

BRIEFING PAPER

**CENTER
FOR
REPRODUCTIVE
RIGHTS**



CHILD MARRIAGE IN SOUTH ASIA

**INTERNATIONAL AND CONSTITUTIONAL LEGAL STANDARDS AND JURISPRUDENCE
FOR PROMOTING ACCOUNTABILITY AND CHANGE**

Cover Image: Rajni, 5, and her husband are seen during their marriage ceremony early in the morning in Rajasthan, India on April 28, 2009. **Photography:** Stephanie Sinclair/VII/Tooyoungtowed.org

MISSION AND VISION

The Center for Reproductive Rights uses the law to advance reproductive freedom as a fundamental human right that all governments are legally obligated to protect, respect, and fulfill.

Reproductive freedom lies at the heart of the promise of human dignity, self-determination, and equality embodied in both the U.S. Constitution and the Universal Declaration of Human Rights. The Center works toward the time when that promise is enshrined in law in the United States and throughout the world. We envision a world where every woman is free to decide whether and when to have children; where every woman has access to the best reproductive healthcare available; where every woman can exercise her choices without coercion or discrimination. More simply put, we envision a world where every woman participates with full dignity as an equal member of society.

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GLOSSARY

ADOLESCENTS	People between the ages of 10 and 19
AIHRC	Afghanistan Independent Human Rights Commission
ANNULMENT	When a marriage is terminated and treated legally as though it never occurred.
BDT	Bangladesh taka, currency of Bangladesh
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: International treaty codifying states duties to eliminate torture and other cruel, inhuman or degrading treatment.
CAT COMMITTEE	Committee against Torture: The United Nations body charged with interpreting and monitoring states parties' implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women: International treaty codifying states' duties to eliminate discrimination against women.
CEDAW COMMITTEE	Committee on the Elimination of Discrimination against Women: The United Nations body charged with interpreting and monitoring states parties' implementation of the Convention on the Elimination of all Forms of Discrimination against Women.
CHILD MARRIAGE	A legal or customary union between two people, in which one or both spouses are below the age of 18. The practice largely affects girls and has graver consequences for them as well. Also referred to as early marriage or forced marriage.
CRC	Convention on the Rights of the Child: International treaty upholding the human rights of children.
CRC COMMITTEE	Committee on the Rights of the Child: The United Nations body charged with interpreting and monitoring states parties' compliance with the Convention on the Rights of the Child.
DISSOLUTION	The termination of a marriage through legal action, requiring a petition or complaint for dissolution by one party. Used interchangeably with "divorce," but originates from the concept of a no-fault divorce.

DIVORCE	The termination of a marriage through legal action, requiring a petition or complaint for divorce by one party. Used interchangeably with “dissolution,” but historically associated with termination of marriage when one or both parties are at fault.
ECLAMPSIA	An often-fatal condition of convulsions and coma during pregnancy or delivery. Caused by preeclampsia, a condition during pregnancy characterized by hypertension (high blood pressure), fluid retention, and protein in the urine.
ESCR COMMITTEE	Committee on Economic, Social and Cultural Rights: The United Nations body charged with interpreting and monitoring states’ implementation of the International Covenant on Economic, Social and Cultural Rights.
GENDER-BASED VIOLENCE	Violence that targets women or affects women disproportionately. Includes acts that inflict physical, mental, or sexual harm.
GENERAL LAW	Civil and criminal law that is applicable to the general population. It is sometimes referred to as “secular law.”
HABEAS CORPUS PETITION	A writ (legal action) that requires a person under arrest to be brought before a judge or into court.
HCD	High Court Division
HIV/AIDS	Human Immunodeficiency Virus is a retrovirus that infects cells of the immune system, destroying or impairing their function. As the infection progresses, the immune system becomes weaker and the person becomes more susceptible to infections. AIDS, or Acquired Immune Deficiency Syndrome, is the final stage of this progression.
HRC	Human Rights Committee: The United Nations body charged with interpreting and monitoring states parties’ implementation of the International Covenant on Civil and Political Rights.
ICCPR	International Covenant on Civil and Political Rights: International treaty protecting individuals’ civil and political human rights.
ICESCR	International Covenant on Economic, Social, and Cultural Rights: International treaty protecting individuals’ economic, social, and cultural human rights.

LEGAL CAPACITY	The attribute of a person who can acquire new rights or assume duties, according to his or her own will, without any restraint arising from his or her status or legal condition.
MARRIAGE	The civil status of one man and one woman united in law for life.
MATERNAL MORBIDITY	Illness or disability in women caused directly or indirectly by factors relating to pregnancy, childbirth, or the puerperal (post-delivery) period.
MATERNAL MORTALITY	Deaths of women caused directly or indirectly by factors relating to pregnancy, childbirth, or the puerperal (post-delivery) period.
MILLENNIUM DEVELOPMENT GOALS	Eight goals endorsed by governments at the United Nations Millennium Summit in 2000 that range from halving extreme poverty to promoting gender equality, all by the target date of 2015.
MULUKI AIN	A Nepali legal code that includes substantive legal frameworks and administrative procedures for civil and criminal matters, revenue collection, landlord and peasant relations, and marriage and family law.
NCW	National Commission for Women
NGOS	Non-governmental Organizations
NHRC	National Human Rights Commission
NHRI	National Human Rights Institutions: Administrative bodies separate from the government established either in national constitutions or through human rights legislation to monitor human rights at the national level.
NPR	Nepali rupee, currency of Nepal
PCMA	Prohibition of Child Marriage Act, an Indian law passed in 2006.
PERSONAL LAW	Law typically relating to family and succession issues that are applicable to individuals belonging to a specific religion (unlike general law). Often allows for autonomous governance of matters such as marriage or divorce.

PIL	Public Interest Litigation: Litigation filed in a court of law for the protection of the public interest.
REPUDIATE A MARRIAGE	To reject the authority or validity of a marriage
SAARC	South Asian Association for Regional Cooperation
SR ON SLAVERY	Special Rapporteur on contemporary forms of slavery and its causes and consequences
SR TCIDT	Special Rapporteur on torture and other cruel, inhuman, or degrading treatment
SRVAW	Special Rapporteur on Violence against Women, its causes and consequences
STI	Sexually transmissible infection
SUPPLEMENTARY CONVENTION ON SLAVERY	Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery
TCIDT	Torture and other forms of cruel, inhuman, or degrading treatment
U.N. TMB	United Nations treaty monitoring body
UNFPA	United Nations Population Fund
USD	United States dollar
UTERINE PROLAPSE	A condition where the pelvic muscles or ligaments cannot support the uterus and cause it to slip and potentially protrude from the vagina.
VOID MARRIAGE	The term given to marriage with no legal validity because it is prohibited by law.
VOIDABLE MARRIAGE	Contract with legal force and effects when made that can later be annulled by court by a recession process.
WHO	World Health Organization



Rajni, 5, is seen just after waking up before her wedding ceremony in Rajasthan, India on April 28, 2009.

Photography: Stephanie Sinclair/VII/Tooyoungtowed.org

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INTRODUCTION

Child marriage is a human rights crisis occurring on an alarming scale in South Asia. South Asia accounts for almost half of all child marriages that occur globally¹—the most of any region in the world. Child marriage, defined internationally as marriage where one or both spouses are under the age of 18,² is legally prohibited under many national laws in the region as well as by international human rights treaties adopted by South Asian countries; however, the practice persists with impunity. In South Asia, 46% of women between ages 20-24 report having been married before age 18—in 2010, this translated to 24.4 million women in the region.³ Estimates project that from 2010 to 2030, 130 million more girls in the region will be married.⁴

Governments in South Asia have an absolute legal obligation to eliminate child marriage. The extensive repercussions of child marriage violate the international and constitutional obligations of states to protect children's rights and discriminatorily interfere with women's and girls' ability to enjoy a broad range of human rights. The persistence of child marriage in South Asia indicates the widespread failure of governments to address one of the most critical human rights issues facing women and girls in the region and the absence of state accountability for violations of their human rights and constitutional rights.

Child marriage does not constitute a single rights violation; rather, every instance of child marriage triggers a continuum of violations that continues throughout a girl's life. Child marriage endangers the survival and well-being of women and girls by exposing them to forced initiation into sex and ongoing sexual violence,⁵ as well as to early, unplanned, and frequent pregnancies.⁶ Further, women and girls married as children are often denied educational opportunities, are isolated from society, and face a lifetime of economic dependence.⁷ Together, child marriage and early pregnancy trap generations of women in cycles of poverty.⁸ These harms result in significant violations of girls' rights, including their reproductive rights and their right to freedom from gender-based violence. Ensuring accountability for child marriage entails both holding responsible those officials who have failed to implement laws and policies against the practice, and addressing legal and social barriers that prevent married girls seeking to leave such marriages from being able to do so. It also requires the introduction of specific legal measures and remedies to address the particular needs of married girls.

The single most important finding of this briefing paper is that by failing to enact and enforce laws that clearly and consistently prohibit child marriage, governments in the region are complicit in the grave violations of human and constitutional rights experienced by married girls. These governments are responsible for perpetuating legal and practical barriers that make girls vulnerable to child marriage and deny those trapped in such marriages effective legal remedies.

Purpose, Scope, Terminology, and Structure

This briefing paper demonstrates why governments must be held accountable for addressing child marriage in the region and discusses child marriage as a form of early and forced marriage. Child marriage is considered forced marriage under international law, because children—defined as boys and girls under 18 years of age⁹—do not have the legal capacity to provide informed consent to marriage. The phrase “child marriage” is used in this briefing paper rather than “early and forced marriage” because it captures both the elements of age and lack of consent, and

WHAT IS CHILD MARRIAGE?

“The term ‘child marriage’ is used to describe a legal or customary union between two people, of whom one or both spouses are below the age of 18. While boys can be subjected to child marriage, the practice affects girls in greater numbers and with graver consequences. Child marriage is often referred to as ‘early’ and/or ‘forced’ marriage since children, given their age, are not able to give free, prior, and informed consent to their marriage partners or to the timing of their marriage. Many girls, for example, may have little understanding of or exposure to other life options. They may ‘willingly’ accept marriage as their allotted fate. An element of coercion may also be involved if families apply social or emotional pressure or urge marriage for economic reasons, or further advocate marriage in the (misguided) belief that such a union will keep their daughters safe.”

Source: Quoted from United Nations Population Fund (UNFPA), MARRYING TOO YOUNG: END CHILD MARRIAGE 11 (2012)

because “child” is a more precise term that can be clearly defined and protected in law. Further, childhood represents the vulnerable starting point for the continuum of reproductive and sexual rights violations discussed in this briefing paper.

The briefing paper primarily focuses on violations of women’s and girls’ reproductive rights and right to be free from sexual violence arising from child marriage in six South Asian countries—Afghanistan, Bangladesh, India, Nepal, Pakistan, and Sri Lanka. These countries were selected largely due to the widely documented scope of the problem in each nation and the urgent need for accountability. The briefing paper includes Sri Lanka despite the fact that the country has been recognized as a model in South Asia for elimination of child marriage; reports have been emerging concerning high rates of child marriage in conflict-affected areas and where customary laws apply.¹⁰ The term “South Asia” does not have a uniform definition, which means that studies and reports presenting statistics or information on South Asia may include more or fewer countries than are within the scope of this report. However, where legal trends are analyzed or discussed pertaining to South Asia in this briefing paper, the term is intended to refer to the six countries noted above.

While child marriage affects both boys and girls, this briefing paper focuses on the impact on girls and women because of the significantly higher incidence of child marriage among girls and the particular risks of reproductive rights violations¹¹ and sexual violence,¹² experienced by girls and women who were married as children. This briefing paper discusses violations of both women and girls’ rights that stem from child marriage, because this continuum of violations results in harm to girls even after they have become women. The harm associated with child marriage, including the barriers to realization of girls’ full potential as well as the great risks of sexual violence and reproductive rights violations, are well-established. This briefing paper focuses on the obligation of governments to prevent and address these harms, but does not specifically analyze trends being reported in the region concerning children who enter self-initiated marriages. Child marriage in the region has many dimensions and nuances; future factsheets and materials will continue to be added to this briefing paper to delve deeper into distinct aspects of the issue.

This briefing paper is intended to serve as a resource for those interested in using international and constitutional legal norms to establish government accountability for child marriage through human rights advocacy and litigation. It also is meant to serve as a critical resource for government officials, who act as gatekeepers of the law, to enable them to strengthen their role in enforcing existing laws and policies and bringing about necessary legal reform.

Section I contains an overview of child marriage in South Asia, including an analysis of legal trends concerning child marriage in the region. This section discusses both national laws that are applicable to the population as a whole, referred to as “general laws,” as well as personal laws that are intended to reflect specific religious ideology and apply only to members of a particular religious group. While some general laws may reflect a particular religious ideology, such as general laws rooted in Hinduism in Nepal and in Islam in Afghanistan, Bangladesh, and Pakistan, they are distinguished from personal laws because they apply to all individuals, regardless of religious affiliation. Section II presents the international legal standards that recognize child marriage and the continuum of harms experienced by women and girls married as children as violations of human rights. Section III discusses South Asian constitutional principles and jurisprudence that are violated by the failure of governments to address child marriage, and highlights the role of courts and national human rights institutions in ensuring accountability for these fundamental rights violations. The final section contains recommendations for governments.

GLOBAL COMMITMENT TO THE ELIMINATION OF CHILD MARRIAGE

The international community has historically and consistently condemned child marriage.¹ International commitments, such as the International Conference on Population and Development Programme of Action and the Beijing Declaration and the Platform for Action, affirm child marriage as a violation of human rights and call upon states to end child marriage.² Governments have pledged through the adoption of international consensus documents to prioritize the eradication of child marriage,³ “strictly enforce” existing laws against child marriage,⁴ raise the minimum legal age at marriage,⁵ and intensify international support for programs that focus on protection against child marriage.⁶

In September 2013, the Human Rights Council adopted the first-ever procedural resolution specifically focused on the elimination of child, early, and forced marriages.⁷ Over one hundred countries supported the resolution, which recognizes child marriage as a human rights violation.⁸ Despite the scale of child marriage in the region, at the time of publication, not one of the South Asian countries featured in this publication had expressed their support for the resolution. As result of the resolution, the Human Rights Council will convene a panel on child, early and forced marriage at its 26th session in 2014, and the Office of the High Commissioner will prepare a report in consultation with states, UN bodies and agencies and civil society.⁹ Several other Human Rights Council resolutions, including on sexual violence and children’s rights, also have reaffirmed the international community’s condemnation of and commitment to eliminating child marriage.¹⁰ Human Rights Council member states have repeatedly urged governments to eliminate child marriage in law and in practice through the Universal Periodic Review process.¹¹

In 2013, the Commission on the Status of Women also issued conclusions on violence against women that committed to “review, enact and strictly enforce laws and regulations concerning the minimum legal age of consent and the minimum age for marriage” in order to end the practice of child marriage.¹² As the 2015 deadline for the Millennium Development Goals fast approaches, the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda has proposed the inclusion of the elimination of child marriage as a specific goal,¹³ further demonstrating the international community’s concern for and commitment to eliminating the practice of child marriage.

SECTION I: CHILD MARRIAGE IN SOUTH ASIA

Overview of Laws Relating to Child Marriage in South Asia and Key Trends

The legal status of child marriage in South Asia is regulated through a complex interplay of national laws, including civil codes, criminal codes, and personal laws. A review of laws related to child marriage in South Asia reveals several key gaps and inconsistencies that undermine girls' ability to seek legal protection and remedy where child marriage persists. Marriage of girls under 18 is legally permissible under general laws in both Afghanistan and Pakistan, as well as under personal laws throughout the region, implying that the practice is acceptable and even condoned. In many parts of South Asia, there is deference to personal laws that establish a lower age of marriage, which leads to discrimination against girls on religious grounds and increased vulnerability within certain subgroups of girls based on religious affiliation. The failure of governments to establish a uniform minimum age of marriage and clarify that the prohibition on child marriage also applies to marriages solemnized under personal laws undermines enforcement of legal bans on child marriage and creates ambiguity about legal options to leave child marriages.

Further, the absence of a legal consent requirement for marriage allows for the recognition of marriages of children, who do not have the legal capacity to consent to marriage, and makes a girl's lack of consent irrelevant. In addition, laws in South Asia fail to recognize sexual offenses against girls within marriage, particularly nonconsensual sex, which takes the form of marital rape. These acts would otherwise constitute a sexual offense but for the legal recognition granted to child marriages. In many instances, the law prescribes unreasonable legal requirements for terminating a marriage that may obstruct and deter young girls from seeking legal remedies. Finally, the failure to ensure compulsory registration of marriage and births undermines legal prohibitions on child marriage and allows impunity to persist.

GENERAL LAWS ON CHILD MARRIAGE IN SOUTH ASIA

Child marriage is regulated in general laws in the region either through specific legislation aimed at prohibiting or preventing the practice or within national codes that include provisions concerning legal recognition of marriage. While many of these laws still grant legal recognition to marriages involving children, they do articulate minimum ages of marriage and often penalize promotion of and involvement in marriages involving spouses below these ages.

While marriage of boys under 18 years of age is penalized under general laws throughout South Asia, several general laws allow for the legal marriage of girls under 18 years,¹³ including in Afghanistan and Pakistan.¹⁴ In Afghanistan, girls can be legally married at as young as 15 years of age with parental consent and 16 without parental consent.¹⁵ In Pakistan, marriage of girls is permitted at 16 years of age under legislation prohibiting child marriage, and at as young as 14 years with parental consent under the Special Marriage Act, which governs nonreligious marriages.¹⁶ In Bangladesh and India, legislation specifically concerning child marriage establish penalties for involvement in the marriage of girls below 18 years.¹⁷ However, in Bangladesh, the Special Marriage Act, governing nonreligious

marriage, also permits girls as young as 14 to be married with consent by a girl's father or guardian.¹⁸ In Nepal, the age of marriage for boys and girls is 18 years with parental consent and 20 years without parental consent.¹⁹ In Sri Lanka, marriage of girls and boys below 18 is prohibited in a national marriage law applicable to the general population except for Muslims, who have a separate marriage law.²⁰

In South Asia, general laws often permit marriage to occur legally at a younger age for women and girls than men and boys. The child marriage laws in both Bangladesh and India establish a minimum age of marriage of 18 for girls, but recognize a higher minimum age of marriage of 21 years for boys.²¹ In Afghanistan and Pakistan, marriage below 18 years of age is not legally permitted for boys, while marriage is permitted for girls as young as 15 in Afghanistan and 16 in Pakistan.²² **Only Nepal and Sri Lanka set a consistent minimum age of marriage regardless of sex.**²³

PERSONAL LAWS ON CHILD MARRIAGE IN SOUTH ASIA

Marriages in South Asia, including child marriages, are typically not performed based on legal practice, but rather on the religious custom or tradition of the individuals involved.²⁴ In the region, personal laws—which may be codified or uncodified—often set forth the requirements for marriage for individual religious communities, including the age at which marriages may be performed. **Many personal laws in South Asia permit child marriage,²⁵ allow a lower age of marriage than general law,²⁶ or accord marriages involving children distinct legal status from general law.²⁷ Further, personal laws in Afghanistan, India, and Pakistan recognize a higher age of marriage for boys than girls.**²⁸

LEGAL STATUS OF MARRIAGES INVOLVING CHILDREN

Clarity on the legal status of child marriages under the law is required for girls to be able to understand their legal rights and the requirements to leave such a marriage. Child marriages may be regarded as void *ab initio*, voidable or able to be repudiated, or valid. Marriages that are void *ab initio* are legally treated as though they have not taken place and can be treated so by the parties to them without having to resort to court action for an annulment. Marriages that are voidable can be ended by court action for annulment due to a defect in the marriage, although this may be limited under certain circumstances. A valid marriage can only be ended by court action for a divorce. General laws may remain silent on the legal status of child marriage,²⁹ or set forth a legal status but allow for ambiguity by deferring to³⁰ or failing to clearly supersede personal laws.³¹

Under most laws relating to child marriage in South Asia, child marriages that have already been performed are voidable³² or can be repudiated;³³ however, these legal pathways out of child marriages are severely restricted by requirements that girls challenge their marriage within a certain amount of time following the marriage³⁴ or before attainment of the age of majority or another specified age,³⁵ consummation of the marriage,³⁶ or the birth of a child.³⁷ For example, child marriage has been recognized as a ground for divorce under India's Hindu Marriage Act, but a girl can only seek a divorce if she was married before 15 and has repudiated the marriage before 18.³⁸ Nepali law does recognize child marriages as voidable, but only before the couple has had children.³⁹

