask certain questions. Is the need of the hour an amendment to give more teeth to the Prohibition of Child Marriage Act, 2006 (PCMA)? Or should attention shift to interventions in the root causes, the social context and investments in girls’ empowerment?

**“This report draws attention to how the child marriage law works for girls who seek its protection, what it takes to use the law, and who bears the weight of moving the law.”**

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1 PIL against the gang rape of Bhanwari Devi led to the framing of the Vishaka Guidelines in 1997 for the protection of women against sexual harassment in the workplace, considered a milestone for women’s rights in India. These guidelines were superseded by the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act in 2013.

Typically, if a law has not been effective, it is simplistically assumed that it is not ‘strong’ enough. Rather than document evidence of the implementation barriers as well as the interplay of social factors with the law, and question the overwhelming reliance on law to transform social practices, there is a widespread tendency to call for ‘stronger’ legal measures. Law reform proposals to make the PCMA stringent have gained currency in this context. The example of Karnataka’s hastily amended PCMA is a case in point. The declaration of all underage marriages void in 2016 (rather than voidable as is the case under the Central legislation) in Karnataka has not deterred the occurrence of underage marriages, which reportedly continue to take place in the state.

The experiences of girls who approach the law for preventing or exiting early marriage, and the risks they encounter in the process, must surely inform policy discourses that seek to protect the rights of girls. As must the threat to grassroots workers involved in this field. Understanding law’s interface within a social context is not an option but a necessity. This caution is imperative in the current push for stringent legal responses on child marriage to meet the targets of Sustainable Development Goal (SDG) 5.

This report draws attention to how the child marriage law works for girls who seek its protection, what it takes to use the law, and who bears the weight of moving the law. Committed to understanding how law works across social contexts, and to making sense of its differentiated responses, Partners for Law in Development (PLD) organized a two-day national consultation with grassroots organizations working with young girls. The report consolidates the experiences of such organizations in using the PCMA to both prevent marriages involving underage girls and help girls nullify their marriage.

Over 55 participants from 25 organizations (listed in Annexure C), working with adolescents and youth from Delhi and various districts in Rajasthan, West Bengal, Gujarat, Tamil Nadu, Andhra Pradesh, Maharashtra and Uttar Pradesh, participated in this national consultation on December 12-13, 2018. The participating community-based organizations submitted narratives of cases (eight of them are summarized in Annexures A and B) in which they sought legal intervention on behalf of girls seeking to escape marriage. These accounts provide evidence of how accessible and responsive the PCMA is to underage girls seeking to prevent, nullify or exit marriage. A combination of case discussion, socio-legal analysis and group work to chart common experiences of social workers helped consolidate evidence and collectively review the functioning of the law against its stated objectives.

The report documents the understanding – that emerged through sharing of case studies, encounters with the law, and the organizations’ extensive work within communities with girls – of what it takes to access the law, and the intended and unintended consequences for girls seeking to avoid underage marriage. The exchange brought to light the functioning and coordination of different agencies mandated to protect the rights of the child, highlighting the conditions under which law might or might not work for girls.

As a report that consolidates case studies, group work discussions and collective review of law, this is a valuable resource for informing policy discussions on preventing child marriage. It also provides insights into the comparative role of different agencies in assisting girls seeking to avoid early marriage.

The report is divided into five parts. **Chapter I** is the introduction. **Chapter II** ties together the strategies used by grassroots organizations in designing and executing interventions with the responses of criminal justice, administrative bodies and the child protection machinery. It also weighs the allied costs and challenges of carrying out interventions against their outcomes. **Chapter III** shows the gap between the de jure content of the PCMA towards the prevention of child marriage and its de facto functioning based on learnings from the accounts of grassroots organizations which help girls escape forced underage marriages. It comparatively analyses the contribution of the law and the roles of different agencies involved in interventions. **Chapter IV** looks critically at the macro developments shaping the domestic discourse on child marriage to contrast that against grassroots realities. **Chapter V** identifies sectoral recommendations that emerged from the deliberations for various stakeholders invested in combating CEM.

## CHAPTER 2

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# USING THE PCMA TO ADDRESS FORCED UNDERAGE MARRIAGE:

## ACCOUNTS FROM GRASSROOTS ORGANIZATIONS

How does PCMA actually work on the ground? What are the agencies and factors involved? Which approaches and strategies are the most effective? The main discussion at the consultation centred around the written case studies of interventions carried out in relation to the PCMA, submitted by the participant organizations. Of the twelve accounts shared by organizations, eight are included in this report as they cover the socio-legal aspects involved most fully. Four of the case studies relate to prevention of early marriage, and four relate to getting marriages nullified. These case studies, with the names of the girls changed to ensure anonymity, are annexed to this report.

The case documentation covered different aspects involved in preventing/nullifying child marriage. These range from the preparatory work based on an assessment of social power structures that operate in relation to the case, coordination between agencies, risk evaluation and long-term follow-up, including with the family and the community, to ensure the well-being of the girl involved. The narratives also bring out the comparative value of different strategies, interventions and agencies in carrying out such work.

In addition to the case studies and the discussion arising from it, smaller group discussions saw the sharing and documentation of experiences to capture a broader cross-section of experiences. This method helped assess whether the findings from the case

**“The experiences of girls who approach the law for preventing or exiting early marriage, and the risks they encounter in the process, must surely inform policy discourses that seek to protect the rights of girls. As must the threat to grassroots workers involved in this field.”**

studies were corroborated by wider sectoral experience. The discussions in the smaller groups were conducted around three themes: (a) the risks and challenges to field workers that carry out an intervention; (b) the continuing supportive role played by the grassroots group after the intervention; and (c) a comparative assessment of the advantages and risks arising from informal strategies vis-à-vis formal legal recourse.

The common themes and insights gathered through these two distinct methods are consolidated in this section.

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## 2.1 How do cases reach an organization?

Most organizations work with federations of community women that link them to networks of volunteers across districts. They also have close work associations with local administration, redress mechanisms and frontline workers of state government programmes covering women, children, public health, nutrition and family welfare. Organizational staff is drawn from local communities. These linkages, the goodwill and credibility of their contribution within communities, and most importantly, steadfast belief in social justice goals, are key to carrying out casework.

The linkages with peer leaders, federations and volunteers in the community are a crucial source of information/alerts about cases. In some cases, organizations get referrals from the local Childline. Girls at risk seek help from acquaintances within collectives, or from girls who have successfully resisted forced underage marriage in the past. Two of the girls in the case studies were members of adolescent groups, which helped to bring matters to light. *One of them, 15-year-old, 9th grade student Jamila, was a member of 'Lucky', a group of school-going adolescents involved in social awareness campaigns in Malda, Bengal. When Jamila became irregular in her attendance, and the group launched an investigation, and found out that she was to be married shortly and was confined to the house. They then approached social workers of TALASH (TALASH, West Bengal).*

In some cases, a girl might have tried to approach an official agency or state actor, only to be disappointed, and then turned to an organization on local advice and references. *Preeti in Jodhpur, 19, wanted to get her marriage annulled before she was sent for her *gauhna*<sup>2</sup> against her wishes. She approached the area's Child Welfare Committee (CWC) but was rebuffed. She then turned to Vikalp (Vikalp Sansthan, Jodhpur).*

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## 2.2 Prepping for interventions

Once volunteers hear of a marriage being arranged for an underage girl, or of such a girl wishing to leave a marriage, they begin investigating the matter and attempt to establish contact with the

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2 An event, usually at or after puberty, when a girl married at childhood is sent to reside in her matrimonial home, consummate the marriage, and perform matrimonial duties.

girl, either through the phone or in person. This helps ascertain her wishes, without involving her guardians and family. Her wishes are fundamental to the planning. Local support mechanisms, such as, of *mahila sangathans* (women's organizations) or administrative officers in the block are simultaneously put on alert.

### **i. The girl's wish**

First, field volunteers establish contact with the girl to verify the information, confirm the course of action she 'wishes' to take, and determine the outcome she seeks. If the girl is within their adolescent collectives, they discuss this in collective meetings; where she is not, they may contact her through mobile phones, or devise ways of meeting her without the presence of her family members. *In the case of Jamila, 15, who was part of an adolescent group, to verify the situation, the workers and peer leader strategically designed a game around personal autonomy to discuss the damaging impacts of early marriage on girls' lives. This game was conducted when Jamila attended a meeting, helping her to confide in the group that she did not want to get married (TALASH, West Bengal).*

*When 16-year-old Pooja, who lived in a slum in Vadodara, was approached by social workers to ascertain if she wanted their help in stopping her marriage, they learnt she had agreed to the marriage. The social workers then approached the groom's family but couldn't persuade them to call off the wedding. But later, when Pooja wanted to exit the unhappy marriage, they mounted an intervention to support her in this (Sahiyar Stree Sangathan, Gujarat).*

### **ii. Timing and risks**

In every intervention, the timing is crucial. If pre-wedding ceremonies have taken place by the time field volunteers are informed, accessing or rescuing the girl or confronting her family is most important. This comes with the risk of exposing the girl/key informant and field workers to retaliatory violence. The risks are magnified for girls who are to be sent to matrimonial home for *gauhna* to honour the marriage. Social workers weigh the risks to plan the course of action. *In the case of Yasmin, 13, time was running out as the haldi and mehendi<sup>3</sup> ceremonies had already been performed. The social workers feared that talking to the family might expose Yasmin and themselves to physical abuse. They decided that the best course of action was to secretly gather the legal evidence necessary to back their intervention (Rubi Social Welfare Society, Maharashtra).*

Direct confrontations with the family have been experienced to be counter-productive, as in some cases it puts the girl at greater risk. The family might turn hostile and violent, or make a false promise to call off the marriage but, in fact, take the girl to another location to hastily marry her off. There is also the risk of caste leaders or *jati panch* (caste/village council) – who wield considerable

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3 Pre-wedding ceremonies in certain regions of South Asia, where haldi (turmeric paste) is applied on the bride and her hands are adorned with patterns of mehendi (henna).



influence, including on state agencies – being alerted. *In one instance, when social workers heard Abida, 14, of South Parganas in West Bengal, was to be married to a middle-aged man, they asked the parents to call off the wedding. The parents appeared to agree but then took Abida away to her sister's matrimonial house in Odisha and got her married there (Nishtha, West Bengal).*

### iii. Agencies, steps, sequence

The social workers meet with the family of the girl, and the groom's family if required, to counsel them about the legal implications, advising them to avoid criminal liabilities that ensue from violating the law. They collect documents/evidence, and use this to alert and pressure legal and administrative bodies like the CWC and the police to act. *In the case of Yasmin, 13, the organization gathered the requisite legal evidence to back their intervention. When faced with the documentary proof of the girl being underage, the police had no option but to investigate (Rubi Social Welfare Society, Maharashtra).*

The volunteers also leverage their goodwill in the community to engage with community leaders and various other administrative officials like the Block Development Officer (BDO) or the Village Level Child Protection Committee (VLCPC) to prevent the marriage. They use all available contacts to ensure that the police arrange rescue vans for safe passage of the girl to a shelter home. *When social workers trying to help 13-year-old Seema escape forced underage marriage encountered obstacles, they went to the District Provincial Officer (DPO) who, in her speech at a recent event, had said people could approach her for help. The DPO directed the district office to send a police rescue van (SAKAR, Uttar Pradesh).*

## 2.3 Collecting proof

Various strategies are employed to collect evidence of the girl's age and of the wedding preparations and date. Falsification of ages is prevalent, so school records are relied upon wherever possible. Wedding cards/invitations are collected. Where girls attempt to exit marriage, they usually furnish the documents themselves. Documents once collected are used to pressurize the police or administrative bodies to act.