Very few laws clearly establish that child marriages are legally invalid,⁴⁰ which allows courts to interpret marriage of girls as valid. Child marriages are considered invalid under the general law in Sri Lanka,⁴¹ although this law explicitly does not apply to Muslims. Other than in Sri Lanka, child marriages are only clearly considered void in specific circumstances in other countries in South Asia. For example, while India's Prohibition of Child Marriage Act (PCMA) generally views child marriages as voidable, the PCMA recognizes certain marriages involving minors as void, including marriages where a minor is taken or enticed away from a parent or guardian by force or deceit and sold into marriage, or where a marriage is solemnized despite an injunction against the marriage being ordered.⁴² Certain personal laws in India also recognize child marriage as void in specific circumstances. India's Muslim personal laws consider marriages without the consent of parties who have reached puberty to be void.⁴³ Under the Indian Parsi Marriage and Divorce Act, marriages below the ages of 18 for a girl and 21 for a boy are invalid, but not declared void.⁴⁴

Many laws also state that marriages are void or voidable where there is force or fraud involved but fail to explicitly recognize child marriage as an example of such a marriage.⁴⁵ For example, in Nepal, forced marriages are also considered void,⁴⁶ but the law does not state whether child marriages are per se considered to be forced.⁴⁷

AGE RESTRICTIONS RELATED TO SEX AND CRIMINALIZATION OF MARITAL RAPE

In most South Asian countries, rape within marriage is not criminalized, although penal codes do establish a minimum age under which sex with a girl is criminalized. In Bangladesh, Nepal, and Pakistan, sex with a girl who is under 16 years old is considered rape.⁴⁸ Afghanistan does not establish a minimum age in relation to sex, but punishes any person who through violence, threat, or deceit violates the chastity of another and permits a harsher punishment where the victim is below 18.⁴⁹ Similarly, Nepal and Sri Lanka recognize harsher punishments for sexual abuses related to younger girls.⁵⁰ The Shia (Shiite) Personal Status Law in Afghanistan establishes that sexual intercourse with a married woman before she reaches puberty is prohibited.⁵¹

Further, in certain South Asian countries, the law permits marriage to legitimize sex with a girl where it would otherwise be illegal. For example, in India, the 2012 Protection of Children from Sexual Offences Act established that sex with a child under 18 is rape; however, the Indian Penal Code, which was amended in 2013, states that marital rape is only criminalized until a girl is 15 years of age.⁵² Similarly, in Sri Lanka, sex with a girl under 16 years is considered rape even if she says that she consents; however, the law permits a man to legally have sex with his wife without her consent so long as she is above 12 years of age.⁵³

In most of South Asia, marital rape involving women or girls older than the ages discussed above is not criminalized.⁵⁴ Only Nepal clearly penalizes all instances of marital rape, regardless of the age of the wife at the time that the rape occurred.⁵⁵ Marital rape is also one of the grounds for divorce in Nepal;⁵⁶ however, the punishment for marital rape remains light.⁵⁷ Pakistan's penal code does not state that marriage is a defense to rape, which would allow for the recognition of marital rape as a crime; however, the failure to clearly criminalize marital rape has meant that courts in Pakistan continue to allow evidence of marriage to be a bar to a finding of rape.⁵⁸

CONSENT TO MARRIAGE

General marriage laws in South Asia typically do not require consent of the parties to marriage. Only Nepal's national law formally requires consent to marriage by both parties.⁵⁹ General laws in Afghanistan and Sri Lanka do not require consent to marriage.⁶⁰ In Bangladesh, India, and Pakistan, laws governing nonreligious marriage do not formally require consent, but obligate each party to vow, "I take thee as my lawful spouse."⁶¹ Conversely, parental consent is often permitted or required for marriages under specified ages under general marriage laws in South Asia,⁶² even where consent of the parties themselves would not be required if they were of age.⁶³

Personal laws vary in their approach to consent to marriage. Muslim law regards marriage as a contract, and, as such, both parties must give their consent and fulfill requirements related to legal capacity—namely, to be "of sound mind" and have attained puberty, which is presumed to occur at 15 years of age.⁶⁴ Codified Muslim personal laws in Bangladesh do not explicitly discuss consent of the parties as a requirement for marriage;⁶⁵ which means that ultimately courts determine whether consent is required in specific cases when the issue is raised for adjudication.⁶⁶ In Pakistan, the marriage contract formulated per the rules issued under codified Muslim personal laws includes columns to record consent to marriage; however, this requirement is often circumvented by the failure to ensure marriages are registered.⁶⁷ Personal laws for other religions do not typically require consent.⁶⁸ However, lack of consent may be recognized as a barrier to legal recognition of marriage. For example, the Hindu Marriage Act in India does not explicitly require consent, although marriage requires that neither party is incapable of giving consent due to "unsound mind" or "even if capable of giving a valid consent, is not suffering from a mental disorder or insanity."⁶⁹ Further, under the Hindu Marriage Act in India, marriages are voidable where "consent of the petitioner...was obtained by force or by fraud."⁷⁰

For marriages involving parties that are under a specified age or have not undergone puberty, certain personal laws allow consent of a parent or guardian to be considered sufficient for marriage.⁷¹ Further, certain personal laws may require consent of a parent or guardian⁷² or a religious official⁷³ where parties are under a legally specified age or before puberty. Muslim personal law in Sri Lanka also requires the consent or permission of the male guardian of the bride, regardless of age.⁷⁴

REGISTRATION OF MARRIAGE

Registration of marriage can be essential to combating child marriage by requiring documentation of the age of the prospective spouses prior to solemnization. **However, Afghanistan is the only country in South Asia that has adopted general legislation applicable to all citizens requiring registration of all marriages.**⁷⁵ Compulsory registration of marriage was ordered by the Supreme Court of India, but national legislation has not been enacted requiring registration of all marriages across the country.⁷⁶

Personal laws differ regarding registration of marriage, with registration being required in some laws⁷⁷ and optional in others.⁷⁸ Even where registration is required, the failure to register a marriage may not invalidate a marriage.⁷⁹ Further, requirements of registration of marriage are rarely enforced,⁸⁰ and the practice is typically not widespread.⁸¹ Finally, laws may also permit registration of marriage even where a girl does not meet the minimum age of marriage, such as in Sri Lanka.⁸²

REGISTRATION OF BIRTHS

Accurately assessing a girl's age at marriage requires a system of birth registration. Birth registration is compulsory in Bangladesh, and birth certificates are to be utilized as a means of establishing the age of the prospective spouses at marriage.⁸³ Registration of births is also compulsory in Afghanistan, India, Nepal, and Sri Lanka.⁸⁴ Only Pakistan does not make birth registration compulsory.⁸⁵ **Despite legal requirements, however, in South Asia only 36% of births are registered.**⁸⁶

Together, the gaps, inconsistencies, and unreasonable requirements in national legal frameworks concerning child marriage in the region have denied girls legal protection against child marriage. (See “Legal Barriers and Deterrents for Girls Seeking to Challenge Child Marriages,” pp. 18-19, for more information.) Impunity for child marriage persists throughout South Asia, resulting in grave implications for women's and girls' reproductive and sexual health and rights.

The Continuum of Harms Suffered by Women and Girls as a Result of Child Marriage

A woman or girl married as a child is exposed to a continuum of violations of her human rights, particularly due to the devastating impact of child marriage on her reproductive health and the increased risk of sexual violence within marriage. Child marriage involves the most vulnerable of girls, who often live in poor, rural, or conflict- or disaster-affected areas with limited access to health care and education,⁸⁷ and compounds their already heightened risk of reproductive health harm and sexual violence.⁸⁸

In South Asia, married girls experience **significant pressure to become pregnant soon after marriage** to prove their fertility⁸⁹ and produce children, especially sons. This pressure results in **early, closely spaced, and frequent pregnancies⁹⁰ that increase girls' risk of maternal mortality and morbidity,**⁹¹ including uterine prolapse⁹² or obstetric fistula.⁹³ Within the region, there is no greater threat to an adolescent girl's life than **early pregnancy-related complications.**⁹⁴ Early and frequent pregnancies are particularly dangerous for exactly those girls who are most at risk of child marriage—girls with less education who lack decision-making power within their family, are unable to access health care information and services, and are living in poverty.⁹⁵

Girls in the region often **lack basic sexuality education,**⁹⁶ which leaves them unaware of the risks of early pregnancy.⁹⁷ Studies show that married girls in South Asia are the **least likely to use contraceptives** globally,⁹⁸ and many pregnant adolescent girls ultimately resort to potentially fatal **unsafe abortions** when experiencing unplanned, early pregnancies.⁹⁹ Married girls are often **unable to negotiate contraceptive use** due to unequal power dynamics and lack of reproductive health information, resulting in greater risk of **unplanned pregnancies and sexually transmissible infections (STIs).**¹⁰⁰ Abortions in South Asia are typically illegal or difficult to access,¹⁰¹ exposing girls with unwanted pregnancies either to the risks of **unsafe abortion** or to **forced, high-risk early pregnancy.** Despite the increased risk of maternal mortality and morbidity, adolescent girls, defined by the United Nations Population Fund (UNFPA) as girls between 10 and 19 years of age,¹⁰² face distinct **barriers to adolescent-friendly reproductive health care**¹⁰³ and typically receive **limited, if any, skilled pregnancy-related care.**¹⁰⁴

Child marriage also leaves girls vulnerable to sexual exploitation and violence throughout their lives. Child brides are often initiated into **sex by force or coercion**

by their husbands, and typically continue to experience **nonconsensual sex throughout their marriage**.¹⁰⁵ Married girls also face **other forms of physical, sexual, and psychological abuse** by their husbands and potentially others in their families.¹⁰⁶ Sexual violence exposes married girls to **severe sexual and reproductive health consequences**, including early and unintended pregnancy, unsafe abortion, and higher risk of STIs.¹⁰⁷ Both sexual violence and the reproductive health consequences associated with child marriage, including early pregnancy, are associated with significant physical and emotional trauma.¹⁰⁸ (See “WHO Recommendations Concerning Child Marriage and Early Pregnancy,” p. 17 for more information.)

Each pregnancy and childbirth increases the financial burden on a married girl and her family, pushing her deeper into poverty.¹⁰⁹ Girls married as children are often **denied educational opportunities** that would allow them to generate income and are **isolated from society**,¹¹⁰ creating significant barriers for them to transcend stereotypical gender norms of women and girls as wives and mothers. Child marriage results in a **lifetime of economic dependence and poverty**.¹¹¹ This financial dependence,¹¹² coupled with **social stigma concerning divorce**¹¹³ and **significant legal barriers**, means that married girls are often **trapped within their marriage** without a realistic way to leave. The daughters of women who were child brides are at greater risk of being married as girls themselves,¹¹⁴ perpetuating cycles of poverty and disempowerment.

“Preventing violence in one generation reduces its likelihood in the next.” –Committee on the Rights of the Child

Why Child Marriage Persists in South Asia

Child marriage persists in South Asia because governments have not done enough to end the practice. Child marriage is rooted in and perpetuates existing patriarchal power structures that have led to women’s subordination to and dependence on men in society.¹¹⁵ Confronting child marriage requires governments to take meaningful steps to dismantle discriminatory patriarchal norms and stereotypes within South Asia, including as embodied in the law, that promote child marriage.

PATRIARCHAL NORMS UNDERLYING CHILD MARRIAGE

Child marriage in South Asia reflects the dominance of patriarchal norms surrounding marriage, which view girls as objects to be “protected” and exchanged as commodities, rather than as bearers of rights.¹¹⁶ These norms lead to the treatment of daughters as economic burdens whose primary value is their virginity and reproductive capacity.¹¹⁷ In rural and poor areas, girls are particularly vulnerable to child marriage¹¹⁸ due to the predominance of these patriarchal views and widespread poverty.¹¹⁹ The risk of child marriage is also exacerbated for girls in conflict and disaster-affected areas, where there are increased risks of poverty from financial instability and sexual violence that pose a threat to girls’ bodily integrity and virginity.¹²⁰

CONTROL OVER SEXUALITY AND REPRODUCTIVE CAPACITY

In South Asia, parents often consider ensuring their daughter’s marriage as their final duty in raising her.¹²¹ Marriage is seen as an institution that protects women and girls and ensures their financial and physical security.¹²² Generally, a girl’s virginity is a prerequisite to marriage and determines her worth as well as her *(continued on p. 20)*

WHO RECOMMENDATIONS CONCERNING CHILD MARRIAGE AND EARLY PREGNANCY

The World Health Organization (WHO) has clearly recognized the connections between child marriage, early pregnancy, and poor reproductive health outcomes for adolescent girls. In its Guidelines on Preventing Early Pregnancy and Poor Reproductive Outcomes Among Adolescents in Developing Countries as well as in a 2012 report by the WHO Secretariat entitled “Early marriages, adolescent and young pregnancies,” the WHO has articulated several evidence-based recommendations for governments to protect adolescent reproductive health, targeting six key objectives:

- reducing marriage before the age of 18 years;
- creating understanding and support to reduce pregnancy before the age of 20;
- increasing the use of contraception by adolescents at risk of unintended pregnancy;
- reducing coerced sex among adolescents;
- reducing unsafe abortion among adolescents;
- increasing the use of skilled antenatal, childbirth, and postnatal care among adolescents.¹

The 2012 report specifically emphasizes the role of sexuality education to address harmful gender stereotypes and empower adolescent girls to resist coerced sex and prevent early pregnancy.²

IN FOCUS: LEGAL BARRIERS AND DETERRENENTS FOR GIRLS SEEKING TO CHALLENGE CHILD MARRIAGES

In addition to socio-cultural barriers, a girl seeking to avert a child marriage that is imminent or leave one that has already taken place may also face serious barriers due to the complex interplay of multiple laws regarding child marriage. The following are examples of legal barriers and ambiguities that impede girls' ability to seek legal recourse for child marriage:

- **Powerlessness of girls in decision-making:** Laws in South Asia often place the onus on girls themselves to seek to avoid or dissolve child marriages, but fail to establish a simple process for leaving a marriage. (See Section I, p. 13, for further discussion.) Current legal frameworks fail to recognize the unequal power dynamics experienced by girls, who are denied autonomy as result of their status both as females and as children.¹ Girls who are vulnerable to child marriage are particularly likely to grow up in patriarchal societies where they may not be aware of laws prohibiting child marriage, are not granted decision-making authority² or do not possess the economic resources necessary for seeking legal representation and remedies. The failure to address girls' powerlessness within patriarchal societies acts as an impediment to girls' ability to utilize the law.
- **Inconsistent general and personal laws on child marriage:** Child marriage is regulated by inconsistent general and personal laws in much of South Asia, resulting in significant ambiguity concerning which law is applicable. For a girl, these inconsistencies can make it difficult to know whether her marriage is illegal and what rights she has.³ (See Section I, p. 13, for more information.) For example, although a general law on child marriage may penalize marriage below 18, the personal law applicable to a girl's religious community may permit marriage at a much younger age. Further, general and personal laws may also accord child marriages different legal status and provide girls conflicting rights to dissolve child marriages—without clarification, girls may not know if their marriages are legally void and can be treated as if they did not happen, or if they need to seek judicial authorization for annulment or divorce. General legislation, including that which concerns child marriage, often fails to clarify which law prevails, compounding the problem.⁴ The weak implementation of prevention laws and penalties by local government officials entrusted with enforcement further contributes to the uncertainty about the scope of legal protection.

- Unreasonable criteria for dissolution of marriage:** Several laws in South Asia permit the dissolution of marriages where one party is a child, but only in limited circumstances, such as before the marriage has been consummated,⁵ before there are offspring,⁶ or only within the first few years of attaining majority.⁷ These restrictions fail to consider the circumstances of married girls, who often lack control over consummation of marriage or pregnancy; indeed, girls who are being abused within marriage are the ones who are left without protection under such laws. The likelihood of pregnancy within the first few years of marriage also means that girls may be unable to leave a marriage within the limited time frame permitted under many laws for dissolution of child marriage. Those years may also be when married girls are the most dependent on their husbands, as they may be pregnant or have small children, and lack the education or income generating skills to provide for their family.
- Weak laws on sexual violence and limited recognition of sexual crimes within marriage:** Many South Asian countries either fail to recognize rape within marriage as a crime⁸ or only recognize it as a crime through puberty⁹ or through 12 or 15 years of age.¹⁰ If a married girl tries to run away to escape the violence she is experiencing, in some South Asian countries, such as Afghanistan, she may be convicted of intent to have sex outside of marriage.¹¹ Further, although sex with a girl below a statutorily established age is criminalized in most of South Asia, laws that permit child marriage undermine this protection by legitimizing coerced sexual intercourse with children. Together, these contradictory standards mean that the sexual violence married girls experience will not be considered violence under national law.
- Lack of evidence of age at the time of marriage:** As a result of poor birth and marriage registration systems throughout most of the region, girls face significant barriers to establishing their age at the time of marriage. Without this information, girls may experience barriers in substantiating that their marriage was a child marriage in violation of the law.

family's honor; a girl who is known to not be a virgin will face significant barriers to marriage, even if the loss of her virginity resulted from sexual violence.¹²³ Unmarried girls are often viewed as particularly vulnerable to sexual attacks or transgressions, leading parents to regard child marriage as a way to minimize the risk that their daughter will become unmarriageable due to premarital sex or pregnancy and as a way to “secure” her future.¹²⁴

In South Asia, a woman's or girl's reproductive capacity generally is not regarded as an individual right; rather, bearing children, particularly sons, is understood as a woman's or girl's obligation to ensure the continuity of families, clans, and social groups.¹²⁵ A woman's fertility is considered an appropriate object for regulation by families, religious institutions, and even governmental authorities.¹²⁶

“Child marriage [and] forced marriage...are additional forms of direct abuse that regulate female sexuality. Ignoring women and young girls as individuals capable of making choices about their lives, these practices subject many women to unwanted sex and rape, thus destroying their lives and their life potential.”

–Special Rapporteur on Violence Against Women

Similarly, marriage, which legitimizes reproduction, is regarded as a decision that must be made by the elders in a family, not as a decision where a girl's preference ought to be considered.¹²⁷ A younger bride is thought to be more likely to submit to the demands to engage in sex and bear and raise children, in part because her youth and lack of education mean she has less negotiating power to defy stereotypical gender norms and expectations.¹²⁸ Ultimately, child marriage operates to perpetuate patriarchal power structures that ensure women's and girls' subservience within the family and society.

VIEW OF WOMEN AS COMMODITIES

Child marriage also persists as a financial survival strategy,¹²⁹ particularly in areas with significant poverty.¹³⁰ Generally, a married girl is expected to live with her husband and in-laws.¹³¹ Parents often view their daughters as a financial burden, as they must bear the cost of raising them, but will not be supported by them in the future.¹³² Further, in much of South Asia, marriage comes with significant costs for the bride's parents. Marriage at a younger age allows parents to pay a lower dowry or save on wedding costs by marrying their younger daughters along with older siblings or on designated days when mass wedding ceremonies of children are conducted.¹³³ Similarly, in situations where a girl's family receives a “bride price,” or payment, from the groom's family, a younger bride attains a higher price.¹³⁴ Child marriage also is utilized as a means to settle debts or to generate income.¹³⁵ This view of girls as commodities to be bought and sold perpetuates the view that girls lack agency and that their preferences and best interests do not need to be considered in marriage-related decisions.¹³⁶

Together, these patriarchal norms and practices underlying child marriage also serve to trap girls within child marriage. First, due to their lack of education and isolation in society, girls are often unaware of the legal age of marriage, who can be convicted, what the punishment would be, and how to avoid a child marriage.¹³⁷ Second, since married girls often lack education and income generating skills, they

have limited options to support themselves outside of marriage. The moment a girl seeks to leave a child marriage, she will need to consider where to seek shelter and how to survive financially. Laws may involve prosecution of a girl's parents as well as her in-laws or even her husband.¹³⁸ Even where she can avoid prosecution of her parents, in the region the return of a married girl to her parents is highly stigmatized and discouraged. Remarriage is typically not an option, as often once a girl is married, she is presumed to have had sex and will be considered unmarriageable.¹³⁹

LACK OF EFFECTIVE GOVERNMENT ACTION

The failure of governments to effectively address these patriarchal norms and stereotypes underlying child marriage is a significant cause of child marriage. Girls are most vulnerable to child marriage where governments have failed to condemn and address gender discrimination, protect girls from violence, and provide girls educational and employment opportunities that promote their financial independence and constitute real alternatives to child marriage.¹⁴⁰ Indeed, the patriarchal roots of child marriage are a significant factor in the lack of political will to ensure the clear and consistent prohibition of child marriage throughout the legal system, adequate punishment for child marriage, and the effective enforcement of the law.¹⁴¹ Patriarchy is embodied in many laws that relate to child marriage, especially personal laws; the failure of governments to clarify that child marriage is illegal, regardless of religious custom, reflects their resistance to changing existing power structures that oppress women and girls.