*In the case of Yasmin, 13, two organization workers posed as official surveyors come to verify if all members of the girl's house had Aadhar cards. They also asked for Yasmin's school certificates, and when bringing all the documents, the girl mentioned that her date of birth in Aadhar was higher than her real age, but the one in the school certificate was correct (Rubi Social Welfare Society, Maharashtra).*

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## 2.4 Law and interventions

Interventions carried out by social workers of an organization are predicated on the follow-up support of state entities such as the police, shelter homes, CWCs, BDOs and *panchs*. The action by social workers implies police backing, even without the physical presence of the police. In cases of prevention, organizations use their credibility to call upon the Subdivisional Magistrate (SDM) or Child Marriage Prohibition Officer (CMPO) to initiate action, and to secure an injunction or inquiry orders. Often, the injunction orders are mere verbal promises secured from the girl's guardian by the police.

Successful interventions involving police help or presence may not involve actions under law; rather, they leverage the state authority to pressurize families into complying with the law. *In the case study involving Seema, 13, even as the social workers attempted to persuade her father, and also the groom and his father, to think of the impact of an early marriage on her health, given her young age, the relatives who were present were insistent about the wedding going through. But the matter was de-escalated through the silent presence of the police force (SAKAR, Uttar Pradesh).*

Experiences show that the police as well as the CWC are susceptible to political pressure, and attempt to obstruct or obfuscate requests for support by field workers. *In the case of Bindiya, 16, pressure was exerted on the social workers through the police as they sought to organize the girl's safe passage from her village to the shelter home in Ajmer. The police station head kept trying to persuade the girl to speak with someone over the phone for an urgent matter – a tactic to intimidate Bindiya. Similar calls were made to the social workers, sometimes through the police, from local leaders/influencers to urge them to not take Bindiya away. The social workers repeatedly refused to take the calls (Mahila Jan Adhikar Samiti, Rajasthan).*

Law, on its own, is simply not effective. Other parallel processes and agencies must also play a role. To ensure a clean separation or nullification of child marriage, social workers have to engage with the *jati panch* or the caste *biradari*<sup>4</sup> to avoid penalties or ostracism of the girl and her family. Social boycott and fines invariably follow if the girl or her family avoids fulfilling the child marriage agreed upon – typically the girl going to the matrimonial house for *gaunha*. The social workers often combine persuasion with information about the legal consequences of not just the child marriage law, but also the domestic violence laws that can be invoked over extended periods of time, to get the community leaders to agree to a closure and accept the girl's decision. *For Jashoda, 13, who had been married at age 8, social workers arranged for a jati panch, where they spoke of filing a case of domestic violence, apart from her in-laws being indicted under PCMA if they took her away for gauhna. The jati panch eventually agreed to the annulment of the marriage without payment of penalty (Rajsamand Jan Vikas Samiti, Rajasthan).*<sup>5</sup>

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4 A community grouping based on sub-caste or classification derived from common lineage of families.

5 Under customary laws of kinship and marriage, the consequence of a breach of marriage agreement or dissolution of (child) marriage can involve high monetary penalties, sometimes accompanied by stigma, social boycott and ostracism.

In cases where the rescued girls are produced in the police station for orders to be moved to shelter homes, the police may arrest her parents for violating the PCMA. While such actions are legally ordained, they invariably break the morale and confidence of the girl, who seeks external intervention for herself, without meaning to harm her parents. This also disturbs the social workers' efforts to dialogue with parents and communities, burdening them instead with the task of finding temporary caregivers for younger children in the family. In such a scenario, social workers prefer to invoke the law and the state agencies, to engage and negotiate with the family and the community, rather than to blindly enforce the letter of the law. Often they might even have to plead for release of the parents, forcing them to turn attention away from the girl, to handling the criminal cases filed against her parents. *While social workers were handling the case of Abida, 14, police arrested her parents for the offence of performing an underage girl's marriage. Abida's mother was in judicial custody for a month and a half, despite volunteers' efforts to have her released (Nishtha, West Bengal).*

The proceedings under the PCMA are numerous and tedious in technicalities. Organizations complain that the law requires the girl to come to the court a number of times when it might not be possible for her to do so. The courts may not recognize or act upon customary practices such as group weddings, siblings being married together, or where promises to marry are made during another marriage while the girl is very young and not required to move to the matrimonial home. Such situations are not understood by law, which requires proof of the wedding. When the boy or the boy's family do not show up in court, the court does not give ex-parte orders but postpones the hearing to another date.

*For Preeti, 19, who wanted to get her marriage annulled, coming to court on different dates the matter was listed was as a problem. Since the organization's lawyer was not available the first day, the social workers got the documentation ready themselves and entered the case in the records after considerable effort and running around. The next stage was delayed for months, in spite of the volunteers fulfilling the legal requirement for issuing a dasti or speedy hand-delivered notice to the opposite party, to expedite matters. With the hearings taking so long, one day, Preeti's parents forcibly sent her off to her matrimonial home (Vikalp Sansthan, Rajasthan).*

Court processes take their own time, paying little heed to the ground realities where the custody of the girl is precarious, with a high risk of her disappearance.

## 2.5 Negotiation and parallel processes

Faced with the prospect of forced marriage, girls invariably attempt to negotiate with their families, failing which they seek help from outside. Where there is a high possibility of the girl disappearing, the social workers identify a sympathetic family member to secure a channel of communication and risk assessment.

Recognizing the unpredictability in such situations, the organizations alert the CWC and, through them, the shelter home, in preparation of moving the girl to safety. Even during the rescue, when a police van is arranged to take the girl to the shelter, the field volunteers attempt to counsel parents about the impacts of early marriage to engage them in the necessity for the shelter, while giving them time to work out a way of avoiding the marriage. The groom's family is also contacted and counselled, so that the law does not disrupt ties, or create lasting ill-will that overshadows the lives of the girl and her family, but becomes an opportunity to dialogue and sensitize. *In the case of Seema, 13, in their second attempt to stop the wedding, the social workers sensed some reception when they requested the groom, his father and Seema's father to reflect upon her young age, and the possible impact of the marriage on her health and her future. Seema's father admitted that poverty was compelling him to marry off his daughter as he lacked the means to take care for her or arrange a marriage when she was older (SAKAR, Uttar Pradesh).*

Even as the nature and process of intervention are being planned, most organizations have a back-up plan in case the girl becomes untraceable. Such an eventuality involves activating sympathetic media persons who can flash the news, to attract attention to the case. *When Bindiya, 16, was sent back home from the shelter home and was in danger of being married off, the community group realized the CWC, SDM and some other state agencies had come under the influence of the caste factor. They took some help from the media to engage with Childline, the shelter home and others to prevent the wedding (Mahila Jan Adhikar Samiti, Rajasthan).*

Once the girls are rescued from the immediate risk of marriage, they want to restore ties with their families, and plead with social workers to shield their families from being prosecuted. The emotional ties with their families cannot be forgotten in the course of such interventions, which need to be calibrated to make legal prosecution contingent on a threshold of violation; it cannot be a one-size-fits-all response. While a girl is in a shelter home, she is also susceptible to manipulation by her family, which may seek her custody only to marry her off forcibly. Social workers and organizations play a critical role at this juncture in motivating the girl by sharing success stories of interventions and reconciliations, to sustain her resolve. They also make sensitive judgement calls as to when it is safe and necessary for the girls to meet their parents and when it is not.

Within the community, the volunteers work to secure an informal promise/prohibition against the solemnization of marriage in the presence of community leaders. Through conversations with leaders, a return of dowry or a negotiation of penalty is worked out in some cases. *For Jashoda, 17, when the social workers faced problems in convincing the jati panch to rule in the girl's favour, they approached the zila pramukh (district head), invoking caste reputation (he belonged to the same caste as Jashoda and her in-laws). The strategy worked: the zila pramukh persuaded the jati panch to declare Jashoda free of the marriage, and also that the dowry items be returned and the cash spent on the wedding be given back to Jashoda through a bank account opened for her (Rajsamand Jan Vikas Samiti, Rajasthan).*

Even after a case is successful, community groups continue to engage with local stakeholders, for example, by making religious leaders aware of the need to verify ages of parties before performing marriages. *In the case study of Yasmin, 13, once the workers managed to get the police to stop her planned wedding at an ijtemai ceremony (mass wedding), they approached the ijtemai committee about checking the age proof of girls before arranging their weddings. A long-term dialogue with the committee yielded positive results, and they agreed to establish a procedure of asking for the age proof of girls before conducting and registering weddings in future. (Rubi Social Welfare Society, Maharashtra).*

## 2.6 Handling backlash against organizations/social workers

When field workers confront the family about the illegality of an underage marriage, the family often resorts to leveraging their political connections in order to pressurize the workers. Threats of counter cases being filed against workers are issued. At the same time, bringing police into the community is regarded as a violation of the trust reposed by the community in the field workers and they are labelled 'home breakers'.

Extreme hostility from the girl's family and community occur particularly when the family is from a dominant caste. It may also occur when a family of frugal resources manages to arrange the daughter's marriage with difficulty. The former situation may invite long-term hostility and violence, while the latter may trigger a desperate bid to fight back and breakdown of trust. Threats of violence to the workers and volunteers are common. The families may even spur the *panchayat* on to take action against the volunteers involved. *In the case of Preeti, 19, who wanted to have her child marriage annulled, when the social workers were taking her to a place of safety as per her request, the family forced them to talk to a powerful police officer who threatened to file a case of kidnapping against them if they did not restore the girl (Vikalp Sansthan, Jodhpur).*

In the case of a girl trying to exit a marriage, the social workers helping her may face severe backlash while negotiating penalties imposed by the *jati panch* or demands for returning the bride price (for breaking the marriage). Many a time, volunteers leave town shortly after an intervention, and may not revisit the village for months to a year until the matter is expressly resolved by the organization with the help of sympathetic community leaders. *In one case study, after community workers prevented the forced marriage of Jamila, 13, her father visited the family of the field worker, Nur Jahan, who had alerted the organization to the matter, blaming her for the cancelled wedding. He also approached the *pradhan* (head/president) of the *panchayat* to file a complaint against Nur Jahan, and asked that she be punished. Fearing repercussions, her family sent Nur Jahan away to her aunt's for a while (TALASH, West Bengal).*

*In another case, after Abida, 14, was rescued, there was another fallout: the volunteers lost the trust of their community because they were blamed for certain events (the girl's parents were jailed for a while) and for 'ruining' a marriage in a poor family (Nishtha, West Bengal).*

## **2.7 Follow-up with the girl**

Field volunteers associated with the case and familiar with the girl are in positions of trust with the girl. Hence, they remain in contact with her periodically. Where the family is opposed to it, the contact is maintained surreptitiously through the school or phone. *For instance, after her rescue Bindiya, 16, studies in Kota and is still in contact with the organization which helped her, albeit without the knowledge of her family (Mahila Jan Adhikar Samiti, Rajasthan).* The workers also alert teachers in the girl's school to show sensitivity towards the girl. If the girl seeks employment, the volunteers help find a job that is safe for her. Regular meetings with parents are held to boost their confidence in the girl and help them understand the impact of early marriage, while simultaneously motivating the girl to avail of existing opportunities. If the girl remains in the shelter home for a longer period, they facilitate contact with her family and try to reconcile them.