There are minor punishments for violations of laws on child marriage in several South Asian countries,¹⁴² reflecting the weak stance governments take toward child marriage. In Bangladesh, for example, the punishment for contracting, performing, or failing to prevent a child marriage is only a maximum fine of BDT 1,000 (approximately USD 13), one month in prison, or both.¹⁴³ Further, courts may also have wide discretionary power, allowing for the issuance of light punishments, even below statutory minimums. For example, in Nepal, the Supreme Court only issued a three day sentence and a fine of NPR 25 (approximately USD 0.25) to the father of a 13-year-old girl who confessed to entering her into a child marriage.¹⁴⁴ This sentence was even lighter than the minimum penalty of three months' imprisonment established in the law.¹⁴⁵

Further, legal prohibitions on child marriage are only as strong as their enforcement at the local level. Prosecution for child marriage remains low in the region, even where the practice is illegal, indicating impunity for the practice.¹⁴⁶ The failure to appoint designated officials mandated to investigate and intervene in child marriage cases¹⁴⁷ and ensure their awareness that child marriage is illegal and harmful to girls also constitutes a barrier to enforcement of child marriage laws.¹⁴⁸ In the region, child marriage is often considered a personal or family issue, leading law enforcement officers to refrain from intervening as mandated under the law.¹⁴⁹ Ensuring accountability for child marriage requires that officers tasked with enforcing legal prohibitions on the practice must have adequate training about the harms of child marriage and support to respond to community opposition and protection against retaliation. For example, in Nepal and Sri Lanka, although registration of marriages involving children is prohibited, registrars report facing immense social pressure to falsely register such marriages in violation of the law.¹⁵⁰ Similarly, in India, activists seeking to enforce child marriage laws have faced violent retaliation.¹⁵¹ The failure of governments to ensure that frontline defenders of girls' rights to be free from child marriage are adequately prepared and supported contributes significantly to the practice of child marriage.

PHULMONEE AND RUKHMABAI

SHIFTING THE DISCOURSE ON CHILD MARRIAGE IN INDIA

Court cases have played an important role in shifting the discourse on child marriage in India by illustrating the brutal impact of child marriage on girls' well-being, and survival. Two 19th-century cases in India are widely credited with bolstering advocacy against child marriage. While the courts themselves were not an immediate source of remedy, public controversy surrounding the cases contributed to national legal reform.

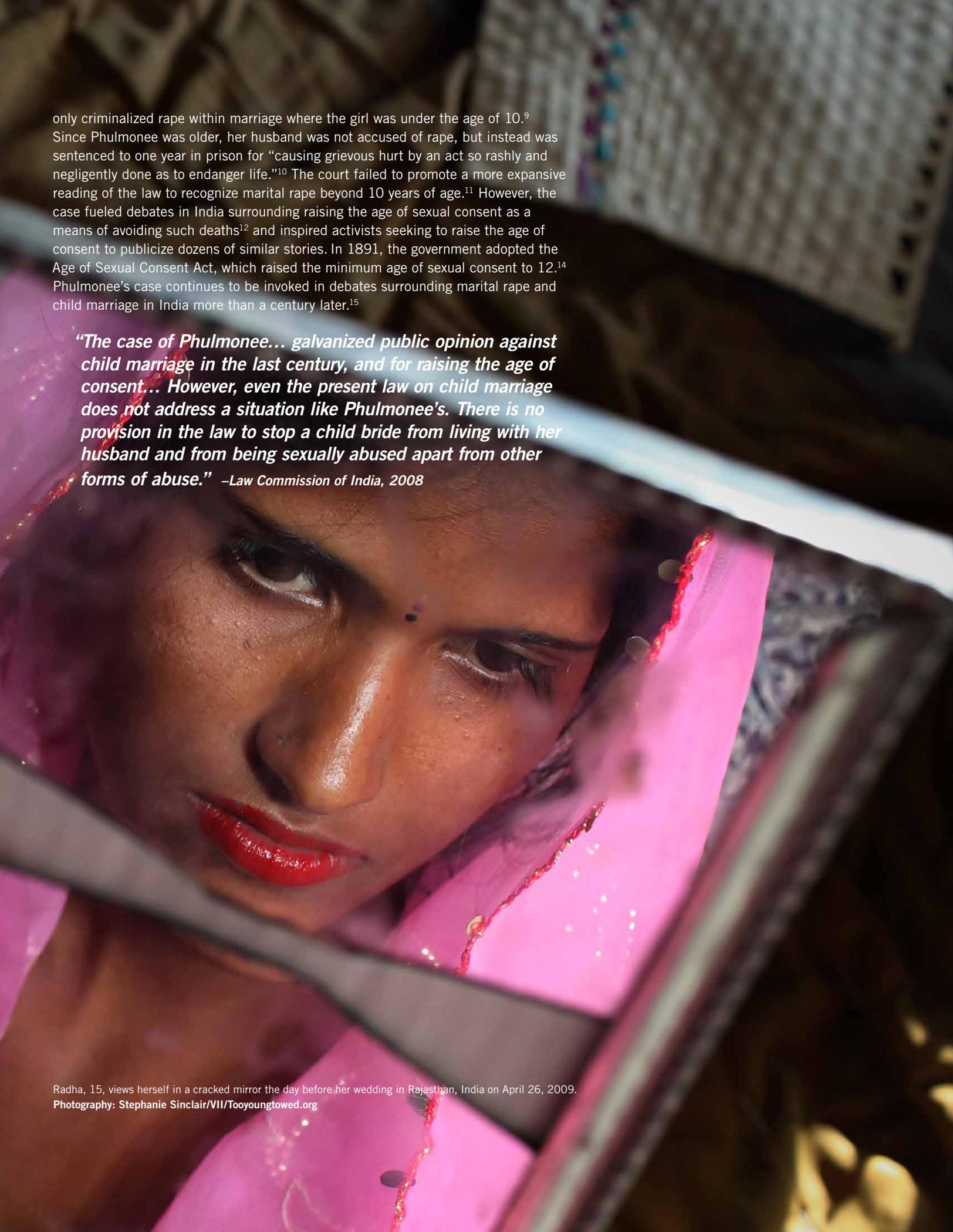
Rukhmabai had been married at the age of 11, but was allowed to remain at home until she was in her 20s.¹ In 1884, after several years of marriage, her husband filed a case for restitution of conjugal rights.² Rukhmabai argued that since she could not have given legal consent to the marriage at 11 years of age, her marriage was invalid.³ This argument was novel in India, and sparked debates on consent of minors to marriage. The Bombay High Court initially dismissed the case, stating that

“it would be a barbarous, a cruel, a revolting thing to do to compel a young lady under those circumstances to go to a man whom she dislikes, in order that he may cohabit with her against her will.”⁴

Unfortunately, the dismissal was appealed and the case was ultimately settled out of court.⁵ However, through the controversy, Rukhmabai became a leading voice in the media against child marriage, inspiring public outcry on the issue.

“I am one of those unfortunate Hindu women whose hard lot is to suffer the unnameable miseries entailed by the custom of early marriage. This wicked practice of child marriage has destroyed the happiness of my life. It comes between me and the thing which I prize above all others – study and mental cultivation. Without the least fault of mine I am doomed to seclusion; every aspiration of mine to rise above my ignorant sisters is looked upon with suspicion and is interpreted in the most uncharitable manner.” –Rukhmabai, *LETTER TO THE TIMES OF INDIA*, June 26, 1885

In 1890, Phulmonee, a girl of approximately 11 living in India, died from a rupture of her vagina after her 35-year-old husband forcibly had sex with her.⁶ Phulmonee died after 13 hours of hemorrhaging and acute pain.⁷ Unanimous medical opinion found that Phulmonee's injuries were caused by violent sexual penetration, which her immature body could not sustain.⁸ The colonial law in India in place in 1890



only criminalized rape within marriage where the girl was under the age of 10.⁹ Since Phulmonee was older, her husband was not accused of rape, but instead was sentenced to one year in prison for “causing grievous hurt by an act so rashly and negligently done as to endanger life.”¹⁰ The court failed to promote a more expansive reading of the law to recognize marital rape beyond 10 years of age.¹¹ However, the case fueled debates in India surrounding raising the age of sexual consent as a means of avoiding such deaths¹² and inspired activists seeking to raise the age of consent to publicize dozens of similar stories. In 1891, the government adopted the Age of Sexual Consent Act, which raised the minimum age of sexual consent to 12.¹⁴ Phulmonee’s case continues to be invoked in debates surrounding marital rape and child marriage in India more than a century later.¹⁵

“The case of Phulmonee... galvanized public opinion against child marriage in the last century, and for raising the age of consent... However, even the present law on child marriage does not address a situation like Phulmonee’s. There is no provision in the law to stop a child bride from living with her husband and from being sexually abused apart from other forms of abuse.” –Law Commission of India, 2008

SECTION II: INTERNATIONAL LEGAL ACCOUNTABILITY FOR CHILD MARRIAGE

As parties to U.N. human rights treaties, governments in South Asia have an obligation under international law to ensure that girls are protected from child marriage and the continuum of violations resulting from the practice.¹⁵² These violations are particularly egregious because they are occurring against children, whom governments are obligated to take special measures to protect. Governments are accountable for violations of women's and girls' rights as a result of child marriage, and must offer legal remedies and ensure that they are accessible where these rights are violated.

Rights of the Child

Children are recognized under international human rights law as requiring special care and enjoying the right to special measures of protection.¹⁵³ This protection is enshrined in the Convention on the Rights of the Child (CRC), as well as in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).¹⁵⁴ The Human Rights Committee (HRC), which interprets and monitors compliance with the ICCPR, has established that the obligation to protect children requires states parties to “eradicate both through legislation and any other appropriate measures, all cultural or religious practices which jeopardize the freedom and well-being of female children.”¹⁵⁵

The Committee on the Rights of the Child (CRC Committee), which interprets and monitors compliance with the CRC, has repeatedly expressed concern that the persistence of child marriage undermines girls' status and dignity;¹⁵⁶ negatively impacts girls' health, development, and full enjoyment of their rights; and exposes girls to early pregnancy.¹⁵⁷ The CRC Committee's General Comment 4 on adolescents' right to health recognizes that “early marriage and pregnancy are significant factors in health problems related to sexual and reproductive health, including HIV/AIDS.”¹⁵⁸ The CRC Committee has emphasized that states parties must regard married girls as being in a potentially vulnerable situation because of the likelihood that they will be exposed to gender-based violence.¹⁵⁹ As such, the CRC Committee has urged states parties to provide shelters to girls who escape from child marriages and to develop and provide adequate resources to implement “physical and psychological recovery programmes for child victims of harmful traditional practices,” including child marriage.¹⁶⁰

CHILD MARRIAGE VIOLATES THE OBLIGATION TO ESTABLISH A MINIMUM AGE OF MARRIAGE OF 18

The obligation to take special measures of protection and assistance for children is violated where states parties fail to ensure that the minimum legal age of marriage is at least 18.¹⁶¹ While the CRC itself defines “child” to mean “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier,” the CRC Committee has called on states parties to review the age of majority if it is set below 18 and to increase the level of protection for all children under 18.¹⁶² The HRC has echoed this standard, stating that the obligation of special protection continues until the age of 18, regardless of any lower age of majority set forth in domestic laws.¹⁶³

HUMAN RIGHTS LAW DOES NOT RECOGNIZE PARENTAL CONSENT AS A SUBSTITUTE FOR AN INDIVIDUAL PARTY'S CONSENT TO MARRIAGE

Human rights law does not permit parents or guardians to consent to marriage on behalf of a child. The Committee against Torture (CAT Committee), which interprets and monitors compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), has specifically criticized laws that permit marriage of girls with parental consent, stating that “this amounts to violence against them as well as inhuman or degrading treatment.”¹ While human rights treaties protect parents' liberty and recognize the role of parents and guardians in protecting children's rights,² human rights law establishes that parents' and guardians' decisions relating to their children's rights must be guided by two key principles: evolving capacities and the best interests of the child. In most child marriages in South Asia, which involve girls being married without consideration of their preference and the risks involved, both principles are violated.

Evolving capacities and consideration of the child's views: The principle of evolving capacities is reflected in Article 12 of the Convention on the Rights of the Child (CRC), which specifically affirms the right of children to express their views freely and to be heard in accordance with their age and maturity.³ The Committee on the Rights of the Child (CRC Committee) has

Reflecting this obligation, the CRC Committee has “strongly recommend[ed] that [s]tates parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys.”¹⁶⁴ Further, states parties must ensure that all laws and policies, including religious laws, reflect uniform definitions of “child” as “any person below 18 years old.”¹⁶⁵ The Committee on the Elimination of Discrimination against Women (CEDAW Committee), which interprets and monitors compliance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), has similarly stated that notwithstanding CRC Article 1, the minimum age of marriage for men and women must be 18 years.¹⁶⁶ These legal standards, set forth by U.N. treaty monitoring bodies (TMBs), reflect progressive development of the standard established in the 1964 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, which did not establish a minimum age of marriage but called for the elimination of “child marriages and betrothal of young girls before the age of puberty.”¹⁶⁷ The CRC Committee has repeatedly called for states parties to ensure legislation prohibiting child marriage, appropriate sanctions where child marriage occurs, and prosecution of those involved in the performance or promotion of marriages.¹⁶⁸ Further, reflecting the important role registration of birth plays in facilitating verification of a girl’s age at the time of marriage, U.N. treaties and TMBs have recognized that states parties are obligated to register all births, particularly as a means to eliminate child marriage.¹⁶⁹

Under human rights law, no marriage may be entered into without the full and free consent of both parties.¹⁷⁰ Children do not have the capacity to provide legal consent to marriage, regardless of maturity, as it is considered detrimental to their health and overall well-being.¹⁷¹ The minimum age of marriage is established as 18 in recognition of the “important responsibilities” assumed in marriage and to ensure the attainment of “full maturity and capacity to act.”¹⁷² The HRC has stated that a proper minimum age of marriage is necessary to “ensure women’s capacity to make an informed and uncoerced decision.”¹⁷³ (For more information, see “Human Rights Law Does Not Recognize Parental Consent as a Substitute for an Individual Party’s Consent to Marriage,” p. 24.)

CHILD MARRIAGE VIOLATES CHILDREN’S RIGHT TO REPRODUCTIVE HEALTH-RELATED INFORMATION, SERVICES, AND DECISION-MAKING

Adolescent girls face significant risks to their reproductive health within child marriage, particularly in contexts where children already encounter barriers to reproductive health decision-making arising from lack of reproductive health information and adolescent-friendly services. (See Section I, p. 17, for more information on child marriage and women’s and girls’ autonomy.) The CRC Committee has urged states parties to establish clear policies and legislation addressing adolescent health-related issues, including on early marriage and pregnancies.¹⁷⁴ The CRC Committee has affirmed that the best interests of the child standard must be observed in all health-related actions affecting children¹⁷⁵ and requires ensuring children have access to appropriate information on health issues.¹⁷⁶ CRC General Comment 15 affirms that states parties must ensure girls can make “autonomous and informed decisions on their reproductive health.”¹⁷⁷ Under the right to health, governments must ensure adolescents have “the opportunity to participate in decisions affecting their health, to build life-skills, to acquire appropriate information, to receive counselling and to negotiate the health-behaviour choices they make.”¹⁷⁸

(cont’d) urged states parties to “pay special attention to the right of the girl child to be heard, to receive support, if needed, to voice her view and have her view be given due weight, as gender stereotypes and patriarchal values undermine and place severe limitations on girls in the enjoyment of the right set forth in article 12.”¹⁴ Girls who are given away in marriage as children would often prefer to delay marriage, yet they are married without consideration of their preference.⁵ A girl’s silence must not be construed as consent, or as tacit assent to the marriage.⁶ Respect for the evolving capacities of a girl gives rise to the obligation to ensure a girl’s right to refuse marriage.

Best interests of the child: The CRC establishes that “[i]n all actions concerning children...the best interests of the child shall be a primary consideration.”⁷ In assessing a child’s best interests, states parties must ensure full respect for a child’s inherent right to life, survival, and development and consider his or her health condition and safety, including protection from all forms of physical and mental violence.⁸ The CRC Committee has recognized child marriage as violation of children’s rights that endangers girls’ lives and health and exposes girls to violence,⁹ and directly contravenes the “best interests of the child” standard.¹⁰

States parties must ensure that the actions of parents or legal guardians responsible for the upbringing of a child promote the “best interests of the child.”¹¹ The CRC Committee has affirmed that “an adult’s judgment of a child’s best interests cannot override the obligation to respect all of the child’s rights under the Convention.” As such, states parties must protect girls from child marriage, even where their parents may view the practice as in their child’s best interests.

An essential component of empowering girls to make decisions concerning early pregnancy is providing information about the harms of childbearing before their bodies are fully mature and counseling on how to time and space pregnancies. The CRC Committee has affirmed that states parties must ensure adolescents' right to information about their health even if they are out of school¹⁷⁹ and has recognized that adolescents must be provided sexual and reproductive health information, including about the dangers of early marriage and early pregnancy, contraception, and the prevention of STIs including HIV/AIDS.¹⁸⁰ The CRC Committee also has affirmed that fulfillment of adolescents' right to information is essential for the prevention of child marriage and for family planning.¹⁸¹

U.N. TMBs have affirmed that ensuring adolescent decision-making also requires states parties to provide access to adolescent-friendly health services. The CRC Committee has called on states parties to reduce adolescent maternal mortality and morbidity by providing sexual and reproductive health services, including obstetric health care and counseling.¹⁸² States parties also must ensure adolescents' access to short-term as well as long-term methods of contraception; emergency contraception; and safe abortion and post-abortion services, regardless of the legality of abortion.¹⁸³

Further, the CRC Committee has recognized that adolescent girls who have children themselves need special protection, and clarified that states parties are obligated to develop and implement, in a manner consistent with adolescents' evolving capacities, legislation, policies, and programs to support adolescent parents and their children's well-being.¹⁸⁴ The CRC Committee has emphasized that adolescent parents often experience depression and anxiety, and has urged states parties to support adolescent parents and implement policies that allow adolescent mothers to continue their education.¹⁸⁵

CHILD MARRIAGE VIOLATES THE OBLIGATION TO PROTECT CHILDREN FROM VIOLENCE AND SEXUAL ABUSE

Child marriage is a form of violence against children.¹⁸⁶ The CRC Committee has unequivocally stated that the legalization of any form of violence against children, including child marriage, is unacceptable.¹⁸⁷ States parties must "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse."¹⁸⁸ Officials at all levels of government are responsible for preventing violence against children.¹⁸⁹ In addition, the CRC Committee has called on states parties to raise the age of sexual consent to prevent forced marriage and ensure the health of children.¹⁹⁰

Right to Equality and Nondiscrimination

International human rights treaties guarantee women's rights to equality and non-discrimination.¹⁹¹ The CEDAW Committee has explained that "[i]nherent to the principle of equality between men and women, or gender equality, is the concept that all human beings, regardless of sex, are free to develop their personal abilities, pursue their professional careers and make choices without the limitations set by stereotypes, rigid gender roles and prejudices."¹⁹² States parties must ensure both formal and substantive equality, meaning that women and girls must be treated equally under the law as well as enjoy equality of results and opportunities; uphold-

ing this right requires states parties to ensure women's distinct biological capacity to reproduce does not lead to violations of their rights.¹⁹³ The CEDAW Committee has urged states parties to make use of "temporary special measures" to accelerate substantive equality, and ongoing special measures to protect women during pregnancy.¹⁹⁴

Under international law, child marriage is recognized as a violation of women's rights to non-discrimination and equal enjoyment of their human rights.¹⁹⁵ U.N. TMBs have emphasized that child marriage results from discriminatory social attitudes, and causes suffering and marginalization of women.¹⁹⁶ U.N. TMBs have repeatedly expressed concern where child marriage persists despite legal prohibitions,¹⁹⁷ and affirmed that states parties must ensure there is not impunity where child marriage occurs.¹⁹⁸ Under CEDAW, states parties must not grant child marriages any legal effect.¹⁹⁹ Further, marriage registration must be made compulsory,²⁰⁰ even if performed under religious law, as a means to ensure equality in marriage, prevent child marriage, and protect children's rights.²⁰¹

CEDAW Article 16, concerning protection of women's equal rights in marriage, specifically prohibits child marriage.²⁰² Human rights law recognizes that women have the right to equality within marriage, which includes the equal right to consent to marriage²⁰³ and to enjoy equal roles and responsibilities within marriage.²⁰⁴ Recognizing that minority compromises legal capacity to consent, human rights law states that right to consent to marriage requires states parties to establish an appropriate minimum age of marriage to "ensure women's capacity to make an informed and uncoerced decision."²⁰⁵ States parties also must ensure that the law, including customary law, does not accept consent of family members or a male guardian in place of the consent of the woman herself.²⁰⁶ (See "Human Rights Law Does Not Recognize Parental Consent as a Substitute for an Individual Party's Consent to Marriage," p. 24, for more information.) The failure to ensure proper legal capacity and consent is a serious impediment to equality within marriage and perpetuates unequal power dynamics between women and men.

States parties have a particular obligation to protect those girls most at risk of child marriage and the harms resulting from the practice. Rural, poor, and adolescent girls, who are recognized as being most likely to be married as children, are recognized under human rights law as vulnerable subgroups of women.²⁰⁷ Further, the intersection of their gender, age, and socio-economic or geographic status increases their vulnerability to violence and reproductive health harm and exacerbates the impact of the human rights violations resulting from child marriage experienced by these subgroups. (See Section I, p. 16, for more information on rural and poor girls' vulnerability to child marriage.) Where girls face multiple and intersecting forms of discrimination, states parties have an obligation to take special measures to ensure their enjoyment of their human rights without discrimination,²⁰⁸ including their rights to reproductive health services²⁰⁹ and freedom from violence.²¹⁰ Human rights law also recognizes the increased risk of discrimination experienced by girls in times of armed conflict and states of emergency, and has affirmed that the "obligations of States parties do not cease in periods of armed conflict or in states of emergency due to political events or natural disasters."²¹¹

CHILD MARRIAGE MAY NOT BE JUSTIFIED ON THE BASIS OF STEREOTYPES, TRADITION, IDEOLOGY, OR CULTURAL ATTITUDES

Child marriage violates women's and girls' right to equality and nondiscrimination by perpetuating patriarchal traditions, cultural attitudes, and stereotypes that place them

STATES PARTIES MUST ENSURE PERSONAL LAWS DO NOT LEGITIMIZE CHILD MARRIAGE

U.N. TMBs have criticized personal laws that permit child marriage as discriminatory towards women.¹ (See p. 13, for more information on personal laws in South Asia and child marriage.) The Committee on the Elimination of Discrimination against Women has specifically expressed concern about "under-age marriage[s] of girls that are legitimized under different religious laws governing personal status."² Enforcement of personal laws that establish unequal rights and responsibilities of married partners is recognized as a violation of women's right to nondiscrimination.³ The Committee on Economic, Social and Cultural Rights has affirmed that the immediate obligation to ensure women's equal enjoyment of their rights "cannot be conditioned to willingness of concerned communities to amend their laws,"⁴ but rather must be undertaken by states parties themselves. Similarly, the Committee against Torture has criticized personal laws that permit the marriage of girls, stating that "this amounts to violence against them as well as inhuman or degrading treatment."⁵ The Human Rights Committee has affirmed that while the right to freedom of religion permits recognition of both religious as well as civil marriage, states parties may still require that religious marriages be conducted, affirmed, or registered under civil law.⁶

in a subordinate role within family and society.²¹² (See Section 1, p. 17 and p. 20, for more information on stereotypes underlying child marriage.) Under CEDAW, states parties must “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”²¹³ The HRC has emphasized that, “states parties should ensure that traditional, historical, religious and cultural attitudes are not used to justify violations of women’s right to equality before the law and to equal enjoyment of all Covenant rights.”²¹⁴ (See “States Parties Must Ensure Personal Laws Do Not Legitimize Child Marriage,” p. 27, for more information.) The Committee on Economic, Social and Cultural Rights (ESCR Committee), which interprets and monitors compliance with the ICESCR, has recognized child marriage among the “traditional practices that violate the physical integrity and human dignity of women and girls.”²¹⁵

U.N. treaties and TMBs have recognized that states parties that permit different legal ages of marriage for men and women promote discriminatory stereotypes²¹⁶ and violate human rights.²¹⁷ The CEDAW Committee states that such provisions “assume incorrectly that women have a different rate of intellectual development from men, or that their stage of physical and intellectual development at marriage is immaterial.”²¹⁸ The HRC has similarly rejected a recent state party’s claim that child marriage is justified on the stereotyped notion that “girls mature faster and are more likely to handle family life at an earlier age than boys.”²¹⁹ States parties have an immediate obligation to enact legislation prohibiting traditional practices that are harmful to women and girls and adopt measures to modify or eliminate discriminatory traditional practices and stereotypes.²²⁰

CHILD MARRIAGE VIOLATES WOMEN’S RIGHT TO DETERMINE THE NUMBER, SPACING, AND TIMING OF THEIR CHILDREN

Child marriage operates as a means to control women’s and girls’ sexuality and reproductive capacity, and results in significant risks of unwanted and forced pregnancies. (See Section I, pp. 16–17 and p. 20, for more information.) The preamble to CEDAW affirms that “the role of women in procreation should not be a basis for discrimination.”²²¹ Under CEDAW Article 16, women must have the same right as men “to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.”²²² The CEDAW Committee has affirmed that women’s right to determine the number, spacing, and timing of their children is violated where women are denied autonomy in making decisions about their reproductive health by their husbands or family members or are exposed to forced pregnancies.²²³ Article 16 guarantees women the right to make informed decisions about contraceptive measures, which requires access to contraceptive information and services as well as sexuality education.²²⁴

CHILD MARRIAGE CONSTITUTES GENDER-BASED VIOLENCE

Child marriage is recognized under human rights law as form of gender-based violence.²²⁵ Freedom from gender-based violence is a human right.²²⁶ The CEDAW Committee defines gender-based violence as violence “directed against a woman because she is a woman or that affects women disproportionately” and “includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts,

coercion and other deprivations of liberty.”²²⁷ Child marriage has been recognized by the CEDAW Committee as a practice involving violence or coercion and as a form of forced marriage.²²⁸

Child marriage exposes women to reproductive rights violations²²⁹ and marital rape,²³⁰ both of which are recognized as forms of gender-based violence. (For more information on child marriage, sexual violence, and barriers to reproductive health services, see Section I, pp. 16–17.) The United Nations Special Rapporteur on Violence against Women (SRVAW) has recognized child marriage as a “cultural practice” that is harmful to women and their reproductive health, and is rooted in the desire to control women’s and girls’ reproductive capacity.²³¹ Under the obligation to eliminate violence against women, states parties must ensure women do not experience human rights violations as a result of lack of control over their sexual and reproductive lives or poor quality of reproductive health care.²³² U.N. TMBs also have criticized states parties where marital rape is not recognized as a crime.²³³ (See Section I, p. 14, for more information on laws on marital rape in South Asia.)

Under human rights law, states parties must exercise due diligence in addressing violence against women committed by both state and non-state actors.²³⁴ The due diligence obligation requires states parties to prevent, investigate, punish, and provide remedy for all acts of violence against women.²³⁵

States parties must address “gender-based stereotypes, power imbalances, inequalities and discrimination which support and perpetuate the use of violence and coercion in the home...and in society more broadly.”²³⁶

The SRVAW has emphasized that although historically governments have denied the legal obligation to intervene in “cultural practices” that cause violence because they occur in “private” or “domestic” spheres, international human rights standards clearly reject this “public/private differentiation” and obligate governments to eradicate all forms of violence, including within the family.²³⁷

Right to Health

The ICESCR recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”²³⁸ States parties have “immediate obligations” to guarantee the right to health without discrimination,²³⁹ including for women and adolescent girls.²⁴⁰ Ensuring the right to health without discrimination requires states parties to take effective measures to abolish traditional practices that are prejudicial to women’s and children’s health.²⁴¹ Child marriage is recognized as a harmful traditional practice that is the root cause of significant violations of the right to health.²⁴² The CEDAW Committee has affirmed that the right to health requires the proscription of betrothal and marriage of children as a means to “prevent[] the physical and emotional harm which arise from early childbirth.”²⁴³ The CEDAW Committee also has recognized the long-term negative effect of child marriage on women’s enjoyment of their right to health²⁴⁴ and has affirmed that “states parties should ensure the right to sexual health information, education and services for all women and girls.”²⁴⁵

U.N. TMBs have recognized that prevention of child marriage is needed to ensure protection of the right to health.²⁴⁶ The ESCR Committee has affirmed that states parties must take “preventive, promotive and remedial action to shield women from harmful practices and norms that deny them their full reproductive rights.”²⁴⁷ Further, the

obligation to respect, protect, and fulfill the right to health²⁴⁸ requires states parties to abstain from imposing and enforcing discriminatory practices that affect women's health²⁴⁹ and to ensure the enactment and effective enforcement of laws prohibiting child marriage.²⁵⁰ States parties also must prevent third parties from coercing women to undergo traditional practices, guarantee “that harmful social or traditional practices do not interfere with access to pre- and post-natal care and family-planning,”²⁵¹ and launch information campaigns concerning harmful traditional practices and sexual and reproductive health.²⁵²

EARLY PREGNANCY RESULTING FROM CHILD MARRIAGE VIOLATES THE RIGHT TO HEALTH

U.N. TMBs have specifically stated that early pregnancy violates a girl's right to health by putting her at risk of maternal mortality and morbidity²⁵³ and unsafe abortion.²⁵⁴ Governments have an obligation to take steps to allow girls to prevent early pregnancy²⁵⁵ and to prioritize the reduction of adolescent maternal mortality and morbidity²⁵⁶ by prohibiting child marriage²⁵⁷ and by developing programs that provide access to contraception, safe abortion services, and comprehensive obstetric care and counseling.²⁵⁸

Governments doubly jeopardize married girls' health by failing to ensure that girls can prevent early pregnancy and that pregnant girls have access to safe and appropriate reproductive health services. The CEDAW Committee has affirmed that “it is the duty of States parties to ensure women's right to safe motherhood and emergency obstetric services and they should allocate to these services the maximum extent of available resources.”²⁵⁹ The duty to ensure maternal health is recognized as comparable to a “core obligation,”²⁶⁰ meaning that states parties must take “deliberate, concrete and targeted” steps toward meeting this goal.²⁶¹ The failure to ensure women's and girls' access to reproductive health services, including maternal health services, is recognized as violating women's right to enjoy the right to health on an equal basis with men.²⁶² The CEDAW Committee has affirmed that “[m]easures to eliminate discrimination against women are considered to be inappropriate if a health-care system lacks services to prevent, detect and treat illnesses specific to women.”²⁶³

CHILD MARRIAGE EXPOSES WOMEN TO COERCION AND VIOLENCE IN VIOLATION OF THE RIGHT TO HEALTH

The obligation to ensure women's right to health without discrimination requires states parties to protect women from violence,²⁶⁴ including sexual violence and violence resulting from denial of reproductive rights. Girls and women who were married as children face significant coercion and violence within the family and from society relating to reproductive decision-making, including whether to have sex, use contraceptives, become pregnant, and continue a pregnancy. (See Section I, p. 16, for more information concerning reproductive health risks and violence faced by girls and women married as children.) U.N. TMBs have established that unequal power dynamics between men and women can jeopardize women's and girls' right to health²⁶⁵ by denying them the ability to refuse sex or to insist on safe sex practices.²⁶⁶ The CEDAW Committee has particularly expressed concern where girls are vulnerable to sexual abuse by older men, noting the risk of physical and psychological harm and unwanted and early pregnancy.²⁶⁷

Right to Freedom from TCIDT

The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) and ICCPR call on states parties to eliminate torture and other forms of cruel, inhuman, or degrading treatment (TCIDT).²⁶⁸ The right to be free from TCIDT cannot be diminished under any circumstance.²⁶⁹ States parties must exercise due diligence to “prevent, investigate, prosecute and punish”²⁷⁰ TCIDT committed by state agents and others acting in an official capacity.²⁷¹ States parties also must exercise due diligence where TCIDT is committed by non-state or private actors when state authorities or others acting in an official capacity know or have reasonable grounds to believe that these acts are taking place.²⁷²

U.N. TMBs have recognized that child marriage may constitute TCIDT,²⁷³ particularly where governments fail to “set a minimum age of marriage that complies with international standards,”²⁷⁴ do not eradicate forms of marriage that permit sexual exploitation of children,²⁷⁵ or allow child marriage to occur despite laws setting the minimum age of marriage at 18.²⁷⁶ The failure of governments to introduce and enforce uniform laws prohibiting child marriage and to eliminate discriminatory patriarchal norms about girls’ value perpetuates girls’ powerlessness to challenge the practice of child marriage. The U.N. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SR TCIDT) has stated that

TCIDT may be found where “a society’s indifference to or even support for the subordinate status of women, together with the existence of discriminatory laws and a pattern of State failure to punish perpetrators and protect victims, create the conditions under which women may be subjected to systematic physical and mental suffering, despite their apparent freedom to resist.”²⁷⁷

(See Section I, pp. 17–21 for more information on why child marriage persists.)

FAILURE TO ELIMINATE HARMFUL TRADITIONAL PRACTICES, INCLUDING CHILD MARRIAGE, CONSTITUTES TCIDT

U.N. TMBs have recognized that harmful traditional practices, including child marriage,²⁷⁸ violate the right to be free from TCIDT.²⁷⁹ Under CAT, states parties must “create adequate conditions allowing victims to report incidents of harmful traditional practices and domestic and sexual violence without fear of reprisal or stigmatization.”²⁸⁰ This involves training government officials, including prosecutors and the police, about the obligation to strictly apply penal code provisions concerning the criminal nature of harmful traditional practices and other forms of violence against women.²⁸¹ Further, under CAT, states parties must ensure that domestic protections against discrimination against women trump customary laws that condone discriminatory practices.²⁸² The Committee against Torture (CAT Committee) has affirmed that under the right to be free from TCIDT, states parties must enact and implement laws that mandate registration of marriage,²⁸³ criminalize child marriage,²⁸⁴ prosecute any offenders,²⁸⁵ and ensure such marriages have no legal effect.²⁸⁶ Governments cannot absolve themselves of this obligation by allowing communities to create their own individual ages of marriage under personal laws.²⁸⁷ The CAT Committee has called for urgent legislative measures where governments allow child marriage on the basis of personal laws.²⁸⁸ (*Continued on p. 34.*)

IN FOCUS: THE POTENTIAL FOR SAARC TO CREATE ACCOUNTABILITY FOR CHILD MARRIAGE: COMPARATIVE EXAMPLES OF PROGRESS IN THE DEVELOPMENT OF REGIONAL STANDARDS

The South Asian Association for Regional Cooperation (SAARC)

is a regional body composed of eight member states dedicated to the economic, social, and cultural development of South Asia,¹ including the six countries discussed in this briefing paper.² SAARC member states have repeatedly pledged to protect children, including in the SAARC Convention on Regional Arrangements on the Promotion of Child Welfare in South Asia (Child Welfare Convention),³ the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (Trafficking Convention), and the Colombo Statement on Children of South Asia.⁴ However, SAARC has yet to adopt a convention clearly condemning child marriage and calling on states to enforce a minimum age of marriage of 18, consistent with human rights law.

While SAARC's Child Welfare Convention defines "children" as being below the age of 18,⁵ it only obligates governments to take steps to enforce the minimum age of marriage established in national laws.⁶ The Child Welfare Convention fails to establish 18 as the minimum legal age of marriage, despite the fact that it reaffirms SAARC member states' commitment to uphold the Convention on the Rights of the Child and calls for compulsory civil registration of births and marriages as means to enforce national laws on minimum age of marriage.⁷ Similarly, SAARC's Trafficking Convention requires that member states punish under criminal law traffickers who utilize child marriage as means to force children into prostitution.⁸ However, the Trafficking Convention does not define child marriage nor does it explicitly prohibit the practice.⁹

While no SAARC convention currently specifically condemns child marriage, there have been some noteworthy developments on child marriage in SAARC statements and in advocacy work by regional organizations engaging with SAARC. For example, the SAARC Colombo Statement on Children of South Asia has recognized child marriage as a "harmful traditional practice" and resolved to "enhance and make effective child protection efforts, including eliminating child marriage."¹⁰ Although SAARC has yet to define and condemn child marriage in a convention, two regional bodies have begun to engage with SAARC member states to support the development of regional actions plans that include steps to eliminate child marriage.¹¹ The first is the South Asia Initiative to End Violence Against Children, which is a SAARC apex body consisting of government representatives that seeks to hold governments accountable for ending all forms of violence against girls, boys, and women.¹² The second is the South Asia Coordinating Group on Action on Violence Against Children, a network of U.N. agencies, non-governmental organizations, and other actors working together at the regional level in South Asia to coordinate activities aimed at addressing violence against women and children.

Regional instruments and formal legal and political bodies in Africa and Europe provide examples of further steps that can be taken by SAARC to create legal accountability for child marriage as a violation of women's and girls' rights. For example, the African Union's Protocol to the African Charter on Human and

People's Rights on the Rights of Women in Africa recognizes that all marriages require free and full consent, establishes that the minimum legal age of marriage is 18, and mandates compulsory marriage registration.¹³ The African Charter on the Rights and Welfare of the Child further recognizes child marriage as a “harmful social and cultural practice” and states that child marriage should be prohibited by all member states.¹⁴ The African Committee of Experts on the Rights and Welfare of the Child, which periodically reviews states parties' compliance with this charter, has called for legal reform where governments permit child marriage.¹⁵ Similarly, the Council of Europe's Convention on Preventing and Combating Violence against Women and Domestic Violence establishes that governments must take all necessary measures to ensure that child marriage is criminalized.¹⁶ Further, European Parliament Resolution 1468 recognizes child marriage as a violation of fundamental human rights, and it commits national parliaments to criminalize acts of forced marriage and to set the minimum statutory age for marriage at 18 years.¹⁷

“Child marriages limit opportunities and undermine [the] wellbeing of [c]hildren, particularly girls. Child marriages often result in early and unwanted pregnancies, posing life-threatening risks for girls. This vulnerability in the South Asian region calls for a redoubled response in terms of survival, development, protection and the social disadvantages faced by...girl children.

Empowering girls is a matter of basic justice and equality and it is an obligation under human rights laws and conventions. The basic rights of children and [the] girl-child are explicitly set out in the Convention on the Rights of the Child, which is the most widely ratified human rights treaty in history. If we truly believe that investing in girls is a catalyst for changing the world, we must do everything possible to reduce the gap between girls and boys in respect to their level of health, nutrition as well as education and other discriminatory practices based on their gender.”

—SAARC Secretary General, Inaugural Address to the Regional Consultative Meeting to Celebrate the International Day of the Girl Child, December 2012

CHILD MARRIAGE VIOLATES THE RIGHT TO FREEDOM FROM TCIDT BY DENYING GIRLS THEIR REPRODUCTIVE RIGHTS

States parties are obligated under the right to freedom from TCIDT to ensure that women and girls are not exposed to grave risks to their reproductive health due to early and unintended pregnancy, preventable maternal mortality, or gender-based violence. The CAT Committee has expressed concern about child marriage as a cause of maternal mortality and child mortality.²⁸⁹ It has stated that state party failure to take steps to prevent acts that endanger women's physical and mental health constitutes "cruel and inhuman treatment,"²⁹⁰ and it has recommended that governments "take whatever legal and other measures...necessary to effectively prevent acts that put women's health at grave risk"—including providing medical treatment, strengthened contraceptive programs, and better access to information and reproductive health services.²⁹¹

More specifically, the SR TCIDT has stated that the right to freedom from TCIDT is implicated where states are complicit in violations of reproductive rights or violence against pregnant women as a result of failing to protect their legal right to access reproductive health services.²⁹² In recent jurisprudence, the HRC has recognized that state omission to ensure access to safe abortion services where legal can result in forced pregnancy and foreseeable physical and psychological harm, in violation of the right to freedom from TCIDT.²⁹³

THE FAILURE TO CRIMINALIZE AND ADDRESS GENDER-BASED VIOLENCE, INCLUDING CHILD MARRIAGE AND MARITAL RAPE, VIOLATES THE RIGHT TO FREEDOM FROM TCIDT

Child marriage exposes girls to forced sexual initiation and increases the risk that they will experience a lifetime of physical and sexual abuse. (See Section I, p. 16, for more information on rape and child marriage.) The SR TCIDT and U.N. TMBs have also recognized that governments' failure to eliminate violence against women and girls, including child marriage, is a violation of their right to freedom from TCIDT.²⁹⁴ The SR TCIDT has affirmed that sexual violence, including rape, constitutes torture where carried out with the consent or acquiescence of government officials.²⁹⁵ States must criminalize all forms of violence against women, including marital rape and domestic violence; the failure to do so condones these acts of violence and discriminatorily interferes with women's right to be free from TCIDT.²⁹⁶ Under this right, states parties have an obligation to punish perpetrators and to provide victims with protection; access to medical, social, and legal services; temporary accommodation; compensation; and rehabilitation.²⁹⁷ The SR TCIDT has stated that "[s]tates should be held accountable for complicity in violence against women, whenever they create and implement discriminatory laws that may trap women in abusive circumstances."²⁹⁸ In the context of child marriage, TCIDT is clearly implicated where states parties fail to ensure that laws prohibiting child marriage are enacted and enforced, that married girls have clear and realistic legal options to leave child marriages, and that marital rape is criminalized. (See Section I, p. 18, for information on legal barriers to leaving child marriages and the limited recognition of marital rape, including involving minors, in South Asia).

Rights to Life, Privacy, and Freedom from Slavery

Child marriage violates a host of civil and political rights recognized in human rights treaties, including the rights to life, privacy, and freedom from slavery. Recognition of child marriage as a violation of these rights reflects the negative impact of the practice on girls' dignity, which is a core element of these rights. Violations of these rights are interrelated with the right to liberty due to their implications on bodily integrity and security of the person.