When court proceedings are initiated to nullify/exit the marriage, the organization pays the legal costs and also accompanies the girl on court visits, preparing her every step of the way. If the girl has faced violence in the duration of her marriage, sensitive counselling is undertaken to help her move on. If she wishes to marry a partner of her choice later on, social workers attached to her case might have to counsel the suitable groom and his family about the girl's earlier marriage so that they accept her without stigma. They also help her solemnize her marriage without dowry. *For Jashoda, the social workers waited a year for her to turn 18 and then started court proceedings to annul her marriage. From time to time, her in-laws threatened to hurt her if she did not return but the field volunteers who were in touch with her throughout ensured her safety (Rajsamand Jan Vikas Samiti, Rajasthan).*

*In the case of Preeti, 19, once the court hearings to annul her marriage became regular, the social workers helped her find a job and paid for her rent and subsistence the first few months at a working women's hostel (Vikalp Sansthan, Rajasthan).*

Alongside rebuilding trust with the family and the community, the field workers and organizations commit to long-term support for the girl to help her make life choices. To do so, they induct the girl into peer groups to develop leadership and advocate against forced marriage. *After her rescue from forced underage marriage Jamila conducts trainings for girls on behalf of the organization which helped her, using her own story to advocate against such marriages and continued education for young girls (TALASH, West Bengal).*

## CHAPTER 3

# THE DE JURE VS DE FACTO LAW:

## KEY FINDINGS ON HOW THE PCMA WORKS IN REALITY

Law reform proposals often assume that the law operates in its letter, without reference to the social pressures and structures of the context in which it functions. This formalistic approach is particularly true of proposals that seek to make law stringent, assuming that once enacted, the law will be implemented uniformly and exactly as it is written; that without altering the social and material realities from which the practices arise, and without regard to the power relations and social pressures, the legal machinery will precisely implement the law, to effectively bring about social change.

Such assumptions are true of the demands to amend the PCMA so as to declare all underage marriages void, i.e. without any legal effect. Yet, the insights from the case studies as well as the group discussions of grassroots organizations tell a different story of how the law and its functionaries respond to underage marriages, and of the consequences of using the law for those who seek to activate it. It reveals that the true value of law lies in opening possibilities of negotiation and dialogue, of leveraging state machinery and administration, by frontline workers, to help girls who seek to escape forced underage marriages. These understandings about ways

**“These understandings about ways in which the social context mediates the implementation of the law, the fine balance struck on a case-by-case basis, must inform proposals for law reform, and especially caution against stringent approaches that allow no room for leverage and dialogue.”**

in which the social context mediates the implementation of the law, the fine balance struck on a case-by-case basis, must inform proposals for law reform, and especially caution against stringent approaches that allow no room for leverage and dialogue.

This chapter sets out how the PCMA seeks to prevent or prohibit child marriage, outlining the de jure content of the law; it also summarizes the de facto functioning of the law, based on findings that emerge from the case studies and discussions by community groups on the frontlines of helping girls avoid or exit forced marriages. The de jure outline is a summary of the letter of the law; the de facto part is a synthesis of discussions based on the case studies and group work carried out by community organizations at the consultation, facilitated by Madhu Mehra (Partners for Law in Development) and Dipta Bhog (Sadbhavana Trust/Nirantar).

### **3.1 De jure or the letter of the law**

The Prohibition of Child Marriage Act, 2006, sets out the minimum age of marriage for the parties to a marriage along with setting out procedures, remedies and designated functionaries for prevention and annulment of an underage marriage.

The minimum age of marriage set out by the Act is 18 years for a female and 21 years for a male. The law provides remedies for three situations in relation to ‘child marriage’ or marriage in which one or both parties are underage. The three situations are: where the marriage is yet to take place (impending marriage), where the marriage has already taken place (voidable marriage), and where the marriage lacks validity or recognition under law (void marriage). In addition, the law requires that the government carry out awareness raising activities to prevent underage marriages, through the Child Marriage Prohibition Officer (CMPO), to be appointed in each district.

#### **i. Where the marriage is yet to take place**

An impending marriage can be prevented, under the law, by an application seeking an injunction against it. The injunction is an order that prohibits the performance of such marriage. It can be granted by the Magistrate at the district level, usually the Sub-Divisional Magistrate (SDM) on an application brought by the CMPO, *suo moto* or even any third party. Marriages performed in the face of such an injunction are treated as invalid and *void ab initio*.

#### **ii. Where the marriage has already taken place**

Despite the law being in place, underage marriages do occur. Such marriages are treated as valid under the law. This is on account of the unequal and harsh consequences of non-recognition of the marriage for a girl within the gendered patriarchal context; and because marriage remains fundamental to familial, kinship and community relations in society. Instead, the law allows the underage party to the marriage the option to nullify their marriage. The minor may file a petition for



invalidation of marriage through the guardian or the friend along with the CMPO. This petition must be filed before the completion of two years of attainment of majority by the child filing the petition.

### iii. Where the marriage is unlawful

A few types of underage marriages are treated by law as void or of having no legal recognition. This category refers to the cases where a minor is enticed out of the possession of the lawful guardian, a minor is compelled to marry by force or deceitful means, a minor is sold for the purpose of marriage, or a minor goes through a marriage and is thereafter used, trafficked or sold for immoral purposes. Marriages that take place in violation of the Court's injunction order are also treated as void.

### iv. Nature of the offence and punitive measures

An offence under the PCMA, 2006, is cognizable and non-bailable. This means that the police officer must not only register an FIR when a case is reported, but also immediately arrest those who have been accused of any of the offences under the law. Once arrested, the accused can be granted bail only through a judicial order. The law imposes punishments of imprisonment of up to two years or a fine of up to one lakh rupees on those solemnizing or performing the marriage and those promoting the underage marriage; this including the parents or the guardian of the child. Any adult male marrying a girl under the age of 18 is also liable to be punished.

## 3.2 De facto reality

The accounts of the grassroots organizations give a clear picture of how the law actually works. These accounts are fundamental to understanding the law-in-action. The de facto reality indicates how the social context and its value systems, the social and economic hierarchies, shape the way the law functions. The context is all-important, setting out the conditions under which the law functions and the manner in which it is able to operate.

### i. Indispensability of community groups for enabling girls to access the law

The community-based organizations, such as those which participated in the national consultation, play a critical role in helping girls prevent and exit forced marriage. The interventions are usually carried out not only by organization staff and field workers, but also by girls and women from the communities who are members of youth/girls' collectives or *mahila mandals* (women's federations). A case of forced underage marriage typically comes through a community network or collective, which then alerts the organization which in turn plans the course of action.

**Pre-conditions that enable intervention by community groups** - They are able to intervene only because of their long-standing and dedicated work within the rural and urban poor communities

on multiple locally relevant issues. These include consciousness raising, ensuring implementation of welfare schemes, training elected women representatives, running women's livelihood and leadership development programmes, organizing women's collectives and federations, facilitating collectives of girls and boys, organizing youth camps, and working with girls on issues such as early dropout from schools. Additionally, these organizations offer crisis intervention services to women and girls for gender-based violence, including domestic violence.

Each of these organizations has a credible record of working on child/early marriage, and focus on adolescent and youth populations in their field areas. This enduring commitment and working within the community, as well as with the state administration, law enforcement agencies and local government, allows the organizations to intervene effectively. The grassroots groups earn the goodwill of the people they work with, and forging networks of information flow and trust that enable girls to reach out to them and the organizations in turn to navigate social power relations and legal processes.

**Procedure for intervention followed by community groups** - Community groups have a network within collectives of girls and women, and are linked to Childline and as well as government agencies. Cases are referred to them, or they hear about these through federations and networks. Once they receive information, they follow up to ascertain the facts with the girls. Community groups appear unanimous in distinguishing between forced marriages and self-arranged marriages or arranged marriages. These distinctions assume relevance for older adolescents in particular.

On receiving information about a case, the social workers first ascertain the girl's wishes before planning the intervention. The intervention is not based on the age of girl alone, especially for older adolescents, but on finding out what the girl wants, in the short and long terms. Thus the minimum age of marriage alone is not the determining factor; what the girl wants is crucial – and the organization strives to see how the law might help achieve that. Approaches adopted for preventing marriage are infused by the organization's strategic understanding of what works in the context of the community.

## ii. Understanding and navigating the challenges of using the law

The law, i.e. PCMA, cannot be activated easily – and certainly not by the girl alone. Girls cannot get an FIR registered, and sometimes, even social workers are unable to do so. The legal system seems to push back those who access the PCMA without lawyers, social capital or resources – assets that are typically not available to the girls who are the most powerless in the familial structures and the community. Neither is the machinery sensitive to the urgency of action needed in such situations.

The barriers in accessing the law increase when the case concerns socially and politically dominant families/communities. Interventions are easier in cases amongst marginalized communities.

Field workers typically do not inform the police right away. In their experience, the risks to the girl increase if the police are informed too soon. There is a likelihood of the family being alerted, which increases the chance of the girl disappearing, or being taken away to a different place and married suddenly. A common strategy is to alert the police only after ascertaining the girl's wishes and gathering relevant evidence of her age and marriage arrangements – such as her age proof and wedding card – and formulating a rescue plan. The police are deeply enmeshed in local power relations, so approaching them brings the risk of exposing the girl's plans. The police are alerted along with other agencies to create a multi-agency oversight to navigate social or political influence exerted on any agency.

### **iii. Legal intervention impacts: On the girl and her family**

In the few cases when the law is successfully invoked despite all odds, the girl and/or her family is/are likely to be punished or ostracized. In dominant caste groups, it is common for hefty fines to be imposed on the girl's family by the caste *biradari*.

Social boycott can be severe, requiring even the girl's immediate relatives to break ties with her or her family. This means that the family will not be invited to any social occasion, nor will they find prospective matches from their community for their children to marry, nor will anyone eat/drink in their homes or visit them. Further, a boycott involves being excluded from the economic and livelihood networks that bind the community. Even where the extended family may not agree with the boycott, they must comply. The consequences of non-compliance are that they too risk being boycotted.

### **iv. Legal intervention impacts: On the field workers/community organizations**

Most of the field workers/peer leaders are often girls/young women themselves, from the same context as the girl who is being helped. These social workers are known, identifiable and may attract severe backlash to themselves, which can be life threatening. In some cases, the field worker leading the intervention has to move away for months or not visit that village again, to escape retaliation.