RIGHT TO LIFE

Child marriage violates the right to life by exposing women and girls to reproductive health risks, including early pregnancy, and violence. (See Section I, p. 16, for more information.) Every human being has an inherent right to life.²⁹⁹ States parties are obligated to protect individuals from arbitrary and preventable losses of life, and take steps to increase life expectancy.³⁰⁰ States parties are specifically obligated to ensure children's right to life,³⁰¹ and to "ensure to the maximum extent possible the survival and development of the child."³⁰² The CRC Committee has stated that states parties must take effective measures to eliminate all acts and activities that threaten the right to life of adolescents, including traditional practices such as early marriage.³⁰³

U.N. TMBs also have recognized that the right to life is violated where women and adolescent girls experience preventable maternal mortality and morbidity, including from early pregnancy and from illegal and unsafe abortions.³⁰⁴ The HRC has recognized that child marriage, early pregnancy, and maternal mortality and morbidity are linked,³⁰⁵ and has repeatedly expressed concern under the right to life where there are high levels of adolescent pregnancy.³⁰⁶ States parties are obligated to help adolescent girls avoid unwanted pregnancies as well as HIV/AIDS, including by strengthening access to contraceptive information and services and sexuality education programs.³⁰⁷ States parties also must ensure that adolescent girls are not exposed to the life-threatening risks of illegal and unsafe abortions.³⁰⁸

Violence against women may also constitute a violation of the right to life. The SRVAW has recognized that the right to life may be implicated where states parties condone patterns of abuse and violence against women through pervasive nonaction.³⁰⁹ The HRC has also recognized that the right to life may be violated where victims of rape are denied reproductive health services, including safe abortion.³¹⁰

RIGHT TO PRIVACY

Child marriage violates women's right to privacy under ICCPR Article 17, which protects the right to freedom from arbitrary and unlawful interference with privacy, family, and home and to protection of law from such interference or attacks.³¹¹ The right to privacy specifically protects women's rights to make decisions about their private lives free from arbitrary interference by the state. Interference with individual privacy may be considered "unlawful" if it is undertaken on the basis of a national law that is in violation of ICCPR,³¹² and may be considered "arbitrary" if it is based on a lawful interference that is not reasonable and not in conformance with ICCPR.³¹³

The persistence of child marriage reflects the failure of states parties to ensure that discriminatory patriarchal norms do not result in women being deprived of their human rights either by modifying laws that permit child marriage or by enforcing laws

prohibiting child marriage. (See Section I, p. 17, for more information on the persistence of child marriage.) The HRC has stated that states parties are obligated under Article 17 to ensure that the legal age of marriage meets internationally recognized standards,³¹⁴ to eradicate forms of marriage that allow for the sexual exploitation of children,³¹⁵ and to abolish discriminatory provisions of criminal codes and personal laws relating to marriage, including those on consent.³¹⁶ The HRC has specifically stated that Article 17 is implicated where laws permit a lower age of marriage for girls than boys.³¹⁷

The HRC has recognized that women's equal right to enjoy the right to privacy may be violated where there is state interference with women's reproductive decisions or where a state fails to protect women from interference in such decisions by private actors.³¹⁸ States parties are required to ensure women's right to autonomy and privacy in the provision of health care services.³¹⁹

RIGHT TO FREEDOM FROM SLAVERY

Child marriage reflects the commodification of women and girls, without regard to their rights as individuals, best interests, and legal capacity to provide consent to marriage. (See Section I, p. 20, for more information on child marriage and commodification.) Under the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (Supplementary Convention on Slavery), all forms of forced marriage are defined as practices similar to slavery.³²⁰ Article 1 of the Supplementary Convention on Slavery prohibits any institution where a woman, without the right to refuse, is given in marriage in consideration for money or in kind.³²¹ In her 2012 Thematic Report on Servile Marriage, the Special Rapporteur on Contemporary Forms of Slavery (SR on Slavery) has affirmed that children cannot provide informed consent to marriage, and as such, all child marriages are considered to be forced and to fall within the slavery-like practices condemned in the Supplementary Convention on Slavery.³²² The SR on Slavery has recognized child marriage as a form of "servile marriage" that gives rise to domestic servitude and marital rape³²³ and has stated that child marriage perpetuates the view of women and girls as commodities to be used to solidify family links and to preserve honor, as well as a "financial asset" to improve a family's economic status.³²⁴ This view of women and girls as property is reflected in laws and practices that permit them to be married without their consent.³²⁵ Under international law, all forms of slavery, including servile marriages, are considered crimes against humanity and must be eliminated without exception.³²⁶

Article 2 of the Supplementary Convention on Slavery calls for all states parties to establish a suitable minimum age of marriage, encourage expression of consent by individuals to be married, and encourage registration of marriage.³²⁷ (See Section I, p. 15, for more information on consent requirements for marriage in South Asia.)

The HRC has specifically recognized that ICCPR Article 8, the right to be free from slavery, is implicated where governments fail to eliminate discriminatory provisions in personal laws and criminal codes, including by setting a legal age of marriage that complies with international standards and by abolishing discriminatory provisions of personal laws relating to consent to marriage.³²⁸

Rights to Education, Work, and Economic Autonomy

The interrelated rights to education, employment, and economic freedom are each enshrined in international human rights treaties.³²⁹ Under CEDAW, states parties are obligated to ensure that women are able to enjoy these rights on an equal basis with men.³³⁰ U.N. TMBs have expressed concern where states parties permit child marriage due to its negative impact on children's enjoyment of the right to education.³³¹ The CRC Committee has recognized that girls who are married as children are "often obligated to leave school and are marginalized from social activities."³³² The CEDAW Committee has emphasized that child marriage's impact on women's health and ability to pursue education leads to restriction of women's economic autonomy.³³³ The CEDAW Committee has recognized economic dependence as a critical factor that prevents women from leaving violent relationships.³³⁴ U.N. TMBs have urged states parties to effectively enforce legal bans on child marriage to prevent girls from leaving school under the right to education³³⁵ and commended the adoption of laws prohibiting the withdrawal of girls from school because of marriage.³³⁶

States parties also must ensure married girls' right to education.³³⁷ U.N. TMBs have emphasized that states parties should take steps to retain girls in school, and must ensure that early pregnancy does not interfere with girls' ability to exercise their right to education.³³⁸ They have specifically called on states parties to strengthen and adopt re-entry policies enabling girls and young women, including specifically pregnant girls and young mothers, to return to school.³³⁹

Obligation to Provide Legal Remedies for Child Marriage

The failure of a state to establish accountability mechanisms and procedures for seeking legal redress for child marriage and to remove barriers to their accessibility violates the obligation to guarantee legal remedies for violations of human rights.³⁴⁰ The HRC has emphasized the obligation to ensure "accessible and effective remedies" for human rights violations and to take into account "the special vulnerability of certain categories of person."³⁴¹ Importantly, it has also noted that "a failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant"³⁴² and that "cessation of an ongoing violation is an essential element of the right to an effective remedy."³⁴³ In discussing the obligation to provide remedies where the right to nondiscrimination is violated, the CEDAW Committee has stated that remedies established under human rights law include "different forms of reparation, such as monetary compensation, restitution, rehabilitation and reinstatement; measures of satisfaction, such as public apologies, public memorials and guarantees of non-repetition; changes in relevant laws and practices; and bringing to justice the perpetrators of violations of human rights of women."³⁴⁴

Similarly, the CRC Committee has recognized that, "[c]hildren's special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights," and emphasized that states parties must ensure effective, child-sensitive procedures; accessibility to complaints procedures and courts; and appropriate reparation and measures to promote their physical and psychological recovery where rights are found to be breached.³⁴⁵

RAHAR MAYA BISWOKARMA'S STORY

A CASE STUDY ON CHILD MARRIAGE FROM NEPAL

Rahar Maya Biswokarma, now 50, was married at 10—well before she realized what marriage really means to a girl. By the age of just 15, she had already had her first baby. A few months later, probably as a result of having to deliver the baby at a very early age, she suffered from uterine prolapse, which subjected her to a combination of pain, humiliation, and frustration for more than three decades.

“I was turned into someone’s wife before I knew what it meant to me,” says Rahar Maya, now a mother of four grownup children, all of them married. “Perhaps, I’ll regret getting married early throughout my life, until my death.”

Rahar Maya was married off to Hari Narayan Biswokarma, who is five years older than her. “At that time, I didn’t know what I was supposed to do after getting married,” says Rahar Maya, adding, “Today, I wish my parents hadn’t married me off so early.” When she knew that she would have to leave her home and parents for once and all after marriage, she could not stop crying. “I felt I was discarded and my parents no longer loved me,” says she, adding, “All my joy was gone at once.”

“My mother-in-law expected me to be like a perfect daughter-in-law. She wanted me to do all the work in the kitchen, which I wasn’t capable of. When I couldn’t perform my duty as a daughter-in-law, she scolded me. I was fearful of her shadow.”

Rahar Maya says her husband, too, was not mature enough to stand by her when she needed his support and sympathy. “Whenever my mother-in-law berated me, I would seek his emotional support,” says she. “But he would always fail me.” She says she often felt lonely—already discarded by her parents and yet not fully accepted by her husband as well as the parents-in-law. After giving birth to her first baby, Rahar Maya went to her maternal home, where she suffered from uterine prolapse.

“My mother was washing clothes in a nearby canal, leaving my youngest brother with me,” recalls she. “When my brother started crying, I got up to take him to my mother. But as soon as I lifted him, I felt pain in my womb. I also felt something falling from my womb.”

Rahar Maya shared her problem with her mother, who asked her not to worry about it. But the problem, instead of dying down, became more intense, causing pain and embarrassment to her. “My husband was, of course, fully aware of the problem,” says she. “But he was indifferent to my suffering. I lived on with this problem until recently.”

Three years ago, Bhagawato Chaudhary, an Auxiliary Nurse Midwife (ANM), took Rahar Maya to a health camp. She underwent a surgery and finally got rid of the problem. “It felt like being born again,” says she. “I no longer feel pain and embarrassment.” Two years after her first child [was born], Rahar Maya gave birth to yet another baby who could not survive a measles outbreak. “I was unable to look after two children at the same time,” says she. “In retrospect, I think I could’ve saved my second child, too, if I was mature by then.” I was too shy to consult my husband about using contraceptives,” says she. “I used Norplant only after giving birth to five children.”

Excerpted from: Om Astha Rai, *No Country for Young Girls*, REPÚBLICA, July 12, 2013. Text has been condensed.

Examples of Human Rights Violated

Rahar Maya’s story illustrates the continuum of human rights violations that child marriages trigger in the lives of girls. Rahar Maya’s marriage at the age of 10 occurred in violation of the minimum legal age of marriage established in Nepali law at that time.³⁴⁶ Although her marriage occurred 40 years ago, today almost half of girls in the region continue to be married as children and suffer the same harms as Rahar Maya—early and frequent pregnancies, pregnancy-related complications, verbal abuse, and emotional distress. Examples of violations of Rahar Maya’s rights include:

RIGHTS OF CHILDREN TO SPECIAL PROTECTION AND TO HAVE THEIR BEST INTERESTS PROTECTED:

The failure of the government in place at the time of Rahar Maya’s wedding to prohibit marriage of girls before 18 years left her vulnerable to child marriage and the continuum of violations resulting from the practice. Rahar Maya was separated from her parents, despite the grief and fear the separation caused her. She was sent to her husband’s home and exposed to the health risks of early pregnancy, was forced to perform domestic labor, and faced verbal abuse and isolation. She was only a child herself when she had her first child.

CASE STUDY: RAHAR MAYA BISWOKARMA'S STORY

RIGHT TO NONDISCRIMINATION:

By failing to protect Rahar Maya from child marriage through adequate enforcement of the law, the Nepal Government also violated her right to nondiscrimination, which specifically requires states parties to eliminate all forms of violence against women, including child marriage. Further, the government also failed to protect Rahar Maya from other forms of violence, including denial of her reproductive rights. Rahar Maya was unable to protect her reproductive health in part due to unequal power dynamics within her marriage, which limited her negotiating power and acted as a barrier to contraceptive information and services as well as treatment for uterine prolapse.



A photograph of a woman breastfeeding a baby in a dimly lit room. The woman is wearing a red and black patterned shawl. The baby is wearing a red garment. The background is dark and blurry, showing some household items like a metal bowl and a wooden object.

RIGHT TO HEALTH:

Under the right to health, the Government of Nepal is obligated to abolish traditional practices that are prejudicial to women's and children's health, including child marriage. Further, states must ensure that girls have the information and means to avoid early pregnancy. Rahar Maya suffered from uterine prolapse, a preventable form of maternal morbidity that significantly affects adolescent girls in Nepal, and faced years of severe pain and embarrassment as a result.

RIGHT TO FREEDOM FROM TORTURE AND OTHER CRUEL, INHUMAN, OR DEGRADING TREATMENT (TCIDT):

The Government of Nepal's failure to take steps to prevent and prosecute incidents of child marriage, which endangers women's and girls' physical and mental health, constitutes a violation of the right to freedom from TCIDT. Rahar Maya was exposed to physical and mental suffering as a result of her marriage as a child, which was further compounded by barriers to access to reproductive health services. Under the right to freedom from TCIDT, the Government of Nepal is also obligated to take steps to prevent acts that endanger women's health, including through the provision of medical treatment, strengthened contraceptive programs, and better access to information and reproductive services.

Kalpana, 16, breastfeeds one of her twin children while her mother-in-law breastfeeds the other in their home in Kagati Village, Kathmandu Valley, Nepal on Feb. 3, 2007. Kalpana had her babies when she was just seven months pregnant, and was working in the fields until she went into labor. After three days of labor, the children were born severely underweight and their survival was doubtful.

Photography: Stephanie Sinclair/VII/Tooyoungtowed.org

SECTION III: CONSTITUTIONAL NORMS AND JURISPRUDENCE IN SOUTH ASIA

Governments in South Asia may also be held accountable for the failure to prevent child marriage under their own national constitutions. Constitutions in the region echo the human rights principles that form the basis of the international legal obligation to eliminate child marriage. These principles are typically protected in the fundamental rights' section of national constitutions, which enumerate the rights to be accorded the highest legal protection by the government, including courts. (See "Fundamental Rights and Principles of State Policy Underlying the Right to Be Free from Child Marriage in South Asia," p. 44, for more information.) Like human rights treaties, constitutional norms and jurisprudence in South Asia recognize children as rights-holders and articulate a special obligation to protect children and their fundamental rights. Although there has been limited jurisprudence invoking fundamental rights to seek accountability for child marriage, several cases from national courts on children's and women's rights reveal how child marriage and the attendant risks of sexual violence and reproductive health harm may be understood as implicating fundamental rights.

Children's Rights in South Asian Constitutional Law

The persistence of child marriage in South Asia violates constitutional guarantees protecting children's rights throughout the region. Reflecting the vulnerable status of children, the constitutions of Bangladesh, India, Nepal, Pakistan, and Sri Lanka allow the government to make "special provision[s]" to protect children.³⁴⁷ Notably, Nepal's Interim Constitution establishes the right of the child as a fundamental right in Article 22, stating that every child has the right to be nurtured, to receive basic health care, and to have social security.³⁴⁸ Nepal's Interim Constitution further guarantees children the right to be free from physical, mental, or other forms of exploitation.³⁴⁹ The Afghanistan Constitution establishes that the government must take necessary measures to ensure the health and upbringing of children within the fundamental rights provisions relating to families,³⁵⁰ and it prohibits forced labor of children.³⁵¹ Together, these constitutional guarantees unequivocally recognize children as rights-holders in South Asia and underscore the special obligation of South Asian governments to ensure children's fundamental rights. Further, in India, the Directive Principles of State Policy also call on the government to direct its policy toward securing that the "tender age of children are not abused[,]... that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."³⁵²

Courts have played an essential role in articulating the scope of protection afforded to children in South Asia. For example, in a case concerning the traditional practice of *kumari*, where girls are dedicated to temples for a period of time to serve as "living goddesses," the Nepal Supreme Court has recognized the government's constitutional obligation to protect children from physical and mental violence, as well as from any other type of violence.³⁵³ The Nepal Supreme Court has stated that the government is legally obligated to take "economic, social, administrative, legal and other appropriate measures for the effective enforcement of the rights granted to children by the CRC and other international treaties without any discrimination."³⁵⁴ Further, the Nepal Supreme Court has stated that children have been granted certain rights to further the development of their personalities,

JUDICIAL RECOGNITION OF THE ROLE OF REGISTRATION OF MARRIAGE IN ELIMINATING CHILD MARRIAGE

Courts in several South Asian countries have emphasized the role of registration of marriage in eliminating child marriage. (See Section I, p. 15, for more information on laws concerning registration of marriage.) In 2006 the Supreme Court of India issued an order in the case of *Smt. Seema v. Ashwani Kumar* making registration of all marriages mandatory.¹ Although the case was a private matrimonial matter, the Supreme Court of India quoted a submission made by the National Commission on Women (NCW) stating that a law requiring registration of marriage "would be of critical importance to various women related issues such as: (a) prevention of child marriages and to ensure minimum age of marriage; (b) prevention of marriages without consent of the parties; ... (g) deterring parents/guardians from selling daughters/young girls to any person...under the garb of marriage."²

In a case concerning registration of marriages involving minors, the High Court Division (HCD) of the Supreme Court of Bangladesh ruled that marriage registrars are legally bound to stop child marriages.³ The Court emphasized the significant harm to children arising

including the right to free education, to medical treatment, to residence, to stay with and not be separated from one's family, to opinion and expression, to freedom of movement, and to recreation.³⁵⁵ Finally, the Nepal Supreme Court has affirmed the best interests of the child standard set forth in the CRC, stating that it is universally recognized that the best interests of the child be given primary consideration in all actions undertaken by anyone concerning children.³⁵⁶

The High Court Division (HCD) of the Supreme Court of Bangladesh also has affirmed the best interests of the child standard in a 2009 case appealing an order mandating state custody of a 7-year-old girl who was raped by a neighbor.³⁵⁷ In this case, the court expressed concern where a child is separated from her mother against her will, stating that such an occurrence “can be nothing other than cruel and inhuman treatment” in violation of the CRC and the Bangladesh Constitution.³⁵⁸ The HCD of the Supreme Court Bangladesh established that a child's view must be considered by courts in accordance with CRC Article 12.³⁵⁹ Further, the decision specifically established that the government must “ensure that the definition of ‘child’ is uniformly fixed in all statutes as anyone below the age of 18 years [Art.1 CRC].”³⁶⁰ The decision also ordered the government to implement several measures to ensure legal remedies for child victims of violence, including legal aid for children to ensure representation, designated “places of safety” for children to go at the district level, and capacity-building of local health clinics to conduct medical examinations of victims.³⁶¹

Select Decisions by South Asian Courts on Child Marriage

Despite the profound violation of constitutional protections caused by child marriage and its extremely high incidence in the region, there is limited recognition of child marriage as a constitutional rights issue by courts in the region. (See “Fundamental Rights and Principles of State Policy Underlying the Right to Be Free from Child Marriage in South Asia,” p. 44, for more information.) It is difficult to determine whether this is due to too few cases being filed or if it reflects judicial attitudes in the region. While public interest litigation (PIL) has been recognized as a useful tool in seeking accountability for gender-based discrimination,³⁶² including reproductive rights violations,³⁶³ in South Asia, there have yet to be many public interest cases on child marriage decided by supreme and high courts. (See “FFDA v. Union of India: Attempt to Utilize Public Interest Litigation to Address Child Marriage,” p. 48, for more information.) Even with regard to individual writ petitions, the courts are rarely utilized as a means for girls to prevent or escape child marriages.³⁶⁴ Further, even when cases are brought, decisions are issued without discussion of the fundamental rights implications for women and girls. However, in the past ten years, a few cases in South Asia have discussed child marriage as a violation of women's and girls' fundamental and human rights. (See “Judicial Recognition of Women's Right to Freedom from Forced Marriage,” p. 42, for an example of jurisprudence recognizing women's right to consent to marriage.) This section will present four such cases from courts in India and Nepal, which reveal the judicial mindset concerning child marriage and discuss various measures including systemic remedies needed to eliminate the practice.

SAPANA PRADHAN MALLA FOR FORUM FOR WOMEN, LAW AND DEVELOPMENT (FWLD) AND OTHERS V. NEPAL GOVERNMENT, THE OFFICE OF THE PRIME MINISTER AND THE COUNCIL OF MINISTERS AND OTHERS (SUPREME COURT OF NEPAL, 2006)

In the 2006 case of Sapana Pradhan Malla for FWLD and Others v. Nepal Government, the Office of the Prime Minister and the Council of *(continued on p. 46)*

(cont'd) from child marriage, including social isolation, as well as serious risk to young women's health from early pregnancy, increased risk of maternal mortality and morbidity, and susceptibility to STIs.⁴ Similarly, the HCD of the Supreme Court of Bangladesh has also recently issued a ruling requesting governmental authorities, including the Ministry of Law, Justice and Parliamentary Affairs and the Ministry of Women and Children's Affairs, to provide a response as to why registrars should not be directed to refer to identification cards when registering marriages and also to digitalize the marriage and divorce registration systems to prevent child marriages.⁵

The role that government officials can play in preventing child marriage is illustrated in the Sri Lankan Court of Appeal case of Gunaratnam v. Registrar General.⁶ The case was brought against a registrar-general who refused to register the marriage of a 14-year-old girl whose parents wanted to consent to the marriage on her behalf.⁷ Petitioners argued that while the Marriage Registration Ordinance had been amended to raise the age of marriage to 18, a separate provision remained in the law that permitted parental consent for the marriage of their children.⁸ The Court of Appeal clarified that “since the prohibited age of marriage has been raised to 18 years of age, the absolute bar to marriage must necessarily override the parental authority to give consent to the marriage of a party.⁹ It was not relevant whether the parents agreed or did not agree to the marriage of their children.”¹⁰ The Court of Appeal stated that the marriage in question would be legally invalid and upheld the registrar-general's refusal to register the marriage.¹¹

IN FOCUS: FUNDAMENTAL RIGHTS AND PRINCIPLES OF STATE POLICY UNDERLYING THE RIGHT TO BE FREE FROM CHILD MARRIAGE IN SOUTH ASIA

Fundamental rights and principles of state policy set forth in constitutions in South Asia form a strong legal basis for recognition by courts and national human rights institutions that governments must ensure girls are free from child marriage and are protected from the continuum of harms resulting from this practice, including violations of their reproductive rights and their right to freedom from sexual and other forms of violence.

- **Right to equality and nondiscrimination:** The rights to equality and nondiscrimination on the basis of sex are recognized in the constitutions of Afghanistan, Bangladesh, India, Nepal, Pakistan, and Sri Lanka.¹ The constitutions of Bangladesh, India, Nepal, Pakistan, and Sri Lanka further allow the government to make “special provision[s]” to protect women and children.² Nepal’s Interim Constitution recognizes additional fundamental rights for women in an article that specifically guarantees women’s rights to nondiscrimination, “to reproductive health and other reproductive rights,” and to be free from “physical, mental or any other kind of violence.”³ Bangladesh’s and Pakistan’s constitutions also both commit to ensuring women’s equal participation in “all spheres of national life” in their respective sections outlining Directive Principles of State Policy.⁴ Jurisprudence in South Asia has recognized that fundamental rights, particularly the right to equality, cannot be undermined as a result of religion, custom, or tradition.⁵ (See Section II, p. 27, for more information on this principle in international law.) Where personal laws or customary practices violate women’s or children’s rights, courts in India, Nepal, and Pakistan have issued judgments interpreting or requiring modification of such laws or practices to be consistent with women’s fundamental rights.⁶ (See Section I, p. 17 and pp. 20-21, for more information on child marriage and gender inequality and p. 13 for more information on personal laws that condone child marriage.)
- **Right to dignity:** The constitutions of Afghanistan and Pakistan specifically recognize the right to dignity.⁷ Nepal’s Interim Constitution recognizes the right to live with dignity, while the Sri Lankan Constitution guarantees the dignity of its people in its preamble.⁸ The Supreme Court of India has ruled that it is the primary duty of the state to ensure the protection of human dignity through suitable legislation and by the creation of adequate mechanisms.⁹
- **Rights to life and health:** The constitutions of Afghanistan, Bangladesh, India, Nepal, and Pakistan each recognize the fundamental right to life.¹⁰ Although Sri Lanka’s Constitution does not enumerate a right to life, the Supreme Court of Sri Lanka has recognized the right to life as emanating from the right to freedom from torture and other forms of cruel, inhuman, or degrading treatment (TCIDT).¹¹ Courts in the region have emphasized the need for a broad definition of the right to life that recognizes human dignity,¹² and have recognized that protection of the right to life may include ensuring “proper... health care”¹³ or “conditions congenial to good health.”¹⁴ Notably, citing decisions establishing that the right to life includes the duty to preserve life¹⁵ and to protect dignity,¹⁶ the Supreme Court of India has recognized that “the right to health and

medical care is a fundamental right under [the right to life].”¹⁷ (See Section I, p. 16, for information on risks to girls’ lives and health resulting from child marriage.)

In Nepal, the Interim Constitution explicitly recognizes citizens’ right to receive basic health care free of cost as a fundamental right.¹⁸ Health is also protected in the declarations of principles of state policy in certain constitutions in the region, including in provisions concerning protection of citizens’ right to health,¹⁹ public health,²⁰ rural health,²¹ the equitable distribution of economic resources to ensure health,²² and the right to medical relief.²³ Both Nepal’s Interim Constitution as well as high court cases in India have recognized the fundamental right to reproductive health.²⁴ (See Section III, p. 49, for more information on regional reproductive rights jurisprudence.)

- **Right to freedom from TCIDT:** The right to freedom from TCIDT is recognized as a fundamental right in the constitutions of Bangladesh and Sri Lanka, while Nepal’s Interim Constitution protects the fundamental right to freedom from torture.²⁵ The Afghanistan and Pakistan constitutions prohibit torture for the purpose of extracting evidence.²⁶ The Afghanistan Constitution also forbids punishment contrary to human dignity.²⁷ In India, the right to freedom from TCIDT has been recognized in constitutional jurisprudence interpreting the right to life.²⁸ The High Court Division of the Supreme Court of Bangladesh has recognized that the right to freedom from TCIDT may be implicated where traditional laws enable violence against women.²⁹ (See Section II, p. 34, for information on child marriage and the right to freedom from gender-based violence.)
- **Right to personal liberty and privacy:** The constitutions of Afghanistan, Bangladesh, India, Nepal, and Pakistan specifically establish the right to personal liberty.³⁰ The Constitution of Sri Lanka recognizes personal liberty in the context of arbitrary punishment or detention.³¹ The Supreme Court of India has recognized that the right to personal liberty includes the right to privacy. In addition, the right to privacy has been recognized in constitutions in South Asia to protect privacy within the home,³² in communication,³³ and of the person or character.³⁴ The Supreme Court of India has recognized the right to privacy in relation to family life and reproduction, and stated that “[a]ny right to privacy must encompass and protect the personal intimacies of the home, the family, marriage, motherhood, procreation and child rearing.”³⁵ (See Section II, p. 28 and p. 35, for more information on child marriage and women’s and girls’ lack of autonomy in decisions relating to reproduction and procreation.)
- **Right to education:** Education is recognized as a fundamental right in Afghanistan, India, Nepal, and Pakistan,³⁶ and established as an objective under the Directive Principles of State Policy in Bangladesh and Sri Lanka.³⁷ The Afghanistan Constitution specifically obligates the government to “devise and implement effective programs to create and foster balanced education for women.”³⁸ The Bangladesh Supreme Court has specifically linked denial of education in violation of the right to education to child marriage, stating that “lack of education of the children creates a vicious cycle of poverty....The girls who are deprived of education become targets of early marriage, and as illiterate mothers, beget illiterate children which again stokes the poverty cycle.”³⁹
- **Right to freedom from slavery and exploitation:** Constitutions throughout South Asia prohibit slavery, forced labor, and exploitation.⁴⁰ The Afghanistan Constitution prohibits forced labor, including that involving children.⁴¹ The Nepal Interim Constitution further recognizes the right to be free from exploitation in the name of custom, tradition, and practice.⁴² (See Section II, p. 36, for more information on child marriage and the right to freedom from slavery.)

Ministers and Others, petitioners brought a case challenging discriminatory legal standards established in Nepal's Marriage Registration Act as well as poor implementation of legislation prohibiting child marriage in Nepal.³⁶⁵ Prior to the decision in this case, the 1971 Marriage Registration Act permitted marriages to be solemnized for men who were 22 years old and for women who were 18 years old.³⁶⁶ Petitioners alleged that these provisions were discriminatory on the basis of sex, and violated the right to equality guaranteed by the 1990 Nepal Constitution, which was then in force, and international human rights instruments.³⁶⁷ Petitioners also argued that although the Muluki Ain establishes the minimum age of marriage as 18 years with parental consent and 21 years of age without parental consent, child marriage is rampantly practiced without repercussions.³⁶⁸ The petition stated that the pervasiveness of the practice reflects the government's view of child marriage as "a personal issue"³⁶⁹ and violates the rights of the child.³⁷⁰ Citing the Universal Declaration of Human Rights, ICCPR, ICESCR, CRC, and CEDAW, petitioners argued that the government is legally bound to urgently address child marriage in Nepal.³⁷¹

The government's response defended the discriminatory age provisions of the Marriage Registration Act, claiming that these were based on the assumption that women mature into adults earlier in comparison to men.³⁷² Further, the government alleged that setting an age of marriage does not compel individuals to enter into marriage or produce children, but is a discretionary provision, and thereby cannot be considered to create discrimination or neglect of women's health.³⁷³

The Supreme Court of Nepal expressed concern at the continuing prevalence of child marriage and noted that it was critically important for the government to pay attention to this issue.³⁷⁴ The Court ruled in favor of the petitioners and issued directives to the government to make necessary amendments to the Marriage Registration Act and the Muluki Ain to ensure consistency and uniformity.³⁷⁵ The Court dismissed the government's initial argument, stating that in the absence of solid evidence, one cannot consider the assumption that women mature earlier than men to be a scientific fact.³⁷⁶ The ruling rejected the government's argument that such provisions were not discriminatory because they did not compel marriage, stating that "it is difficult to accept this argument in view of the fact that ours is a less developed country where the female literacy rate is lower than the male literacy rate and there is widespread gender discrimination in society."³⁷⁷ The Court stated that in analyzing a law from the perspective of equality, it is appropriate to assess whether the impact caused by the law among the people belonging to that class was positive or negative.³⁷⁸ The Court recognized the real threats posed to girls' lives and health as a result of child marriage.³⁷⁹ Citing reports affirming the greater risk of maternal mortality for girls between the ages of 15 and 19, the Court stated that "early child bearing is detrimental to the health of women, and reproduction is an act which is possible only by women."³⁸⁰

The Supreme Court of Nepal affirmed the government's obligation to eradicate child marriage through effective implementation of the law. The decision expressed concern about the pervasive nature of child marriage in Nepal and the low level of prosecution of those responsible for conducting such marriages.³⁸¹ The Court ruled that the meaning and purpose of a law can only be realized through effective implementation and not mere enactment of legislation³⁸² and issued directive orders to the government to implement the relevant laws.³⁸³ In 2009, the Supreme Court of Nepal ruled in another case on child marriage that similarly issued directives to the government calling for the amendment of inconsistencies in legal provisions relating to child marriage and the elimination of child marriage through effective enforcement.³⁸⁴

ASSOCIATION FOR SOCIAL JUSTICE AND RESEARCH V. UNION OF INDIA (DELHI HIGH COURT, 2010)

In May 2010, the Delhi High Court heard the case of Association for Social Justice and Research (ASJR) v. Union of India and Others, which involved a habeas corpus petition³⁸⁵ by a non-governmental organization (NGO) to trace an underage girl who was reported to have been married to a 40-year-old man.³⁸⁶ Although it did not decide the case on fundamental rights issues, the Delhi High Court division bench decision in the ASJR case clearly recognizes child marriage as a violation of girls' rights and discusses in depth the continuum of harms experienced as a result of this practice. The Court stated that "child marriage is a violation of human rights, compromising the development of girls and often resulting in early pregnancy and social isolation, with little education and poor vocational training reinforcing the gendered nature of poverty."³⁸⁷ The Court emphasized that child marriage disproportionately affects girls, and recognized that girls who are married and have children underage "face constrained decision making and reduced life choices"³⁸⁸ as a result of pressure to perform heavy amounts of domestic work as well as demonstrate fertility and raise children while they are still children themselves.³⁸⁹ The ASJR decision found that "child marriage perpetuates an unrelenting cycle of gender inequality, sickness and poverty."³⁹⁰ The Court affirmed that child marriage leaves girls more vulnerable to health risks resulting from early sexual initiation and child-bearing, including HIV, and leads to high maternal mortality rates and pregnancy-related complications such as heavy bleeding, infection, anemia, eclampsia, obstructed labor, and obstetric fistula.³⁹¹ The Court also emphasized that early marriage "almost always deprives girls of their education or meaningful work, which contributes to persistent poverty."³⁹²

Citing an NGO study, the Court stated that the low education, poor health, and lack of agency and personal autonomy experienced by girls married underage are "linked with gender inequities and biases for the majority of young girls...their socialization, which grooms them to be mothers and submissive wives, limits their development to only reproductive roles."³⁹³ The Court particularly noted that lack of education is linked to limited knowledge concerning sexual relations and reproduction, and stated that this lack of education along with cultural silence concerning reproductive and sexual health denies girls the ability to make informed decisions about sexual relations, planning a family, and their own health.³⁹⁴ The Court expressed concern that women who marry early are more likely to suffer abuse and violence, and to believe that such violence—including physical abuse, psychological attacks, and sexual abuse—is acceptable.³⁹⁵ Further, the Court recognized that girls who enter families as child brides often are treated as "domestic slaves" by their in-laws.³⁹⁶ Finally, the Court emphasized that child marriage is linked to wife abandonment, divorce, separation, and increased risk of widowhood—all of which leave women vulnerable to additional discrimination in India, where divorced, "abandoned," or widowed women are often ostracized or denied property rights.³⁹⁷

COURT ON ITS OWN MOTION (LAJJA DEVI) V. STATE (GNCT OF DELHI) AND OTHERS (DELHI HIGH COURT, 2012)

The Delhi High Court affirmed the ASJR decision in a full bench decision in the 2012 case Court on its own motion (Lajja Devi) v. State (GNCT of Delhi) and Others, which concerned the case of a 14-year-old Hindu girl who left home and got married without her parents' consent. Quoting the portions of the ASJR case detailing the severe risks of maternal mortality and morbidity as well as physical and sexual violence resulting from child marriage, the Delhi High Court again emphasized that child marriage is a

JUDICIAL RECOGNITION OF WOMEN'S RIGHT TO FREEDOM FROM FORCED MARRIAGE

The High Court Division of the Supreme Court of Bangladesh has recognized the right of women to be free from forced marriage in the 2008 case *Dr. Shipra Chaudhury and Another v. Government of Bangladesh and Others*. Although child marriage is a form of forced marriage, courts in the region have only tangentially spoken about the fundamental rights implications of marriage without consent. However, speaking in a case involving the forced marriage of an adult woman, the Court ruled that forced marriage is impermissible under the right to personal liberty as enshrined in the Bangladesh Constitution.¹ Referring to the right to consent to marriage set forth in the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on Consent to Marriage and Registration of Marriage, the Court held that the right to personal liberty guarantees a woman the right to choose whom she marries free of coercion, violence, and discrimination.² The decision stated that while parents have the right to advise their children, even as adults, they must not treat their children as slaves and must respect their right to freedom.³ As discussed in Section II, the provisions of these conventions are equally applicable to girls.

FFDA V. UNION OF INDIA: ATTEMPT TO UTILIZE PUBLIC INTEREST LITIGATION TO ADDRESS CHILD MARRIAGE

As in Nepal, lawyers in India have used public interest litigation to seek accountability for child marriage and implementation of legal protections. In 2003, Human Rights Law Network, on behalf of its client, the Forum for Fact-finding Documentation and Advocacy (FFDA), a human rights non-governmental organization, filed a public interest case against the Union of India and various Indian states, seeking “strict implementation” of the Child Marriage Restraint Act of 1929, which was then in force.¹

The FFDA petition discussed child marriage as a violation of girls’ reproductive and sexual rights. It argued that child marriage contravenes international human rights law, national law, and the constitutional obligation to protect children against exploitation and to provide them with “opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity.”² The petition stated that child marriage is “merely a camouflage for servitude and child sexual abuse of the girl child, which is...violative of her right to life under Article 21 and constitutes bondage and beggar within the meaning of Article 23.”³ The petition also cited the Indian Penal Code’s provisions against unnatural offenses and child sexual abuse, which it argued are implicit in the practice of child marriage.⁴

While the case was pending, the Court issued interim orders for government officials, including police superintendents, at the district level to prevent child marriages.⁵ The Court also ordered state human rights commissions and committees to conduct inquiries into the incidence of child marriages that have allegedly taken place.⁶ However, the Court ultimately did not rule on the constitutional and human rights issues raised in the case because it ordered hearings to be delayed as the bill that would become the 2006 Prohibition of Child Marriage Act was introduced and pending in Parliament.⁷ Hearings were never resumed.⁸

violation of human rights,³⁹⁸ including the “right to lead a life of freedom and dignity.”³⁹⁹ The Court particularly expressed concern as the practice involves young girls who lack status, power, and maturity, and leads to exposure to domestic violence, sexual abuse, and social isolation.⁴⁰⁰

The Delhi High Court emphasized that the Indian Penal Code, which at that time criminalized sex with a girl under 16 outside of marriage and under 15 within marriage, legitimized child marriage by “keeping a lower age of consent for marital intercourse.”⁴⁰¹ The Court stated that “consent of a girl or boy below the age of 16 years in most cases [is] a figment of imagination [and] is an anomaly and a mirage and...will act as a cover up by those who are economically and/or socially powerful to pulverize the muted meek into submission.”⁴⁰² The Court also noted that while it had not been requested to address the validity of India’s Prohibition of Child Marriage Act (PCMA) and thus could not rule on weaknesses in the law, in its view three significant gaps permitted the practice to continue: (1) child marriages are voidable, not void, under the act; (2) the act does not mention whether it supersedes personal laws; and (3) the act itself does not require registration of marriage.⁴⁰³ (See “Judicial Recognition of the Role of Registration of Marriage in Eliminating Child Marriage,” p. 47, for more information.) The Court also criticized the Indian Majority Act, which allows personal laws to set a lower age for majority specifically in matters related to marriage, divorce, dower, and adoption.⁴⁰⁴

T. SIVAKUMAR V. THE INSPECTOR OF POLICE (MADRAS HIGH COURT, 2011)

In 2011, the full bench of the Madras High Court heard the case of T. Sivakumar v. the Inspector of Police, which was a habeas corpus petition filed by the father of a 17-year-old girl against a man he alleged had kidnapped his daughter and married her.⁴⁰⁵ The girl filed an affidavit stating that she had left her parents’ home of her own accord and had not been illegally detained.⁴⁰⁶

The Madras High Court noted the long-standing legal condemnation of child marriage in India, despite its persistence nationally.⁴⁰⁷ Citing recommendations made by the Law Commission, the National Commission for Women (NCW), and the National Human Rights Commission to strengthen laws eradicating the practice,⁴⁰⁸ the decision emphasized that the PCMA applies to all Indian citizens, and as such, it is intended to override inconsistent provisions of the Hindu Marriage Act.⁴⁰⁹ The Madras High Court stated that the PCMA is a special enactment for the purpose of preventing “the evil practice of solemnization of child marriages” and “to enhance the health of the child and the status of women.”⁴¹⁰ The decision affirmed that recognition of child marriage as a human rights violation is “widely accepted world over.”⁴¹¹ The Madras High Court stated that child marriage limits educational and vocational opportunities for “a large sector of the population,” leading to serious consequences for national development.⁴¹² Further, the Madras High Court expressed concern about the grave health consequences of marriage and consummation of marriage for young women and their children.⁴¹³

The Madras High Court ruled that under both the PCMA and the Hindu Marriage Act, a marriage of a girl under 18 years of age is considered voidable and is “not a valid marriage” in a strict sense; as such, men and boys who are over the legal age of marriage who marry underage girls do not attain all of the rights accorded to husbands who marry women age 18 and older.⁴¹⁴ The Madras High Court stated that an adult male who marries an underage female cannot be declared her natural guardian because this would “amount to giving premium for the offence committed by the male” and allow him to “enjoy the fruits of such marriage.”⁴¹⁵

The Madras High Court held that the best interests and welfare of the minor must be taken into account in determining custody,⁴¹⁶ and directed that in this case the girl in question was to remain either with her parents or in a government home for children until she reached majority.⁴¹⁷ However, the Madras High Court emphasized that the ruling is only applicable to laws relating to Hindus.⁴¹⁸

The Madras High Court concluded the decision with a discussion of the persistence of child marriage despite the PCMA, the Hindu Marriage Act, and a commitment in the 2005 National Plan of Action to Children to eradicate child marriage by 2010.⁴¹⁹ Expressing concern about pervasive reports of child marriages as well as widowhood of girls as young as 10 years of age, the Madras High Court criticized the lack of “adequate publicity” about the PCMA, including its punitive provisions, and called for the police to register criminal cases against offenders and file final reports against them.⁴²⁰ The Madras High Court directed the government to adequately publicize and sensitize the public about the law through governmental and non-governmental entities; sensitize the police about their legal obligation to register criminal cases where there is information concerning performance of child marriages; ensure that calendars and prospectuses issued in educational facilities above higher secondary courses discuss the salient aspects of the law to sensitize students and parents; and instruct educational institutions to conduct counseling classes for teenage students and their parents to sensitize them to the harms caused by child marriage.⁴²¹

Constitutional Norms and Jurisprudence on Reproductive Rights and Violence against Women

Although there is limited jurisprudence recognizing child marriage as a fundamental rights issue, courts in South Asia have issued groundbreaking decisions recognizing the obligation of governments to protect women’s and girls’ reproductive rights and rights to be free from gender-based violence. The constitutional norms and cases discussed in this section affirm that governments must protect women and girls from violations of these rights, including by addressing the root causes of these violations. Where government failure to eliminate child marriage gives rise to denial of women’s and girls’ reproductive rights or gender-based violence, courts may hold governments accountable, by critically examining the systemic causes of child marriage and they may order remedies aimed at providing redress to those who have already suffered harm and preventing such violations in the future.