Organizations reportedly encounter personal threats, work disruption/breakdown of trust in the community, and damage to property, among others. This backlash must be anticipated when advocating for stringent laws, as the burden of activating legal redress is borne by such organizations.

### **v. Negotiation, not formal legal redress**

'Legal' typically means the presence of state agencies, rather than formal prosecution under the law. Invocation of the law most often refers to situations where the social workers secure

support from various government entities – including the CWC, VLCPC, CMPO, Integrated Child Development Scheme (ICDS) workers, the Childline, the police and the administration (such as the District Collector, the BDO, SDM and *zila pramukh*). There are difficulties of registering an FIR, and risks of the girl’s plan being known to her family if police are involved too early, as we have noted. Organizations activate the police along with other agencies at the stage when they physically intervene to get the girl out of her home, and transport her to the shelter home.

The involvement of state agencies and officials (such as the police) makes it possible to take the girl to safety and begin negotiating with the family. So negotiation and the girl’s safety, rather than prosecution, is made possible with the law.

The law provides for formal injunctions to be issued against child marriage. If a girl is married in spite of an injunction, the law is violated and such a marriage is considered void, or having no legal validity. In reality, however, in keeping with the spirit of negotiation, marriages are stopped by organizations together with the police, through a *pabandi*, or an informal injunction, against the marriage. After this, the girl may be temporarily placed in a shelter. Although the police resist initiating formal action, they do provide the buffer that enables the social workers to negotiate with the family members.

Formal legal prosecution is more likely to be secured when the girls’ parents are from marginalized and poor communities. In case of dominant caste/social groups, the influence over the police (and sometimes other agencies too) is strong, as is the threat of backlash, which makes formal legal interventions counter-productive. This may magnify the risks for the social workers and the girls. Ironically, the law is seen to work best against families that are poor and lower caste.

The rare cases of girls succeeding in accessing the courts occur because of the tenacity and support of social workers, who source information and activate various networks to navigate the system.

## **vi. Legal vs other interventions: Comparative value**

The law mainly offers ‘avoidance’ of marriage, with the possibility of relocating to a shelter home. The law does not address the fallout of stopping early marriage – such as the girl’s broken ties with her natal family or social ostracism of the girl’s family by the community, or even the heavy fines imposed on the girl’s family by the community.

In contrast, the community organizations invest in continuous follow-up, facilitating linkages of the girls with education, relocation to safe spaces, and mediation with the family and community elders so as to rebuild broken bonds. Their goal goes beyond preventing the ‘occurrence’ of marriage to sensitizing the parents and the community to what the girl wants from her life, the risks of early marriage, and so on. They offer restorative justice which neither the law nor the child protection

bureaucracy has the capacity for. By prioritizing negotiation, they are able to leverage goodwill with both the family and various formal mechanisms.

Despite the existence of formal processes and governmental machinery, community organizations take on the highest risk without security or state acknowledgment of the same. They undertake the responsibility of activating each system's response, working through the day and night when required. These organizations occupy the unenviable position of needing goodwill, even as they risk losing it in the course of their emergency response work. In a case gone wrong, they are labelled the 'enemy' by the community as well as the police.

## **vii. How much of a shelter is a shelter home?**

After a girl is rescued, she is taken into the safe custody of a shelter home. While shelter homes are necessary, the conditions in most such homes are abysmal. The law envisages these as 'safe spaces'. Yet, living in most of these homes is far from empowering for the girls, for they lack educational or capacity development avenues or meaningful therapeutic interventions. Much more attention needs to go into changing shelters from dull residential facilities into transformational spaces, if the girls escaping forced marriage are to feel confident about claiming their rights and can emerge with opportunities greater than what their families and communities offer.

Typically, the girl is returned from the shelter after a short period, under pressure from the family. There is usually only a verbal promise, not a formal injunction, that the parents will not marry off the girl before she is 18. Shelter homes are often open to influence or lack judgement, and counsel the girl (on persuasion of the parents) to return home, without assessing the risks for her. As we have seen, although the family gives assurances that the marriage will not occur, they may wait in some cases, until things cool down, to secretly marry her off. In some cases they take the girl to a relative's home for a quiet marriage.

## **3.3 Conclusion**

The above findings call into question why government commitments to end forced underage marriage – for example, '*Baal-vivaah Mukta Rajasthan*' (Child Marriage Free Rajasthan) – fail to recognize risks taken by community organizations and social workers. There is an argument to be made for acknowledging and safeguarding the working conditions and security of social workers.

Proposals for stringent laws, through demands for declaring underage marriages void or imposing greater penalties, fail to factor in how law operates within social realities. Not only are the risks and costs of implementing such laws too high – for the girl as much as for field workers, or frontline workers who might support her – these laws alone or in their literal implementation are also not transformatory for the girl or the community in any way. For beyond nullifying and punishing, they offer nothing by way of meaningful or restorative resolution. More importantly, proposals to

make laws more stringent neglect the reality that they are most likely to remain on paper, and implemented selectively or symbolically.

Commitments to radically reduce the numbers of early marriage divert attention from addressing the root causes that sustain such social patterns. They empower state machinery to punish, rather than demand it guarantees opportunities and resources to help develop the agency and capacities of girls whose lives are diminished by the pressures of patriarchy and poverty. Calls for strong laws are diversionary for they account for neither the limitations of law, nor the failure to invest in girls, especially those from poor and marginalized contexts, who are most likely to marry early.

Most law reform proposals view the capacities of ‘children’ – in the 0-18 age group – uniformly. Not only do these proposals fail to differentiate between ages or evolving capacities, they also see different kinds of early marriages – forced and self-arranged – in the same light. In contrast, community groups ascertain the wishes of the girl and intervene to not just stop the marriage, but also invest in restoring stability and agency beyond escaping the marriage. In their functioning, the field workers consistently ascertain the wishes and long-term well-being of the girl. Their role is not defined by the prevention of marriages, but by enabling capacities, safety and empowerment of girls. Their goals sometimes direct them to get involved in preventing a forced marriage, but at other times may entail helping a girl marry a partner of her choice, or take steps against domestic violence.

The approach of formal law and law reform proposals differs markedly from that of the community groups. The former two are concerned about simply delaying marriage, without reference to the social contexts or how social realities transform the functioning of the law on the ground; whereas the community organizations are involved in securing and enhancing life chances for girls to secure their future. Accordingly, they invest in collectivizing girls and working with them to develop their agency, and in the course of doing so, they tackle various obstacles in the lives of the girls, including calls to prevent/exit forced marriages.

## CHAPTER 4

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# MACRO DEBATES, DATA AND LAW REFORM PROPOSALS ON CHILD MARRIAGE:

## BRIDGING THE GAPS?

In what ways do macro debates on child marriage, nationally and globally, impact the law reform proposals in India? Are the law reform debates, in their conceptual framing and terminology, aligned to the grassroots realities, national data or intersecting themes relating to young persons and underage marriages? Are the key global and national players framing targets and proposals with sensitivity to contextual diversities of young lives in India?

Many global and national actors, including the ministries and line departments, are seeking to change the PCMA, as it currently exists (where underage marriages are valid though voidable), to making all underage marriages void, that is, having no legal status. Some even seek to increase the minimum age of marriage to 21 years uniformly for girls and boys. The PCMA was amended in the state of Karnataka in 2016, to declare all underage marriages void. Although no case has been filed so far, news reports suggest that underage marriages in poor communities continue to take place.

**“Are the law reform debates, in their conceptual framing and terminology, aligned to the grassroots realities, national data or intersecting themes relating to young persons and underage marriages?”**

This section summarizes some of the key voices in India engaging with the child and early marriage debate at the macro levels. It outlines their thoughts on how macro trends interact with micro realities, where the fault lines of the child marriage debates lie, and the gaps between international standards, global and national activism, and law reform proposals.

## Macro data and structural linkages of child marriage

**Mary John, Centre for Women's Development Studies**

It is important to look at policy narratives that contextualize data on early marriage, such as the Census and National Family Health Survey (NFHS) data. According to Census, 2011,<sup>6</sup> as many as 85 million women were married before the age of 18, out of which 5 million were married within the last four years of the survey. However, a one-dimensional approach problematizes the magnitude of early marriage incidences. Another singular approach is the celebration of the falling rates of early marriage captured by NFHS data, the latest of which (NFHS 4)<sup>7</sup> illustrates indicates that 30% of women in their early 20s were married before the age of 18; there has been a fall in incidences of marriages of girls under 15 years but a corresponding increase in the marriage of girls between ages 15 and 17, which suggest a delay in marriage. Set within the context of SDG 5.3 that aims to eliminate CEM by 2030, should one celebrate the steady decline or fret over the high incidences of marriage in comparison to countries in Africa or Bangladesh?

There is a critical need to understand the factors that have led to a delay in marriage and those that have pushed up the marriage age of girls. The nuanced linkages between the larger causes of forced early marriages – such as poverty, low quality of education or unemployment – should be recognized, rather than looking at age alone. What do falling rates of fertility tell us about CEM where they have been historically linked? On the growing push towards education as a solution to early marriage, it is crucial to guard against not only a singular focus on boosting education, but also viewing schools as crèches to occupy girls until they are 18. There needs to be more debate on the linkages between rates of ECM and the relationship of women with work, specifically the low labour participation rates for women in India. What opportunities can we envision for girls if marriage is delayed through this emphasis on age alone?

There are increasing incidences of love or 'choice' marriages that those below the age of 18 enter into, constrained in their options as they are. This group experiences neither youth culture in terms of education nor an appropriate work culture, instead making choices against social norms that render them vulnerable.

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6 Census, 2011. [http://www.censusindia.gov.in/2011census/population\\_enumeration.html](http://www.censusindia.gov.in/2011census/population_enumeration.html)

7 NFHS 4. [http://rchiips.org/nfhs/factsheet\\_nfhs-4.shtml](http://rchiips.org/nfhs/factsheet_nfhs-4.shtml)



## Conflicting approaches and policy contradictions

**Bharti Ali, Director of HAQ Centre for Child Rights**

There is a disconnect in policy frameworks related to children that arises from differences in perceptions, with the policies fixated on 'age' as the sole marker of childhood, while neglecting the 'agency' in children. These differences distinguish the child protection groups from the child rights groups, as the latter recognize the existence of agency and the many factors that shape the agency of children. The child rights approach calls for shifting the focus from 'age' to 'agency' so as to craft policy frameworks that are enabling, respectful and supportive of children across different age groups.

The advocacy for a uniform definition of 'child' as below 18 across the Indian Majority Act, 1875, National Child Policy, Protection of Children from Sexual Offences Act (POCSO), 2012, and Juvenile Justice Act, 2015, has failed to adequately consider the outcomes of linking age alone to the categorization. The increase in the age of sexual consent by the POCSO was driven by this sentiment, depriving children of rights in the guise of protection. Criminalizing consensual sexual activity has put children at risk; strict liability laws like the POCSO endanger young couples who in any case are subjected to parental wrath. Acting on the populist demands for heavier sentences would exacerbate the situation. Despite being a gender-neutral law, boys are at increased risk of incarceration under the POCSO, even when the couples are close in age.