REPRODUCTIVE RIGHTS

Nepal has led South Asia in recognition of reproductive rights as fundamental rights. In 2007, Nepal became the first country in the region to formally recognize reproductive rights in its national constitution as a fundamental right.⁴²² This right has been interpreted by the Supreme Court of Nepal as “an integral part of woman’s human rights,” which include “the right to health, the right to reproductive health and family planning, the right to marry freely or found a family,...the right to decide to give birth and to space births, within that the right to abortion in accordance with the law, the right to privacy, the right to nondiscrimination, the right against torture, cruel, inhuman or degrading treatment or punishment, the right to freedom from sexual violence.”⁴²³ While the Indian Constitution does not have a similar legal provision specifically guaranteeing reproductive rights as fundamental rights, high courts in India have recognized reproductive rights as protected under the right to life,⁴²⁴ stating

that the “inability of women to survive pregnancy and child birth violates her [sic] fundamental right to live.”⁴²⁵ Recent jurisprudence from these courts specifically has recognized women’s rights to be free from maternal mortality and morbidity, unsafe abortion, and unwanted pregnancies, as well as to exercise reproductive self-determination.

Maternal Mortality and Morbidity: In the 2008 case of *Prakashmani Sharma and Others v. Government of Nepal and Others*, the Supreme Court of Nepal ruled that the constitutionally recognized fundamental right to reproductive health and other reproductive rights includes the obligation to take steps to prevent uterine prolapse,⁴²⁶ which is a form of maternal morbidity. Uterine prolapse is a debilitating pregnancy-related injury that is typically suffered by older women as a result of age, but is experienced by a disproportionate number of younger women in Nepal due to poor reproductive health care as well as early and frequent pregnancies.⁴²⁷ The Supreme Court of Nepal found that the government’s failure to adequately protect women’s reproductive rights guaranteed as fundamental rights by the Interim Constitution had contributed to the high incidence of uterine prolapse.⁴²⁸ In 2011, the Delhi High Court issued a joint decision in the cases of *Laxmi Mandal v. Deen Dayal Harinagar Hospital and Others* and *Jaitun v. Maternal Home, MCD, Jangpura and Others*, which concern denials of maternal health care. The Delhi High Court found that reproductive rights are part of the “inalienable survival rights” implicitly protected under the fundamental right to life.⁴²⁹ The decision found that “no woman, more so a pregnant woman, should be denied the facility of treatment at any stage irrespective of her social and economic background.”⁴³⁰ In the case of *Sandesh Bansal v. Union of India*, decided in 2012, the Madhya Pradesh High Court recognized that women’s right to survive pregnancy and childbirth⁴³¹ arises under the right to life and is violated where maternal deaths occur, including when they occur due to inadequate health facilities and staffing.⁴³²

Abortion and Reproductive Self-Determination: In 2009, the Supreme Court of Nepal recognized in the case of *Lakshmi v. the Government of Nepal* that reproductive rights as guaranteed in Article 20(2) include the right to reproductive self-determination, and specifically access to abortion.⁴³³ The case challenged the government’s failure to ensure affordable and accessible safe abortion services for women in Nepal.⁴³⁴ The *Lakshmi* decision recognized that, “a society which recognizes the right to abortion enables a woman to enjoy a life free from unwanted pregnancy, to live her life according to her own her own free will, to ensure her livelihood, to free her from having to take on an inappropriate burden and to enable her to exercise her right to self-determination.”⁴³⁵ Further, the Supreme Court of Nepal recognized that “a forced pregnancy is a grave conspiracy against a woman’s freedom.”⁴³⁶ In the *Lakshmi* case, the Supreme Court of Nepal ruled that the right to create one’s family vests in women as the owners of their own bodies, and includes the right to decide whether and when to bear children without interference.⁴³⁷

Similarly, the Punjab and Haryana High Court in India stated in a 2011 case where a husband filed suit against a doctor who performed an abortion at the request of his wife without his consent, “[i]t is a personal right of a woman to give birth to a child... No body [sic] can interfere in the personal decision of the wife to carry on or abort her pregnancy... woman is not a machine in which raw material is put and a finished product comes out. She should be mentally prepared to conceive, continue the same and give birth to a child. The unwanted pregnancy would naturally affect the mental health of the pregnant women [sic].”⁴³⁸ Further, the recent case of *Hallo Bi v. State of Madhya Pradesh and Others*, the High Court of Madhya Pradesh has specifically affirmed the importance of providing victims of rape

access to abortion without requirements of judicial authorization.⁴³⁹ The decision stated, “We cannot force a victim of violent rape/forced sex to give birth to a child of a rapist. The anguish and the humiliation which the petitioner is suffering daily, will certainly cause a grave injury to her mental health.”⁴⁴⁰

VIOLENCE AGAINST WOMEN

Supreme courts in South Asia have recognized that violence against women, including domestic violence and rape both within and outside of marriage, results in violations of women’s rights, including the right to equality.⁴⁴¹ In the 2012 case of *Medha Kotwal Lele v. Union of India*, the Supreme Court of India affirmed the following:

*As [the] largest democracy in the world, we have to combat violence against women. We are of the considered view that the existing laws, if necessary, be revised and appropriate new laws be enacted by Parliament and the State Legislatures to protect women from any form of indecency, indignity and disrespect at all places (in their homes as well as outside), prevent all forms of violence—domestic violence, sexual assault, sexual harassment at the workplace, etc.*⁴⁴²

Similarly, the Supreme Court of Bangladesh has stated that respect for gender equality as guaranteed in the constitution requires the government to prevent sexual abuse and harassment of women.⁴⁴³

Rape: The Supreme Court of India has specifically recognized that rape is a violation of women’s fundamental rights. In *Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty*, the Supreme Court of India recognized that “[r]ape is thus not only a crime not only against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis...Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim’s most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21.”⁴⁴⁴

Marital Rape: The Supreme Court of Nepal recognized marital rape as a crime in the case of *Meera Dhungana for FWLD v. Government of Nepal*. The Court stated that the law cannot deny women rights on the basis of their marital status and held that it would be discriminatory to interpret that an act committed against a woman is an offence, but that no offence occurs if the woman is one’s own wife.⁴⁴⁵ The Court stated that regardless of marital status, “[s]exual intercourse with use of force and without consent is regarded as the offence of rape”⁴⁴⁶ and that “a marriage does not mean women turn into slaves.”⁴⁴⁷ The Court affirmed that “to forcibly compel [a woman] to use a part of her body against her will is a serious violation of her right to live with dignity [and] right to self-determination and it is a grave attack on her human rights.”⁴⁴⁸

THE ROLE OF NHRIS IN PROMOTING ACCOUNTABILITY FOR CHILD MARRIAGE

National human rights institutions (NHRIs) are administrative bodies established either in national constitutions¹ or through legislation² to monitor human rights at the national level, operating independently from government.³ U.N. treaty monitoring bodies have affirmed the role of NHRIs in ensuring accountability for violations of children's rights,⁴ including related to child marriage. There are a range of NHRIs in South Asia, including human rights commissions, women's commissions, and children's rights commissions.⁵ Several concrete steps taken by NHRIs in the region demonstrate the significant potential for such institutions to promote accountability for violations of children's rights stemming from child marriage.

- **Intervene in cases of child marriage:** The Afghanistan Independent Human Rights Commission (AIHRC), along with local police, a district governor, and district judge were able to successfully stop the marriage of two girls, aged 14 and 16, when their mother reached out to the AIHRC about a wedding ceremony their uncle arranged against their wishes.⁶
- **Order investigations to identify the scope of child marriage and gaps in enforcement:** In 2013, in response to evidence showing “rampant” rates of child marriage in a district in the state of Uttar Pradesh, the National Human Rights Commission (NHRC) of India directed district authorities to investigate the incidence of child marriage and present information concerning efforts to prevent child marriage.⁷

Judicial Perspectives on Child Marriage and the Continuum of Violations

The above cases provide significant insight into judicial perspectives on child marriage in South Asia, and reveal the potential for advocates to utilize the courts to seek recognition of elimination of child marriage as a fundamental rights obligation of governments in the region. The child marriage-related decisions featured above indicate that courts in the region have begun to recognize child marriage as an issue of women's and girls' equality and a form of gender discrimination.⁴⁴⁹ While only the FWLD case specifically invoked the right to equality, each of the child marriage decisions reflects an understanding that elimination of this practice is crucial to realization of women's and girls' equality.⁴⁵⁰ Further, the decisions on reproductive rights and violence against women reflect judicial recognition that upholding women's fundamental rights includes introducing and strengthening laws, policies, and programs concerning maternal health, safe abortion, marital rape, and sexual violence generally. Human rights obligations recognized in international law have informed the premise of many of these decisions, including in underscoring the severity of the harm suffered by girls and the nature of the obligations of governments.⁴⁵¹

Specifically, the child marriage cases reveal that inconsistencies in national laws significantly undermine the enforcement of legislation prohibiting child marriage by creating ambiguity concerning the parameters of girls' rights. Although there has yet to be a comprehensive ruling by any court in the region recognizing that girls' rights relating to marriage cannot be violated by religiously based personal laws, decisions such as *T. Sivakumar and Lajja Devi* show the role courts can play in clarifying girls' rights in plural legal regimes.⁴⁵² The *T. Sivakumar* case, which is only decided in the context of Hindu law, also illustrates where courts have the potential to go further to protect girls from child marriage, particularly in plural legal regimes. *T. Sivakumar and Smt. Seema* also specifically demonstrate the role of national human rights institutions (NHRIs) in informing judicial efforts to resolve ambiguities concerning the interplay between child marriage legislation and personal laws.⁴⁵³ (See “The Role of NHRIs in Promoting Accountability for Child Marriage,” p. 52, for more information on nonjudicial human rights bodies.)

Further, these child marriage cases reflect the willingness of courts in the region to address the broader legal issues that are undermining the elimination of child marriage. Even where child marriage cases arise as individual writ petitions, rather than as PILs, courts have taken the opportunity to speak on the underlying legal issues that are impeding implementation of legislation prohibiting child marriage. For example, in the *Lajja Devi* case, although the Delhi High Court had not specifically been asked to review the PCMA, the judges took the opportunity to identify legal loopholes in legislation prohibiting child marriage.⁴⁵⁴ In *T. Sivakumar*, the court went further and articulated nonlegal remedies to ensure awareness and implementation of the law.⁴⁵⁵ Similarly, in the *Smt. Seema* case, which raised issues relating to registration of marriage in India, the Supreme Court of India also went beyond the individual case to order larger-scale reform required to ensure women's equality.⁴⁵⁶ Such statements appear to reflect the openness of courts to hearing cases seeking clarification and modification of existing legislation.

Finally, these decisions highlight that a court's understanding of the continuum of violations experienced by women and girls as a result of child marriage is integral to judicial recognition of child marriage as a fundamental and human rights issue. In each of these rulings, the court has placed significant weight on the negative reproductive health outcomes and increased risk of violence experienced by girls and women who were married as children.⁴⁵⁷ These decisions link child marriage to coerced sex and reproduction, and recognize that these aspects of child marriage result in the perpetuation of submissive and stereotyped roles of women.⁴⁵⁸ The reproductive rights- and violence against women-related cases discussed demonstrate judicial recognition that governments are constitutionally obligated to protect women from these harms. Further, these cases indicate that courts may be open to petitions seeking recognition of the obligation to protect women and girls who have already been married as children from the continuum of violations that result from the practice.

(cont'd)

- **Strengthen laws by proposing human rights-based legislation and intervening in judicial cases concerning child marriage:**
India's National Commission for Women (NCW) has drawn on human rights standards to identify and promote law reform related to eliminating child marriage, including through policy papers calling for child marriages to be considered legally void.⁸ India's NCW has also proposed legislation aimed at eliminating child marriage, including a bill to make registration of marriages compulsory.⁹ Further, the NCW has also played a key role in shaping jurisprudence on child marriage, both as a result of the court considering recommendations made by the NCW in policy papers on child marriage¹⁰ and by formally intervening in marriage-related cases. As a result of these interventions, the NCW has been able to raise issues concerning the lack of clarity in India's child marriage laws to the Supreme Court¹¹ and has also urged the Supreme Court to order the government to implement compulsory marriage registration throughout the country.¹²
- **Convene meetings to identify and promote solutions for the elimination of child marriage:**
The NHRC of Bangladesh is actively developing strategies and organizing awareness-raising campaigns to stop child marriage by highlighting its harsh consequences on the physical and emotional development of children,¹³ while also making plans to review the Special Marriage Act in order to legally prohibit child marriage.¹⁴



SECTION IV: CONCLUSION

The law is a critical starting point for the elimination of child marriage in South Asia. Significant gaps and inconsistencies in, as well as poor implementation of, existing laws have left girls vulnerable to grave violations of their human rights and constitutional rights arising from child marriage, including their reproductive rights and the right to be free from sexual violence. Where governments fail to ensure effective legal frameworks for the elimination of child marriage, as well as the provision of access to reproductive health care and legal remedies to already-married girls, they are complicit in the resulting harms to girls' lives and well-being that arise from early pregnancy and sexual violence. Human rights law is clear that governments must address impunity where violations of these rights occur, including by ensuring accountability when child marriages are performed. National constitutions in countries across the region provide a firm legal basis for accountability and legal protection.

Implementation of laws prohibiting child marriage must come along with broader efforts to remove legal barriers that make girls vulnerable to child marriage and deny those trapped in such marriages meaningful legal remedies. Importantly, governments must take concrete steps to improve the overall status of girls in society by ensuring respect for their dignity and legal rights.

A photo is shown of Ashmita, left in picture, who died shortly after giving birth to a baby boy as a teenager, in Kagati Village, Kathmandu Valley, Nepal on Feb. 03, 2007. The family left the baby at the hospital after their daughter's death in hopes that someone would adopt him. They feared the father of the boy was too young to care for a baby on his own. Early marriage is a contributor to high maternal mortality rates throughout the world.

Photography: [Stephanie Sinclair/VII/Tooyoungtowed.org](http://StephanieSinclair/VII/Tooyoungtowed.org)



SECTION V: RECOMMENDATIONS FOR ACTION

Child marriage involves the grave and systematic abuse of young girls in violation of internationally protected human rights and fundamental rights guaranteed in national constitutions across the region. It is a deeply entrenched social and economic problem that involves complicated legal issues. The elimination of child marriage will eventually require the involvement and resolve of a broad range of private and public actors, but the binding legal obligation of governments to prevent child marriage and protect the rights of married girls is absolute and clear.

The following recommendations offer guidance to governments in South Asia regarding actions they should take to end child marriage in accordance with their human rights obligations. These recommendations are not exhaustive, but they represent important legal steps that can and must be taken by governments to demonstrate their commitment to end the practice and protect the human rights of young girls.

National legislative bodies:

Strengthen and enforce national laws prohibiting child marriage, including by establishing a consistent legal minimum age of marriage of 18.

- Undertake a high-level review of national laws relating to marriage and sexual violence to identify gaps, inconsistencies, and inadequate penalties that expose girls to the risks of child marriage and its consequences.
- Take steps to harmonize national laws and personal laws on child marriage in accordance with international human rights standards.
- Appoint and build the capacity of government officials responsible for enforcing child marriage prevention or prohibition laws at all levels of government.

Amend existing laws to remove legal obstacles faced by girls who seek enforcement of national child marriage prevention or prohibition laws and legal remedies.

- Eliminate unreasonable legal requirements for formally ending a child marriage.
- Ensure that complaints filed by girls who are at risk of child marriage or have been married underage, or by a close third party, are taken seriously by local officials and that necessary legal action is taken.
- Mandate the compulsory registration of all marriages and births throughout the country. Conduct nationwide public awareness campaigns announcing mandatory registration and establish the necessary infrastructure.

National executive bodies, including governmental ministries and law commissions:

Ensure the enforcement of laws relating to child marriage, and initiate reform where needed, to ensure that girls are not forcibly given away in marriage before the age of 18.

- Issue studies and reports on gaps, inconsistencies, and unreasonable requirements in law that allow child marriage to persist with impunity.
- Review the existing laws on child marriage, identify areas that need amendment, and bring these laws in line with national and international commitments of the state.
- Host consultations and awareness-raising events concerning the government's legal obligation to strengthen and enforce child marriage laws under both constitutional and international human rights law.

Reduce girls' vulnerability to child marriage by addressing the underlying causes of child marriage.

- Prohibit practices that reduce marriage to a financial transaction, such as dowry and bride price, which contribute to child marriage and the abusive treatment of girls.
- Ensure that girls have access to real alternatives to marriage, including educational opportunities and skills development programs that lead to opportunities for income generation.
- Reform school curricula to promote the equal dignity of girls and eliminate patriarchal stereotypes concerning women and girls, and train teachers to use these curricula to bring about changes in attitudes.
- Provide girls with access to sexuality education programs to ensure that they have accurate information about the health risks of child marriage and early pregnancy.

Ensure that girls who are married under 18 years of age or have recently left a child marriage have access to financial and other forms of support, including counseling.

- Promote the economic independence of girls, including married girls, by implementing initiatives to provide them with access to educational and skill development programs that lead to opportunities for income generation.
- Officially recognize child marriage as a form of violence against women and children, and ensure that women and girls who seek to leave child marriages can benefit from existing policies and programs providing remedies for survivors of violence, including housing in shelter homes, legal support, and counseling.
- Engage at the international level by supporting and co-sponsoring U.N. consensus statements, including Human Rights Council resolutions, on child marriage to demonstrate willingness to be held accountable for eliminating the practice and addressing violations.

National judicial bodies:

- Broadly interpret fundamental rights and apply directive principles to recognize child marriage as a violation of girls' constitutional rights.
- Utilize international law to develop jurisprudence on child marriage as a violation of girls' rights. Give legal effect to recommendations made by U.N. TMBs through judicial orders and decisions.
- Take *suo moto* action to address poor enforcement of legal prohibitions on child marriage and inconsistencies in national and personal laws that contribute to the continuation of child marriage.
- Ensure strict and appropriate punishment for violations of legal prohibitions on child marriage.
- Utilize opportunities created by litigation on child marriage to appoint formal committees and independent experts to investigate violations, examine inconsistencies in national laws, develop appropriate remedies, and create various avenues for legal recourse to ensure that girls can access the justice system when their rights are violated.

National human rights bodies:

- Invite, monitor, and investigate reports of child marriage and liaise with law enforcement agents, including child marriage prohibition officers, to ensure the provision of effective legal remedies.
- Engage with bodies at all levels of government that are mandated to prohibit child marriage or promote women's and children's development and welfare to review their progress in these areas and promote accountability at the institutional level.
- Along with key stakeholders, coordinate and lead national initiatives involving a cross-section of governmental ministries and agencies to strengthen, implement, and enforce prohibitions on child marriage and protections for married girls.
- Initiate a national conversation on child marriage as a human rights concern, and mobilize key actors from government and the private sector to engage in a dialogue about the concerted efforts needed to end the practice.
- Take steps toward the recognition of child marriage as legally void, including by exploring ways to ensure adequate awareness of this legal change before it is implemented and to protect girls who are married under local custom and may be left vulnerable due to the lack of legal status accorded to their marriage. Also explore steps necessary to ensure that legal requirements are considered in the performance of marriage ceremonies.

Civil society organizations:

- Initiate campaigns in high-risk communities to raise awareness among parents and young girls about the legal status of child marriage and the continuum of harms resulting from the practice.
- Conduct research and disseminate evidence, including to government bodies, on the incidence of child marriage to facilitate legal accountability and to inform the development of government programs and policies to combat child marriage.
- Monitor the responses of law enforcement agents to formal complaints of child marriage in local communities to ensure the enforcement of legal sanctions against perpetrators of child marriage and disciplinary action against officials who fail to enforce the law.

South Asian Association for Regional Cooperation:

- Provide leadership on the issue of child marriage in the region, including by developing regional standards that reflect international human rights norms and state obligations and establishing a process of government accountability for the elimination of this practice.
- Acknowledge child marriage as a severe form of discrimination and violence against children and advocate with governments in the region to strengthen legal protections for girls in line with established international standards.

U.N. agencies and international non-governmental organizations:

- Promote accountability for child marriage, including by monitoring compliance of governments in South Asia with treaty obligations and with recommendations issued by U.N. TMBs and independent experts concerning violations ensuing from child marriage.
- Collaborate with national governments to develop national plans of action for the elimination of child marriage that improve measures to prevent and ensure accountability for the practice as well as strengthen legal response mechanisms for child marriage.