It is vital to recognize the interactions of the PCMA, POCSO, Medical Termination of Pregnancy Act, 1971 (MTPA), and compulsory registration of marriages. The recognition of consent needs to be based on context-specific rationales rather than be applied uniformly. For instance, the consent of the child is relevant for adoption and custody cases, as well as for purposes of medical examinations for those above 12 years. Ironically, the Juvenile Justice Act was amended to waive its protection for children in the 16-18 age group, if they appear to be 'mature' enough to be tried as an adult, while denying that very age group the right to sexual consent. In this context, it is important to reopen the question of consent and maturity.

## Adolescent sexuality: A blind spot in child protection debates

**Madhu Mehra, Executive Director, Partners for Law in Development**

The law has historically viewed adolescent sexuality from the perspective of harm. The colonial state was compelled to declare a minimum age below which it was harmful (and criminal) to have sex with a girl, in a context where customary practices allowed infant and child marriages. The interlinked history of age of consent and age of marriage can be traced to Phulmoni Das's case (1889)<sup>8</sup>, when a severely embarrassed colonial state was pushed to increase the age of consent

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8 Queen-Empress vs Hurree Mohun Mythee, 26 July 1890.

from 10 to 12 years, as the law was unable to prosecute the forced sexual intercourse by a 35-year-old husband with his 10-year-old wife, which caused her to bleed to death. Faced with the outrage of the social reformists, the government increased the age of consent. This continued gradually until 1929 when a distinction emerged between age of marriage and age of consent. Although the age of consent was 16 years (from 1940 until 2012), it was a marker of 'statutory' rape, rather than an acknowledgement of adolescent sexuality. With the enactment of the POCSO, every expression of child and adolescent sexuality, including caressing, has been cast as exploitative, harmful and punishable, with consent and capacity linked entirely to age.

The policy discourse on CEM as well as protection from sexual abuse is based largely on harm prevention and fertility control – without any reference to the physiological and psychological development of the adolescents, including in relation to sexuality. These two areas have increasingly witnessed proposals for stringent state action and punishments, without much attention to the problems that beset adolescents most likely to enter into early marriage – such as quality of education and not just access to it; the provisioning of resources, opportunities and livelihood options that are transformatory for the poor; social disadvantages and rural/urban locations, etc. Instead, the POCSO's mandatory reporting requirement puts service and healthcare providers as well as frontline workers at risk of punitive action if they fail to report cases of consensual relations as 'abuse' to the police.

In contrast, the United Nations Convention of Rights of the Child (CRC) uses the principle of 'evolving capacities' to distinguish between minimum ages set for different sets of activities. Accordingly, capacities for sexual activity are seen as varying from those required for marriage, or driving, voting and consumption of alcohol. Articles 5 and 34 of the CRC imply that policies protecting children from sexual exploitation and coercion must not be leveraged to deny their sexuality. State obligation to provide sexuality education, and sexual and reproductive health information and services, as well as stipulate an age of consent that is less than the minimum age of marriage, are important ways of strengthening the capacities of adolescents in relation to their sexuality.

The PCMA's nuanced approach to early marriage is threatened by proposals that seek to render all underage marriages, forced and self-arranged alike, *void ab initio*. In the face of parental and community backlash in the form of honour crimes and 'love jihads', the discourse on early marriage must take on board different trends and realities, including self-arranged marriages, to devise interventions that address structural conditions rather than promote age-centric bans of CEM.

## Global coalitions, SDGs and single-issue targets

### Shipra Jha, Head of Asia Engagement, Girls Not Brides

'Girls Not Brides' emerged as an effort to facilitate international and regional coalition building to tackle child marriage. Since no international treaty addressed this as a specific concern, earlier efforts collectivized around fostering international commitment in other ways and resulted in SDG 5.3 that aims to eliminate child marriage by 2030. This has translated into advocacy for minimum age of marriage laws where there were none or where the age of consent was lower than 18 years.

In relation to work on regional coalition building, the Indian scenario is defined by a lack of a national partnership positioned against child marriage. Approaches thus centre on linking ground efforts for girl empowerment and CEM-allied concerns of boosting health and education with service providers, state governments and community-based organizations, whilst campaigning for stronger laws with implementation. Efforts to take this work forward also include building youth leadership and voices within existing networks.

The gender equality frameworks within women's rights movements are at odds with the positioning of child protection groups. Even as we believe that the consensual sex with informed choices must not be criminalized for those under 18, our focus is on underage marriage. The issue of criminalization of consent, although important, is not part of the advocacy on the minimum age of marriage or elimination of child marriage. The nature of responsibilities attached to marriage requires capacities commensurate with the age of 18 years. Therefore, underage marriage below the age of 18 cannot be a phenomenon of 'early marriage', but remains that of child marriage. While advocating with the government, there is a need to unify around positions amongst contradictory laws, whilst still prioritizing adolescent concerns.

## CHAPTER 5

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# A WAY FORWARD:

## CONSENSUS POINTS FOR A COMMON AGENDA

The deliberations over the two days of the national consultation sought to link the grassroots accounts with the macro impulses for a more stringent law. The case studies and deliberations shed light on many divergences between the child marriage debates and the contextual realities. The law reform proposals seeking to nullify all underage marriages appear blind to the reality of how deeply embedded legal structures are within social power relations, and how that colours the law in practice. The proposals seek to deny recognition to underage marriages, without addressing the structural conditions or vulnerabilities that compel such marriages.

The functioning of the PCMA indicates that its implementation is very different from the black letter of the statute. In distinguishing between responses to different kinds of underage marriages, the PCMA allows field workers to adopt case- and context-specific strategies. In contrast, the law reform proposals lack the nuance necessary to respond to different situations, while failing to account for the gap between what the law stipulates and how it works in practice. Accordingly, the deliberations over two days rejected proposals seeking more law, or a stronger law. Instead, the consensus was to infuse the child marriage debate with intersectional concerns that focus

**“Accordingly, the deliberations over two days rejected proposals seeking more law, or a stronger law. Instead, the consensus was to infuse the child marriage debate with intersectional concerns that focus on enhancing opportunities and capacities of girls to build agency and expand life chances.”**

on enhancing opportunities and capacities of girls to build agency and expand life chances. The list of consensus points for a common agenda listed below touch upon intersecting aspects that strengthen agency and capacities of girls, including through a legal framework that is cognizant of the lived realities of girls.

## 5.1 Recognize adolescent sexuality as part of the evolving capacities of those below 18 years

**i. Recognize adolescents:** The category ‘child’ consists of many sub-categories of which adolescents are one. The psychological and physiological development of children evolves with age, with age clusters within 0 - 18 years – infants, pre-schoolers, pre-teens and younger and older adolescents – having varying capacities. At the level of state programmes like ICDS and Rashtriya Kishor Swasthya Karyakram (RKSK), a differentiation in children based on age clusters is visible, but the same differentiation is missing in law and policy. That the adolescent child is a category is a starting point for creating enabling frameworks for this group, to help transition children into adults.

**ii. Acknowledge adolescent sexuality:** Sexual consciousness arises with puberty, growing through adolescence. The law needs to acknowledge adolescent sexuality as a natural part of human development, as a starting point to develop state obligations towards developing those capacities, protecting against harm and abuse, and enabling a safe environment within which adolescents can be themselves without stigma or punishment.

**iii. Reduce age of sexual consent while protecting the adolescent from coercion and abuse of power and trust:** A discussion needs to be initiated on what the age of consent should be, and the age range within which sexual activity between peers can be considered non-coercive. An age proximity or ‘Romeo Juliet’ clause is necessary to enable positive sexual activity while prohibiting coercive relations. ‘Honour’ crimes as well as punitive laws should not be used to stigmatize and punish consenting adolescents.

**iv. Ensure age of consent is lower than the minimum age of marriage:** The capacities for marital obligations in society and in law entail far more responsibility and are very different in nature compared to what is involved in sexual activity and experimentation. The age of sexual consent is currently the same as the minimum age of marriage for girls, exposing young couples to the dangers of punitive carceral responses. This is not what the PCMA envisaged. The first and most urgent step in relation to addressing early marriage is to reduce the age of sexual consent from 18 years.

**v. Incorporate CSE as a policy:** The significance of comprehensive sexuality education (CSE) as part of life skills has not been understood amongst various stakeholders such as teachers, principals,

parents, Child Protection Officers (CPOs) and CWCs, let alone the state. The necessity of this in comprehending the distinction between natural, positive sexuality and abusive, harmful sexuality cannot be overemphasized. The RKSK too has to go beyond menstrual hygiene to address issues of gender, sexuality and power relations, within which young adults navigate relationships.

**vi. Focus on greater engagement with boys:** In relation to CSE as well as community programmes, a much greater focus on boys is necessary to sensitize them to issues of power and abuse, including in relation to gender and sexuality. This is severely lacking.

**vii. Develop consent culture:** It is not enough to introduce age of consent without actively creating an environment that enables exercising and respecting consent. This is an important area of consciousness-raising for adolescents, young adults, parents, teachers and medical health providers. What inputs do adolescents need for informed decision-making, how do the society, the family and the state contribute to creating conditions for informed decision-making? How do we accept and understand decisions and choices that may be different from our expectations? These questions will open up once we seriously engage with the idea of consent.

**viii. Provide conflict resolution and counselling:** A critical concern that emerged was the need for parents and offspring to have support services to resolve conflicts. The mental health toll from interpersonal inter-generational conflicts on adolescent children and mothers (who primarily bear the emotional labour of nurturing and dealing with their children's problems) is enormous. For adolescents, there is the additional burden of going through relationships, breakups, sexual experimentation without any confidential, empathetic guidance or support. Social workers and state crisis intervention must respond to these too, in addition to cases of domestic violence.

## 5.2 Calibrate responses to underage marriage

**i. Distinguish between different kinds of underage marriages:** There appear to be multiple trends within underage marriages, some of which are already recognized by the PCMA. The law, as it stands, treats marriages where the girl is kidnapped or trafficked or where a legal injunction is violated as void; other underage marriages are voidable at the option of the parties to the marriage. Additionally, there is a need to differentiate between forced, arranged and self-arranged (or elopement) marriages; and between underage marriages based on whether the parties are in early or late adolescence.

**ii. Keep the 'wishes' of the parties/girl in the forefront to distinguish forced marriage from a self-arranged one:** With the PCMA, a recognition of what the girl wants is factored into law. The PCMA allows underage parties to opt out of marriage on attaining adulthood. This allows the parties who were forced into marriages, as well as those who regret the decision to marry early, to opt out. For this legal provision – which offers adolescents a second chance – to be effective, there is a need

to invest in developing a ‘consent’ culture, which equips young people with the tools of decision-making so they may avail of this remedy.

**iii. Use an intersectional lens in addressing forced marriages:** The macro data already suggests that the age of marriage is increasing in India, and a growing trend of self-arranged marriages is seen, with law often being used to punish consenting couples. There is a need for civil society organizations, researchers, field workers, CWCs and police to use an intersectional lens while investigating, dealing and writing about the issue, so as to distinguish between cases of forced and early/child marriages. An intersectional approach requires identification of how caste, religion, economic status, poverty, sexual orientation and gender identity of the children and their families contribute to forced marriage, or indeed, self-arranged marriages and elopements, thus nuancing the complex arenas of kinship, intimacies and marriage.

**iv. Develop a calibrated law that addresses the multiple realities of early marriage:** As we have seen, there are diversities within early marriage – forced marriage and trafficking exist, as do self-arranged marriages. And there is also the fact that plural normative systems operate in grassroots contexts, with the caste and *biradari* norms affecting not just the communities but also the police and the state functionaries. The law cannot turn a blind eye to any of these aspects. With the field of underage marriage being so complex, differentiated interventions are called for. Many community groups tackle the vulnerability of girls in the context of underage marriage (among other things) and ensure their safety through awareness raising, collectivization and trust building by innovative interventions. The law can draw important lessons from these experiences of community groups to offer interventions that help girls across different circumstances.

The PCMA is flexible in that it allows social workers to mediate where the threat of backlash is high, garnering support for the girl from diverse sources to avoid being subjected to the whims and power of any single system. It clearly declares some types of underage marriages *void ab initio*, while giving young parties the right to nullify a marriage on attaining adulthood. This flexibility is vital for accommodating the multiple realities of early marriage in India. A stringent law will be counter-productive, without providing recourse to those who seek help, as it will still be subject to a recalcitrant police influenced by plural systems.

### 5.3 Parallel initiatives for effective functioning of the law

**i. Focus on quality of education and creation of opportunities beyond education:** The concern about girls’ education must not be limited to stopping early dropouts, but be focused on the quality of education along with skills and opportunities available after education. The education solution is often limited to keeping girls in school to delay marriage, when what is needed are more opportunities for girls to create viable futures that are not dependent on marriage. Real transformation in the long run requires that marriage no longer remains compulsory for the social and economic survival of girls and women.

**ii. Ensure quality shelters and restorative justice for girls:** There is a need to survey and improve the shelter facilities and the vocational skills training currently available for girls. Rather than being a space of nurturance and transformation, the shelter homes are custodial in nature, with widespread reports of abuse. This is a critical issue as they house girls in ‘need of care and protection’. These facilities must offer trauma recovery, and build confidence, vocational skills (non-traditional), and income-generating opportunities, to increase the girls’ options rather than just remain places for biding time.

**iii. Recognize the importance of grassroots groups for breathing meaning into law:** Although multiple agencies under criminal justice, child protection and local administrative systems are mandated to play a role, the most effective are the voluntary grassroots organizations and collectives. They are the least resourced and most vulnerable, as they lack official mandate or state sanction to fulfil this role. Yet, these organizations and workers play a crucial and a more far-reaching role than the law or official machinery can ever aspire to. They are sensitive and agile, with a mandate going much beyond addressing violations. They raise consciousness among women, girls and the community about issues, build linkages with the girls, and are accessible; they also take on enormous risks to investigate a case, mobilize state machinery and the law, and confront local power structures to help the girls in every way. Much after the crisis, they continue to follow up, facilitating opportunities and mediating with the family and the community, to ensure safety within the existing context, if possible. It is critical that such grassroots organizations be encouraged, expanded and strengthened to reach out to girls from marginalized populations.

**iv. Ensure more research and data:** Much is said about linkages of CEM with domestic violence. This is not sufficiently substantiated, as these concerns are endemic within patriarchal settings and not age-specific. Similarly, maternal mortality and school dropout are more an outcome of poverty and absence of state provisioning in these areas, rather than early marriage, low-income settings and other consequences. To understand root causes we might want to ask, instead: how do poverty, low quality of education or unemployment contribute to early marriage? Or, what do falling rates of fertility tell us about CEM? Looking at these questions might lead us to transformatory solutions that create opportunities rather than punish and stigmatize populations that are marginalized and poor. More research on the root causes is needed to tackle the underlying conditions that give rise to child marriage and other symptoms of vulnerability and poor life chances of girls and women.



## Annexure A

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# PREVENTING EARLY AND FORCED MARRIAGES: CASE STUDIES<sup>9</sup>

### **Bindiya, Kekri block, Ajmer district, Rajasthan**

#### **Mahila Jan Adhikar Samiti (MJAS), Ajmer, Rajasthan**

Bindiya, 16, belongs to the Meena caste. She lived in Sawar village, Kekri tehsil in Ajmer district, with her uncle and his family. Upon discovering that her relatives were planning to get her married, she sought help from her friend who called the Childline helpline to stop the impending marriage.

The call was referred to Mahila Jan Adhikar Samiti (MJAS), Rajasthan. When the community workers from MJAS contacted Bindiya, they found out that her marriage was scheduled in just two days' time. They immediately contacted the CWC in Ajmer district, the Sub-Divisional Magistrate (SDM), and the Child Marriage Prohibition Officer (CMPO) under him to direct an inquiry. The police Station House Officer (SHO) at Sawar took a written order prohibiting the marriage at Bindiya's house, but the relatives were able to convince him that there were no plans for a wedding.

Suspecting that the police was onto their plan, Bindiya's relatives decide to advance the wedding by a day. Bindiya was able to inform the MJAS workers of the change in plan just a few hours before the scheduled time of the wedding. By then, she was sounding desperately worried about whether her wedding could be stopped.

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9 Names have been changed to maintain the anonymity of the girls.

The workers rushed to Kekri tehsil where they headed straight to the SDM's office to collect an order for the SHO of Sawar police station to stop Bindiya's wedding. At the police station in Sawar, they found the SHO showed no inclination to act. He simply told the community group that a warning had been given to Bindiya's uncle and then began to interrogate them in an attempt to find out the source of their information.

The workers called the SDM's office to force the police to call Bindiya's family to the station. At first only Bindiya's uncle came to the police station, but she was brought in later as well after the social workers demanded that she be present to tell the truth. Bindiya was taken aside by the social workers where she confided to a female MJAS worker that she was being forcibly married. It was only on the urging of the community workers that she found the courage to say this in front of everyone else. The workers started to make arrangements to transfer Bindiya to a shelter.

The police station had begun to receive calls inquiring about this case, possibly to exert pressure. The SHO kept trying to coax Bindiya to speak with someone over the phone on an urgent matter, which the social workers did not allow as they realized this was a tactic to intimidate Bindiya. Many similar calls were also made to the social workers from local administrators and municipal officers to urge them to not take Bindiya away to the shelter home. The social workers ignored the calls. Nor did Bindiya waver, even when her relatives tried to physically stop her from leaving.

Shortly after leaving for the shelter, the team received a call from the SDM in Kekri forcing them to take Bindiya to his residence at 11.30 at night. The SDM wanted to speak with Bindiya alone but the team refused to let him. Bindiya told the SDM that she was going with the team of her own volition. She also refused to tell the SDM she was the one who had called the community workers to intervene for fear of putting herself in danger. Finally, escorted by a constable, the team left for Ajmer.

The team used their network to coordinate with different groups so that arrangements for Bindiya's arrival could be made. The CWC gave a verbal direction to the warden of the shelter to admit her to the shelter home for the night. The next morning, the team filled Form 17 as per procedure along with the counselling report that outlined Bindiya's situation. The CWC Chairperson took over the case, after which the role of the social workers reduced.

However, MJAS did not receive a follow-up report. When an MJAS worker was at the CWC building for a different case, he contacted the Chairperson about the status of Bindiya's case. He discovered that Bindiya had been sent back home, ostensibly because she did not want to stay at the shelter and had claimed it was the social workers who had pressurized her to stay there.

A senior member of MJAS visited the Chairperson to find out more about the case. The latter claimed that Bindiya was in love with another boy who she wanted to marry, the same one who had called the helpline, and that was why she had exaggerated the situation at home. He also said that

the team was lucky there was no complaint against MJAS for forcibly taking Bindiya away from her house. All this was at complete variance to the evidence the team had collected about the planned wedding, such as the wedding card and testimonies of the neighbours.

The team realized that it was the caste angle that had exerted pressure on the CWC, SDM and shelter home to get the matter dismissed quickly. Seeing the official doors close on them, the team used their last card in victim protection. They approached the local media, while also engaging with Childline, the shelter home, Special Juvenile Police Unit (SJPU) and CWC to follow up rigorously with Bindiya's family and ensure the wedding was called off.

Bindiya's wedding was stopped. The MJAS team engaged with authorities to ensure that her education be continued. Bindiya currently studies in Kota and is living with another uncle. She still stays in regular contact with the MJAS team, albeit without the knowledge of her family.

### **Seema, Kholadia village, Nawabganj tehsil, Deoria district, Uttar Pradesh Social Action for Knowledge-building and Awareness Raising (SAKAR), Bareilly, Uttar Pradesh**

Seema, a Kori Dalit girl, then 13, lived in a village in Deoria district with her alcoholic father and her brother. Due to their extremely limited means, they wanted to get Seema married (against her wishes) to Kapil, a 35-year-old man, for a bride price of Rs 35,000. Wedding arrangements were made.

During a visit by two field workers from SAKAR to Kholadia village, a young girl informed them of Seema's imminent marriage. The field workers immediately spoke with the leader of the Mahila Shakti Sangathan, or women's collective associated with SAKAR. Through inquiries, the organization found out that Seema's mother scarcely knew of the marriage plans, and accordingly alerted the women's collective in Seema's village. Seema's father and his relatives had arranged the marriage. The mother gave the field workers the address where Seema and her father were, telling them it was up to them to prevent Seema's forced marriage to a much older man.

The field workers reached the father's house and when they questioned the father, he became agitated, and called his son. Seema's brother was angry at what he perceived as interference in a family matter. Amidst verbal abuses, wild gesticulations and threats of violence, he refused to allow them to meet Seema and asked them to leave. Disheartened but not discouraged, the team shifted their focus to the groom's family; they, too, had been secretly making arrangements for the wedding.

Meanwhile, a team member called 181, a women's helpline, which explained that they would step in only on the day of the wedding to prevent the marriage, not before that. The next day, the team

learnt that clandestine arrangements had been made to shift the wedding to the groom's village. The groom and his father had arrived in a van to quietly take Seema away.

The team decided to look for other sources of help. They approached the District Provincial Officer (DPO) who, in her speech at a recent Human Rights Day celebration, had exhorted the public to be aware and proactive in terms of protecting rights, and if necessary, approach her for help. At their request, the DPO immediately directed the district office to send a rescue van with the police.

The social workers rushed to Seema's house. They waited there till the rescue van arrived before approaching Seema's father again, this time adopting a persuasive rather than confrontational strategy. They asked the groom, his father and Seema's father to reflect upon her young age and her future. Sensing some reception, they proceeded to talk about the likely impact of marriage on her health. Seema's father admitted that poverty was compelling him to marry off his daughter as he lacked the means to take care for her or arrange a marriage when she was older. Although the father's relatives were adamant that the wedding be held, the matter was de-escalated through the silent presence of the police force.

Since the father agreed to call off the wedding, the team left without taking Seema to the shelter home. Before leaving, they impressed upon the father that her education be continued. Although the social workers are not allowed to meet directly with Seema, they keep in touch with her through her school where she continues to study, despite restrictions on her mobility.

## **Yasmin, Nagpur, Maharashtra**

### **Rubi Social Welfare Society, Nagpur, Maharashtra**

Yasmin, 13, daughter of a vegetable vendor, is part of a large household. Her family was devastated when she was sexually assaulted by a local hoodlum, and worried about the continuing threat posed since he lived in the immediate neighbourhood. The fear, insecurity and shame drove her family to arrange her marriage in an *ijtemai* ceremony (mass wedding) organized within the community, as it appeared to afford safety to the girl.

Yasmin tried to reason with her parents about these plans as she simply did not want to get married, but in vain. Panicking upon seeing wedding preparations underway, she reached out to her older friend Aneesa. When Aneesa was 17 years old and married with a young child, she had sought help of social workers to facilitate a separation from a violent husband. Yasmin sensibly assumed that Aneesa had the experience to arrange help for her.

Aneesa alerted Rubi Social Welfare Society, which lost no time in intervention, as there were only two days for the *ijtemai* ceremony. *Ijtemai* ceremonies are mass marriages solemnized by a

qazi<sup>10</sup> on a given day, typically to help poorer families perform marriages within cost. The details of parties seeking the *ijtemai* ceremonies are generally ambiguous, as these are organized by religious bodies. For Yasmin, the pre-wedding *haldi* and *mehendi* ceremonies had already been performed. In a situation fraught with much sensitivity, the social workers feared that talking to the family might expose Yasmin and themselves to physical abuse. Weighing these risks, they decided that the best course of action would be to secretly gather the legal evidence necessary to back their intervention, as a straightforward inquiry would jeopardize the rescue. First, they secretly met Yasmin outside her home to ascertain what she wanted, find out more about her situation, and assure the despondent girl that help was at hand. She was clear she did not want to get married at all, and was afraid to admit this in front of the parents; in fact, she was adamant that they must not know she had sought help from the organization.

To back their claim and act within the law, the social workers needed proof that Yasmin was underage. Only then could the challenge to the *ijtemai* committee hold. Two of the organization's volunteers went to Yasmin's house, posing as official surveyors verifying they all had Aadhar cards. Conversing with the family as they looked at everyone's documents, they casually asked for Yasmin's proof of age documents. While bringing these documents, Yasmin mentioned that her Aadhar had incorrectly inflated her date of birth, whereas the age of her school certificate was correct.

Having collected these documents, the workers went to the closest police station to inform them of the situation. The police needed considerable persuasion, as they were reluctant to intervene in what appeared to be a charitable religious activity. But faced with documentary proof of Yasmin being underage (school certificate), the police had no option but to investigate. They approached the family and their findings compelled them to obtain an order to halt the arrangements for Yasmin's marriage the day before the mass wedding was scheduled.

Even as the police process was ongoing, the workers brought the question of age proof to the attention of the *ijtemai* committee. The committee expressed their inability to take responsibility for the age of girls as they organize mass marriages involving many families and girls. But fearing police action against them in this instance where proof existed, they agreed to enter into a dialogue with the organization to improve their due diligence. The committee eventually set in place a procedure of asking for the age proof of girls before conducting and registering weddings. Whenever in doubt or where no proof of age is available, they now contact the organization for help in ascertaining whether the girl is eligible for marriage.

For Yasmin, however, though the wedding was called off, other problems arose: she was put under virtual house arrest by her parents who were distraught by the cancellation of the wedding. Though they confiscated her phone and would not let her step out, the team nonetheless attempted to keep in touch with her through Aneesa. The parents pressurized her to disclose who she had spoken to,

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10 A learned man who adjudicates or mediates in disputes as part of applying Islamic law within communities, and officiates at marriage ceremonies.

suspecting she herself had a role to play in the turn of events. While Yasmin's outings with friends or visits to their houses ceased, she took sewing and computer classes that she enjoyed.

Fearing social stigma, the parents had avoided filing a police case for the assault, while the attempted marriage plans for Yasmin depleted their financial status considerably. Unable to deal with successive setbacks, they left their village. So far as Yasmin is concerned, from their communication with her, the organization feels the trauma of the assault and the fear of being forcibly married have begun to fade.

## **Jamila, Malda, West Bengal**

### **TALASH – Society for Inner Strength, Peace and Equality, Malda, West Bengal**

'Lucky', a village-level group of school-going adolescents, participates in extracurricular activities to campaign for social awareness. When one of their members, 15-year-old Jamila, a 9<sup>th</sup> grade student, became very irregular in her attendance, the group asked her classmate Atabi, who was also part of 'Lucky', to investigate. She found that Jamila's parents had been arranging her marriage, which was to take place shortly as a result of which her mobility was restricted. Atabi alerted the group and the peer leader, who approached the social workers at TALASH.

To verify the situation, the workers and the peer leader strategically designed a game around the importance of personal autonomy and decision making about one's life, to discuss the damaging impacts of early marriage on girls' lives. This game was conducted when Jamila attended a meeting, helping her to confide to the group that she did not want to get married. Meanwhile, a group member was sent to her neighbourhood to get more information on the case.

Once the marriage plans were verified, the peer leader obtained evidence of Jamila's age from the school, and called Childline. The field workers of TALASH also contacted the Joint Block Development Officer (BDO) and the Village Level Child Protection Committee (VLCPC).

Members of Childline and VLCPC visited Jamila's house the next day and spoke with her parents. After discussing her parents' concerns, they were successful in cancelling the wedding. The parents agreed to let Jamila continue her education and she was allowed to proceed to 10<sup>th</sup> grade with help from the field workers.

However, in their talks with Jamila's parents, one of the interveners happened to mention Nur Jahan, the peer group leader who had alerted TALASH to the situation. Following this, Jamila's

father paid Nur Jahan's family a visit, blaming her for ruining the wedding arrangements. He also filed a complaint against Nur Jahan with the *pradhan* of the *panchayat*, and sought a *gram sabha* meeting (village council/convening of the entire village) to ask for compensation and punishment for Nur Jahan, for the financial and social ruin he had suffered because of the cancellation of Jamila's wedding.

Due to the growing risk and real danger to Nur Jahan, her parents sent her away to stay with her aunt. From there, she called up TALASH supervisors to update them. Workers from TALASH met her and took her to the Joint BDO and VLCPC. The BDO immediately called the police to file an FIR over the threats to Nur Jahan. At the *gram sabha* meeting, a Sub-Inspector was present to explain to the villagers that had the marriage been performed, it would have been illegal and would have harmed Jamila's father. He asserted that Nur Jahan could not be punished for helping prevent the marriage. Only after this did the BDO ask Nur Jahan to return home although some residual anger against her remained amongst those who supported Jamila's parents. To counter this, social workers from TALASH stayed in constant contact with Nur Jahan, the administration, the police and VLCPC members, continuously monitoring her safety.

Nur Jahan continues to be a peer group leader to this day, a position that Jamila now also holds. Jamila also conducts trainings for girls for TALASH, using her own story to advocate against forced early marriages and continued education for young girls. The team still speaks with both the girls every 15 days to monitor conditions in the village.

## Annexure B

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# EXITING EARLY AND FORCED MARRIAGES: CASE STUDIES<sup>11</sup>

### **Jashoda, Emri village, Rajsamand tehsil, Rajasthan Rajsamand Jan Vikas Samiti (RJVS), Rajsamand, Rajasthan**

Jashoda, a 17 year-old *adivasi* (tribal/indigenous people in India) girl, lived with her widowed mother, a member of Rajsamand Jan Vikas Samiti's (RJVS) Mahila Manch (women's forum). Her mother approached the organization to discuss her daughter's predicament.

Jashoda had been married off at the age of 8 years and sent to her husband's home when she turned 14. There, she was subjected to physical and mental violence and made to work hard. After receiving death threats from her husband and being thrown out of the house, she decided to leave for good. When she was called back to take care of the household, she was determined not to go back. However, Jashoda's family wanted her to return because if she left her husband, they would have to pay him a customary fine or payment for breach of marriage agreement. The husband, of course, wanted to exploit this.

The RJVS team spoke to Jashoda who told them about the violence and the work she was made to do. Two social workers talked to her in-laws, warning them they were liable to be charged with underage marriage and domestic violence. Her in-laws promised to take good care of her if she returned. The workers asked them to wait until she grew up, as she needed to study at this age. Her in-laws refused, stating they would rather get another bride for their son, and wanted Jashoda to pay the penalty amount.

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<sup>11</sup> Names have been changed to maintain the anonymity of the girls.



The RJVS workers asked Jashoda's family to call a *jati panch* meeting where the volunteers would speak on her behalf. The meeting was scheduled late at night to discourage women from coming but the entire RJVS team came forward all the same. They spoke of filing a case of domestic violence, as well as of the in-laws being indicted under PCMA if they took Jashoda away, because she was underage. The *jati panch* decided to think about it and deferred their decision.

Two weeks later, they came to the RJVS office to tell the team that they would free Jashoda from the marriage without payment of any money. The workers then asked that the money Jashoda's father had spent on the wedding and all articles given in dowry should be returned to the girl. The *panchayat* refused this, saying that was against social norms. The workers replied that in that event they would proceed with a case.

The social workers decided to approach the appointed *zila pramukh*, who was of the same caste as Jashoda and her in-laws' family. This worked, as the *zila pramukh* being part of the local government was compelled to uphold the law. He pressurized the *jati panch*, asking for their names so that they could be published in the media if this matter were not resolved immediately. Not desiring adverse publicity, the *jati panch* passed an order declaring Jashoda free. After Jashoda and her mother made a list of the things given as dowry, the items were brought back. The amount of Rs 11,000 spent on the wedding by the girl's family was also returned through a bank account opened for Jashoda.

Through this continuous negotiation, the RJVS social workers secured a customary annulment of marriage. They waited for Jashoda to turn 18 to begin court proceedings to formally annul her marriage. The in-laws troubled her from time to time, threatening to hurt her if she did not return, but the field workers remained in touch with her throughout and made sure she was not harmed.

In 2015, Jashoda's courage was acknowledged with the 'Garima Award' by the government of Rajasthan; she won a cash prize and was made minister for a day. Her education thereafter was also sponsored by the state.

## **Abida, Baruipur block, South 24 Parganas, West Bengal**

### **Nishtha, Baruipur, West Bengal**

Abida, a 14-year-old Muslim girl from a poor family, was to be married off against her wishes to a middle-aged man. She confided in Bahini, the leader of the adolescent group of which she was a member. Bahini immediately called a volunteer of the Mahila Mandal network under Nishtha.

Once they had verified the information, three volunteers went with Bahini to speak with Abida's parents. They made them aware of the illegality of this move and asked them to cancel the wedding. The parents appeared to agree with the team.

A few days later, the volunteers found out through Bahini that Abida's parents had taken her away. Abida was able to secretly call the members of her group one night, through a phone she had found unattended. She told them her wedding had already been performed the previous day and that she did not want to stay with the man. She was then at her sister's matrimonial home in Odisha. Following the advice of her friends who were also in touch with the field workers of Nishtha, she escaped from her sister's house late at night and reached the Nishtha office at around 1 am. In the meantime, the field workers informed the police of the situation and requested permission for Abida to stay at the Nishtha office for the night.

The next morning, Abida was produced before the CWC who transferred her to a shelter home. The police, on their own accord, arrested Abida's parents for the offence of marrying off an underage girl. Shocked by this, the field volunteers attempted to speak to the police to secure their release but in vain. The volunteers had to seek help from other group leaders of the village to take care of Abida's younger brother, as there was no one to look after him. Abida's mother stayed in judicial custody for a month and a half, despite the volunteers' efforts to have her released.

Abida stayed in the shelter home for about six months, during which time legal proceedings against her parents were concluded, and efforts to find the man who married her remained unsuccessful. The CWC and the lawyer felt that the marriage, being customary, had no legal effect and did not require formal proceedings under the PCMA to be dissolved. When Abida returned home, she was enrolled in school once again.

The chain of events had caused Abida to withdraw from group activities, but through counselling with the help of field workers, and the support of Bahini and other members of the group, she was eventually able to participate fully again. The volunteers, however, received a setback in their community because they were held responsible for the girl's mother being in jail and for stopping a wedding in a poor family who could not make ends meet.

## **Pooja, Ranchhodnagar slum, Vadodara, Gujarat**

### **Sahiyar Stree Sangathan, Vadodara, Gujarat**

Pooja, 16, of the Parmar caste, is the daughter of Malaben, a member of Sahiyar Stree Sangathan's Savings Committee. As a slum dweller, the girl was a beneficiary of Sahiyar's education loan scheme. Her single mother, struggling to make ends meet, wanted to secure her future; accordingly, she arranged to get Pooja married.

Malaben had brought up the matter a few times during the general monthly meetings at Sahiyar. A group of Sahiyar workers spoke to Pooja, and learnt that the girl had acquiesced to the wedding. So the field workers approached the groom's family to ask why they were in a hurry to get their 19-year-old son married to a 16-year-old girl. The family responded that all they were doing at the

time was arranging the match and the wedding would be performed later, when it was legal under the law. However, Malaben surreptitiously took Pooja to the groom's village, and the wedding was carried out. The Sahiyar team learnt of the wedding later.

Within a few months of the event, the field team heard of Pooja's problems at her matrimonial home. She was underfed and often beaten. Pooja did not want to stay in her marital home any longer; she was now keen to break off the marriage. Malaben bemoaned the fact that there was no proof of the wedding. There were also no witnesses from her family and community at the wedding that had taken place at the groom's house, in the midst of his community; they would all be on the groom's side.

At this point, Sahiyar team members stepped in to counsel Pooja. They stressed the importance of her education and writing her 10<sup>th</sup> grade exams; she herself wished to look for a job due to their poor financial position. The team workers insisted on a legal annulment to the wedding, but both Pooja and Malaben turned down the option. It was then that the team workers found out that Pooja's older sister was married to a family related to Pooja's husband, and also that Malaben had borrowed a sum of money from them. Malaben disclosed that her older daughter had been forced by her husband, through beatings and threats of being kicked out of the house, to arrange the match for Pooja. Under pressure and also because she did not have the means to arrange Pooja's marriage otherwise, Malaben had borrowed the money and agreed to the marriage. When the social workers sat down to settle the matter with Malaben, Pooja's husband and his family repeatedly asked them to return the money (Rs 12,000) Malaben had borrowed.

Since the marriage was a customary exchange of garlands and was not registered, neither was there any proof of marriage, informal mediation was carried out to dissolve the marriage ties. Pooja separated and left her matrimonial home.

Post separation, Pooja continues to work and is now married to a partner of her choice. However, Pooja and her new husband still face hostility from her sister's husband, though Pooja's husband was returned the money Malaben had borrowed from his family. Sahiyar's team workers stay in touch with Pooja and Malaben, who are also helped out by Sahiyar's Saving Committee whenever needed.

## **Preeti, Jodhpur, Rajasthan**

### **Vikalp Sansthan, Udaipur, Rajasthan**

Preeti, a 19-year-old girl from the Parihar caste, wanted her marriage annulled as her *gauhna* was due to be performed against her wishes. She was attached to an adolescent group affiliated with Vikalp, called Roshni Samooh. She got hold of Vikalp's contact number from a girl in the adolescent group who otherwise refused to be associated with the situation, because the volunteers had faced

considerable pressure in previous cases. Prior to approaching Vikalp, Preeti had gone to the CWC but they had turned her away. The Vikalp team assured her of their support and counselled her about the process of the law and the challenges in store.

The lawyer associated with Vikalp was not available on the day Preeti needed legal intervention. But as the law allows the girl to file the plea herself within two years of attaining majority and Preeti urgently needed judicial intervention to avoid being sent to her matrimonial home, the Vikalp staff decided to help her with it. Without the lawyer, the social workers were not aware of the legal protocols and had to press the reluctant court personnel for guidance. Despite persistent advice by the court administrative section to return the next day, a delay Preeti could not afford, the social workers managed to persuade the clerks to accept their application by 4 pm that day itself.

At each step, they learnt of new requirements – the need for additional documentation (such as proof of marriage), that they had to themselves deliver the summons/notice to the opposite party (matrimonial family), and so on. Despite the challenges of fulfilling these requirements without a lawyer's help, Preeti managed to do so only because of the dedication and resourcefulness of social workers. Instead of proof of wedding, they submitted an affidavit from Preeti. The case hearing was delayed for months, though the Vikalp workers had organized a *dasti* or speedy hand-delivered notice to the opposite party to expedite matters. With the process taking so long, one day, Preeti's parents forcibly sent her away to her matrimonial home.

Another complication with this case was that it involved *atte-satte* weddings,<sup>12</sup> where Preeti's brother was married to a girl from Preeti's husband's family. This meant that trouble in Preeti's marriage would inevitably impact the matrimonial harmony of Preeti's brother. If Preeti were to dissolve her marriage, her brother might have to as well. The social workers helping Preeti had warned her of this possibility.

For the next court hearing, the social workers were unable to get in touch with Preeti either directly or through a cousin who was supportive of Preeti's decision. On the day of the hearing, two social workers waited in court for Preeti, not knowing whether she would show up. But she did manage to come – by fooling her husband into thinking that she was going to college.

Once the hearing was over, Preeti refused to go home as her husband had tried to force himself on her and had also beaten her. The social workers thought of admitting her into the Nari Niketan (women's shelter), but Preeti had heard stories about the poor conditions of the state of government shelter homes and their treatment of residents, and turned down this suggestion. The organization Vikalp is based in Udaipur (not Jodhpur where the case was instituted), and they had no office in Jodhpur to offer temporary refuge; other shelters for women in the city also refused to take the risk of helping Preeti. So they decided to take her to Udaipur. Private shelter homes in Udaipur too were of no help; they were willing to shelter Preeti only on the condition of handling her case according

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12 Weddings where siblings of one family are married to siblings of another family at the same event to save cost.

to their own protocol, regardless of her wishes. So the Vikalp team arranged for her to stay in their office for the night.

Preeti's parents were informed about where she was. Meanwhile, as she refused to go back to her husband, the *jati panch* asked her parents to pay a penalty of 9 lakh rupees to break the marriage.

The parents normally threaten the social workers with action if they do not bring the girl back, but since Preeti was an adult by now, this danger was averted. Police protection had been arranged through the Collector and an SDM. However, the family claimed a relative was sick and took Preeti away, supposedly to the hospital, following which the workers did not hear from her for a month. The case could not be highlighted in the media, as there was the risk of the village *sarpanch* (head) turning on her, which would complicate matters.

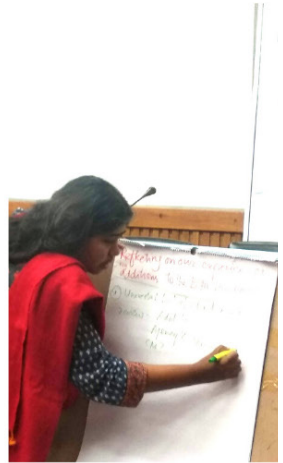
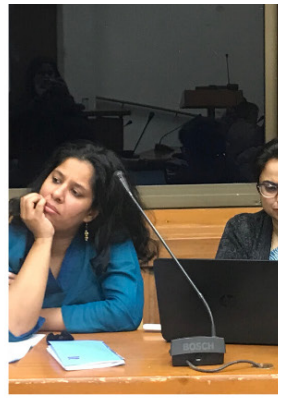
Then, one day Preeti called the Vikalp team to say that she had been taken to her maternal aunt's house. She was determined to appear for her next court date. Once the hearings became regular, the Vikalp team helped Preeti find a job and paid for her first few months' stay at a working women's hostel. She is studying as well. Her brother was informed of her whereabouts. He has managed to preserve his marriage through his own negotiations.

## Annexure C

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# PARTICIPANT ORGANIZATIONS

1. Area Networking and Development Initiatives (ANANDI), Panchamhaals/Ahmedabad/Godhra/Saurashtra, Gujarat
2. Astitva Samajik Sansthan, Muzaffarnagar, Uttar Pradesh
3. Awaaz-e-Niswaan, Mumbai, Maharashtra
4. Bhumika Women's Collective, Hyderabad, Telangana/Andhra Pradesh
5. Centre for Constitutional Law, Policy and Governance, National Law University (NLU), Delhi
6. CREA, New Delhi
7. Girls Not Brides, New Delhi
8. HAQ Centre for Child Rights, New Delhi
9. HUMSAFAR (Support Centre for Women in Crisis), Lucknow, Uttar Pradesh
10. International Center for Research on Women (ICRW), New Delhi
11. Jeevika Development Society, Kolkata, West Bengal
12. Mahila Jan Adhikar Samiti (MJAS), Ajmer, Rajasthan
13. Mahila Sarvangeen Utkarsh Mandal (MASUM), Pune, Maharashtra
14. New Alipore Praajak Development Society (Praajak), Kolkata, West Bengal
15. Nirantar Trust – A Centre for Gender and Education, New Delhi
16. Nishtha, South 24 Parganas, West Bengal
17. Partners for Law in Development (PLD), New Delhi
18. Rajsamand Jan Vikas Sansthan (RJVS), Rajsamand, Rajasthan
19. Rubi Social Welfare Society, Nagpur, Maharashtra
20. Sahiyar Stree Sangathan, Vadodara, Gujarat
21. Social Action for Knowledge-building and Awareness Raising (SAKAR), Bareilly, Uttar Pradesh
22. TALASH – Society for Inner Strength, Peace and Equality, Kolkata, West Bengal
23. TULIR – Centre for Prevention and Healing of Child Sexual Abuse, Chennai, Tamil Nadu
24. Vikalp Sansthan, Udaipur, Rajasthan
25. Women Power Connect, New Delhi





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