ENDNOTES

- 1 Anita Raj et al., *Changes in Prevalence of Girl Child Marriage in South Asia*, 307 J. AM. MED. ASSOC. 2027 (2012) [hereinafter Anita Raj et al., *Changes in Prevalence of Girl Child Marriage in South Asia*]; UNITED NATIONS POPULATION FUND (UNFPA), MARRYING TOO YOUNG: END CHILD MARRIAGE 30 (2012), available at <http://www.unfpa.org/webdav/site/global/shared/documents/publications/2012/MarryingTooYoung.pdf> [hereinafter UNFPA, MARRYING TOO YOUNG].
- 2 UNFPA, MARRYING TOO YOUNG, *supra* note 1, at 11.
- 3 *Id.* at 27; UNFPA, MARRYING TOO YOUNG: END CHILD MARRIAGE, INFOGRAPHICS 2 (2012), available at <http://unfpa.org/files/live/sites/unfpa/files/youngtowed/map%20and%20graphics-oct2-1.pdf> [hereinafter UNFPA, MARRYING TOO YOUNG, INFOGRAPHICS].
- 4 UNFPA, MARRYING TOO YOUNG, *supra* note 1, at 45; UNFPA, MARRYING TOO YOUNG: INFOGRAPHICS, *supra* note 3, at 2.
- 5 UNFPA, MARRYING TOO YOUNG: INFOGRAPHICS, *supra* note 3, at 2.
- 6 UNFPA, THE WORLD AT SEVEN BILLION 9, 2011 available at http://www.unfpa.org/webdav/site/global/shared/documents/7%20Billion/7B_fact_sheets_en.pdf [hereinafter UNFPA, THE WORLD AT SEVEN BILLION]; UNFPA, MARRYING TOO YOUNG, *supra* note 1, at 13.
- 7 UNFPA, MARRYING TOO YOUNG, *supra* note 1, at 11; Special Rapporteur on contemporary forms of slavery, including its causes and consequences, *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences*, Gulnara Shahinian, *Thematic report on servile marriage*, para. 82, U.N. Doc. A/HRC/21/41 (July 10, 2012) [hereinafter SR on contemporary forms of slavery, *Thematic report on servile marriage*].
- 8 Gordon Brown, U.N. Special Envoy for Global Education, *Out of wedlock into school: combatting child marriage through education 3* (2012).
- 9 See Convention on the Rights of the Child, *adopted* Nov. 20, 1989, art. 1, G.A. Res. 44/25, annex, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) (*entered into force* Sept. 2, 1990) [hereinafter CRC]; Committee on the Rights of the Child (CRC Committee), *Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention on the Rights of the Child*, para. 22, U.N. Doc. CRC/C/58/Rev.2 (2010).
- 10 ASIAN FORUM OF PARLIAMENTARIANS ON POPULATION AND DEVELOPMENT (AFPPD), INTERNATIONAL CENTER FOR RESEARCH ON WOMEN (ICRW), UNFPA, AND AUSTRALIAN AGENCY FOR INTERNATIONAL DEVELOPMENT, CHILD MARRIAGE IN SOUTHERN ASIA: POLICY OPTIONS FOR ACTION 21 (2012), available at http://www.afppd.org/files/1113/4992/7261/Child_Marriage.pdf [hereinafter AFPPD ET AL., CHILD MARRIAGE IN SOUTHERN ASIA]; Committee on the Elimination of Discrimination against Women (CEDAW Committee), *Concluding Observations: Sri Lanka*, paras. 44-45, U.N. Doc. CEDAW/C/LKA/CO/7 (2011); *Sri Lanka*, paras. 270, 274, U.N. Doc. CEDAW/C/2002/II/CRP.3/Add.5 (2002); Committee on Economic, Social and Cultural Rights (ESCR Committee), *Concluding Observations: Sri Lanka*, para. 9, U.N. Doc. E/C.12/1/Add.24 (1998).
- 11 SR on contemporary forms of slavery, *Thematic report on servile marriage*, *supra* note 7, para. 15; UNFPA, MARRYING TOO YOUNG, *supra* note 1, at 11.
- 12 Special Rapporteur on violence against women, its causes and consequences, *Rep. of the Special Rapporteur on violence against women, its causes and consequences*, Ms. Radhika Coomaraswamy, *submitted in accordance with Commission on Human Rights resolution 2001/49, Cultural practices in the family that are violent towards women*, para. 57, U.N. Doc. E/CN.4/2002/83 (Jan. 31, 2002) [hereinafter SRVAW, *Cultural practices in the family that are violent towards women*].
- 13 While some laws on child marriage allow for a higher age of marriage than 18 for men and boys, every country in South Asia has at least one general law prohibiting marriage of boys below the age of 18. Child Marriage Restraint (Amendment) Ordinance, No. 38 of 1984, art. 2 (Bangl.) [hereinafter Child Marriage Restraint (Amendment) Ordinance (Bangl.)]; The Prohibition of Child Marriage Act, No. 6 of 2007, art. 2(a) (India) [hereinafter Prohibition of Child Marriage Act (India)]; Civil Law of the Republic of Afghanistan (Civil Code), sections 70-71 (1977) (Afg.) [hereinafter Civil Code (Afg.)]; The Child Marriage Restraint Act, No. 19 of 1929, art. 2(a) (Pak.) [hereinafter Child Marriage Restraint Act (Pak.)]; The Muluki Ain [Country Code], part 4, ch. 17, no. 2 (1963) (Nepal) [hereinafter Muluki Ain (Nepal)].
- 14 Civil Code (Afg.), *supra* note 13, sections 70-71 (age of marriage is 18 for boys and 15 for girls with parental consent and 16 without parental consent); Child Marriage Restraint Act (Pak.), *supra* note 13, art. 2(a) (minimum age of marriage is 16 for women and girls and 18 for men and boys).
- 15 Civil Code (Afg.), *supra* note 13, sections 70-71.
- 16 Child Marriage Restraint Act (Pak.), *supra* note 13, art. 2(a); The Special Marriage Act, No. 3 of 1872, arts. 2(2)-(3) (Pak.) (minimum age of marriage is 14 for a girl with parental consent, and 21 without parental consent) [hereinafter Special Marriage Act (Pak.)].
- 17 Child Marriage Restraint (Amendment) Ordinance (Bangl.), *supra* note 13, art. 2(a) (age of marriage is 18 for girls and 21 for boys); Prohibition of Child Marriage Act (India), *supra* note 13, art. 2(a) (age of marriage is 18 years for girls and 21 for boys). In 2013, Bangladesh passed new legislation defining "child" as anyone under the age of 18. At the time of publication of this briefing paper, it remained unclear whether and how this legislation will impact girls' rights in the context of child marriage.
- 18 The Special Marriage Act, No. 3 of 1872, arts. 2(2)(3) (Bangl.) (14 for girls and 18 for boys, although consent from one's father or guardian is required before 21) [hereinafter Special Marriage Act (Bangl.)].
- 19 Muluki Ain (Nepal), *supra* note 13, part 4, ch. 17, no. 2; Marriage Registration Act, 2028 (1971), sec. 4(c) (Nepal) (the minimum age of marriage for males and females is the same).
- 20 General Marriage Ordinance, art. 15 (Sri Lanka) [hereinafter General Marriage Ordinance (Sri Lanka)].
- 21 Child Marriage Restraint (Amendment) Ordinance (Bangl.), *supra* note 13, art. 2(a); Prohibition of Child Marriage Act (India), *supra* note 13, art. 2(a).
- 22 Civil Code (Afg.), *supra* note 13, arts. 70-71; Child Marriage Restraint Act (Pak.), *supra* note 13, art. 2(a).
- 23 Muluki Ain (Nepal), *supra* note 13, part 4, ch. 17, no. 2; Marriage Registration Ordinance, No. 131 of 1908, art. 15 (Sri Lanka) [hereinafter Marriage Registration Ordinance (Sri Lanka)].
- 24 See UNICEF, EARLY MARRIAGE: A HARMFUL TRADITIONAL PRACTICE 4, available at http://www.unicef.org/gender/files/Early_Marriage_Harmful_Traditional_Practice.pdf.
- 25 See, e.g., The Christian Marriage Act, No. 15 of 1872, arts. 19, 60(1) (Bangl.) [hereinafter Christian Marriage Act (Bangl.)]; Muslim Marriage and Divorce Act (1954) (Sri Lanka) (does not specify a minimum age of marriage)

- [hereinafter Muslim Marriage and Divorce Act (Sri Lanka)]; JAYA SAGADE, CHILD MARRIAGE IN INDIA: SOCIO-LEGAL AND HUMAN RIGHTS DIMENSIONS 79 (2005) [hereinafter JAYA SAGADE, CHILD MARRIAGE IN INDIA] (describing the Muslim Personal Law in India. While not codified, under the Muslim Personal Law, puberty is the age of marriage for both boys and girls and is presumed to occur at 15 years of age. Pre-puberty marriages can be contracted by guardians with the option for the girl to avoid the marriage within three years of completing her fifteenth year if the marriage is not consummated); Sir Dinshah Fardunji Mulla, PRINCIPLES OF MAHOMEDAN LAW 114 (1907) (puberty is presumed to be over by the age of 15).
- ²⁶ See, e.g., Shiite Personal Status Law (amended), art. 99 (2009) (Afg.) (18 for boys and 16 for girls without parental consent; a guardian can consent for a minor) [hereinafter Shiite Personal Status Law (Afg.)]; Christian Marriage Act (Bangl.), *supra* note 25, art. 60(1); JAYA SAGADE, CHILD MARRIAGE IN INDIA, *supra* note 25, at 79; Kandyan Marriage and Divorce Act (amended in 1995), arts. 4(2), 66(a)-(b) (Sri Lanka) (18 years of age unless the parties cohabit for one year after attaining legal age or if a child is born within marriage before either attains legal age); Muslim Marriage and Divorce (Sri Lanka), *supra* note 25 (does not specify a minimum age of marriage).
- ²⁷ For example, under the Prohibition of Child Marriage Act (PCMA) in India, marriages of girls below 18 and boys below 21 are voidable at the request of either party who was a child at the time that the marriage occurred within 2 years of attaining majority. However, child marriages are not void or voidable under the Hindu Marriage Act (HMA). Rather, a girl must seek divorce on the ground that she was married before 15 and repudiated the marriage after 15 and before 18. The Hindu Marriage Act, No. 25 of 1955, art. 13(2)(iv) (India) [hereinafter Hindu Marriage Act (India)]. Section 20 of the PCMA brings change to the punishing section of the HMA, section 18, but does not refer to section 12, which makes Hindu marriages voidable. The Muslim personal laws are also distinct from the PCMA and the HMA. Under Muslim Personal Law, a girl who was married as a child can “avoid” the marriage if she repudiates it within 3 years of turning 15 years of age so long as the marriage has not been consummated. Further, a marriage involving a party who has reached puberty requires the consent of that party under Muslim Personal Law; without consent, such marriages are void under the law. These legal standards are conflicting, and lead to confusion about the minimum age of marriage, status of child marriages, and rights of girls who are seeking to dissolve a child marriage.
- ²⁸ See, e.g., Shiite Personal Status Law (Afg.), *supra* note 26, art. 99; Hindu Marriage Act (India), *supra* note 27, art. 5(iii); The Indian Christian Marriage Act, No. 15 of 1872, art. 60(1) (India) [hereinafter Christian Marriage Act (India)]; The Parsi Marriage and Divorce Act, No. 3 of 1936, art. 3(1)(c) (India) [hereinafter Parsi Marriage and Divorce Act (India)]; Muslim Family Laws Ordinance No. 8 of 1961, art. 12 (Pak.) [hereinafter Muslim Family Laws Ordinance (Pak.)]; JAYA SAGADE, CHILD MARRIAGE IN INDIA, *supra* note 25, at 87 (stating that Jewish personal marriage laws in India prescribe a lower age of marriage for women than men).
- ²⁹ See, e.g., Child Marriage Restraint (Amendment) Ordinance (Bangl.), *supra* note 13; Child Marriage Restraint Act (Pak.), *supra* note 13.
- ³⁰ General Marriage Ordinance (Sri Lanka), *supra* note 20.
- ³¹ See, e.g., Prohibition of Child Marriage Act (India), *supra* note 13.
- ³² Law on Elimination of Violence Against Women, art. 28 (2009) (Afg.) (amending the Civil Code (Afg.), *supra* note 13, art. 133, which states that marriages that fail to meet the established criteria, which includes age, may be annulled); Shiite Personal Status Law (Afg.), *supra* note 26, art. 99(2); *Id.* art. 3 (voidable at the option of either party who was a child when the marriage occurred and can only be done up until 2 years of attaining majority); Muluki Ain (Nepal), *supra* note 13, part 4, ch. 17, no. 2(9) (either a husband or wife who was married before 18 can have the marriage declared void after they reach 18 if there are no offspring).
- ³³ The Dissolution of Muslim Marriages Act, No 8 of 1939, art. 2(vii) (Pak.) (girls married below the age of 16 can repudiate the marriage before the age of 18 if they have not consummated the marriage); Dissolution of Muslim Marriages Act, No. 8 of 1939, art. 2(vii) (Bangl.) [hereinafter Dissolution of Muslim Marriages Act (Bangl.)] (a woman can seek to dissolve her marriage if she was married before 18 and the marriage has not been consummated and she has repudiated the marriage before the age of 19); Dissolution of Muslim Marriages Act, No. 8 of 1939, art. 2(vii) (India) (girls married below the age of 16 can repudiate the marriage before the age of 18 if they have not consummated the marriage).
- ³⁴ Prohibition of Child Marriage Act (India), *supra* note 13, art. 3(3).
- ³⁵ Dissolution of Muslim Marriages Act (Bangl.), *supra* note 33, art. 2(vii); Dissolution of Muslim Marriages Act No. 8 of 1939, art. 2(vii) (Pak.) (a woman can seek to dissolve their marriage if she was married before 16 and she has repudiated the marriage before the age of 18); Dissolution of Muslim Marriages Act No. 8 of 1939, art. 2(vii) (India) [hereinafter Dissolution of Muslim Marriages (India)].
- ³⁶ Dissolution of Muslim Marriages Act (Bangl.), *supra* note 33, art. 2(vii); Dissolution of Muslim Marriages (India), *supra* note 35, art. 2(vii).
- ³⁷ Muluki Ain (Nepal), *supra* note 13, part 4, ch. 17, no. 2(9) (either a husband or wife who was married before 18 can have the marriage declared void after he or she reach 18 if there are no offspring).
- ³⁸ Hindu Marriage Act (India), *supra* note 27, arts. 11, 13(2) (iv) (couple can divorce if the wife was married before 15 and she repudiates it before 18).
- ³⁹ Muluki Ain (Nepal), *supra* note 13, part 4, ch. 17, no. 2(9).
- ⁴⁰ Child Marriage Restraint (Amendment) Ordinance (Bangl.), *supra* note 13; The Hindu Married Women’s Right to Separate Residence and Maintenance Act, No. 19 of 1946 (Bangl.); Christian Marriage Act (Bangl.), *supra* note 25; Christian Marriage Act (India), *supra* note 28.
- ⁴¹ Marriage Registration Ordinance (Sri Lanka), *supra* note 23, art. 15 (“no marriage contracted after the coming into force of this section shall be valid unless both parties to the marriage have completed eighteen years of age”) (art. 22 of the Marriage Registration Ordinance implies that parents can consent on behalf of their children if below 18, but jurisprudence has clarified that art. 22 cannot be understood to permit marriage below 18).
- ⁴² Prohibition of Child Marriage Act (India), *supra* note 13, arts. 12, 14.
- ⁴³ See JAYA SAGADE, CHILD MARRIAGE IN INDIA, *supra* note 25, at 80 (citing F.B. Tyabji, MUSLIM LAW 52 (1968)).
- ⁴⁴ Parsi Marriage and Divorce Act (India), *supra* note 28, art. 3(1)(c).
- ⁴⁵ The Divorce Act, No. 4 of 1869, arts. 18-19(2) (Bangl.) (divorce law applicable to Christians and marriages performed under the Special Marriage Act).
- ⁴⁶ Muluki Ain (Nepal), *supra* note 13, part 4, ch. 17, no. 7.
- ⁴⁷ *Id.*
- ⁴⁸ Oppression of Women and Children (Special Enactment) Act, No. 18 of 1995, art. 2(c) (Bangl.) (amending the

- Bangladesh Penal Code [hereinafter Oppression of Women and Children (Special Enactment) Act (Bangl.)]; Suppression of Violence against Women and Children (Amendment) Act (2000) art. 9(1) (Bangl.); Muluki Ain (Nepal), *supra* note 13, part 4, ch. 14, no. 1; PAK. PENAL CODE, section 375 (as modified by the Protection of Women [Criminal Laws Amendment] Act (2006)).
- ⁴⁹ AFG. PENAL CODE, sections 427, 429.
- ⁵⁰ *Id.* section 429; SRI LANKA PENAL CODE, section 364 (recognizing higher punishments for rape for girls under 18); Muluki Ain (Nepal), *supra* note 13, part 4, ch. 14, no. 3 (excluding in the case of marital rape, rape of a girl below 10 years warrants 10-15 years of imprisonment, between 10-14 warrants 8-12 years, between 14-16 warrants 6-10 years, between 16-20 warrants 5-8 years, and 20 and older is 5-7 years).
- ⁵¹ Shiite Personal Status Law (Afg.), *supra* note 26, art. 100.
- ⁵² The Protection of Children From Sexual Offences Act, No. 32 of 2012, arts. 2(d), 3, INDIA CODE (2012); The Criminal Law (Amendment) Act, No. 13 of 2013, art. 8, INDIA CODE (2013). SRI LANKA PENAL CODE, section 363(e).
- ⁵³ *Id.*; AFG. PENAL CODE, sections 427, 429; BANGL. PENAL CODE, sections 375-376; Oppression of Women and Children (Special Enactment) Act (Bangl.), *supra* note 48, arts. 2(c), 2(g); INDIA PENAL CODE, sections 375-276.
- ⁵⁴ Muluki Ain (Nepal), *supra* note 13, part 4, ch. 14, nos. 1, 3, 6; Meera Dhungana for FWLD v. Government of Nepal, Writ No. 55/2058 B.S., S.C. Nepal (2002), *Some important decisions of Supreme Court on Constitutional Law (2015-2062)*, Vol. 10(II) at 164 (2006) [hereinafter Meera Dhungana for FWLD v. Government of Nepal].
- ⁵⁵ Muluki Ain (Nepal), *supra* note 13, part 3, ch. 12, no 1(2).
- ⁵⁶ *Id.* part 4, ch. 14, no. 3(6) (marital rape warrants 3-6 months of imprisonment).
- ⁵⁷ PAK. PENAL CODE, *supra* note 48, section 375; *see, e.g.*, Allah Nawaz v. Station House Officer, Police Station Mahmood Kot District, Muzaffargarh, PLD 2013 Lahore 243; PBS FRONTLINE, *The Stigma of Reporting a Rape in Pakistan*, <http://www.pbs.org/wgbh/pages/frontline/afghanistan-pakistan/outlawed-in-pakistan/the-stigma-of-reporting-a-rape-in-pakistan/> (last accessed Sept. 11, 2013).
- ⁵⁸ Muluki Ain (Nepal), *supra* note 13, part 4, ch. 17, no. 7.
- ⁵⁹ Marriage Registration Ordinance (Sri Lanka), *supra* note 23; Civil Code (Afg.), *supra* note 13.
- ⁶⁰ Special Marriage Act No. 43 of 1954, art. 12(2) (India) [hereinafter Special Marriage Act (India)]; Special Marriage Act (Bangl.), *supra* note 18, art. 11; Special Marriage Act (Pak.), *supra* note 16, art. 11.
- ⁶¹ Special Marriage Act (Bangl.), *supra* note 18, art. 2(3); Muluki Ain (Nepal), *supra* note 13, part 4, ch. 17, no. 2; Special Marriage Act (Pak.), *supra* note 16, art. 2(3); *cf.* Gunaratnam v. Registrar-General, CA No. 1031/01 (2001) (Sri Lanka) (clarifying that an amendment setting the age of marriage at 18 years old invalidates a provision in the law that allows for parental consent for marriage of children).
- ⁶² For example, in Sri Lanka, which does not require consent under its general law, parents may consent to marriage on behalf of their children, even if they are minors. Marriage Registration Ordinance (Sri Lanka), *supra* note 23, art. 22.
- ⁶³ Shiite Personal Status Law (Afg.), *supra* note 26, art. 105; M. HIDAYATULLAH & ARSHAD HIDAYATULLAH, *MULLA'S PRINCIPLES OF MAHOMEDAN LAW*, secs. 251-252 (19th ed. N. M.Tripathi Private Ltd. 2003). *See* SHIRKAT GAH & WOMEN LIVING UNDER MUSLIM LAWS, *A HANDBOOK ON FAMILY LAW IN PAKISTAN* 35 (1994).
- ⁶⁴ The Muslim Family Laws Ordinance, No. 8 of 1961 (Bangl.) [hereinafter Muslim Family Laws Ordinance (Bangl.)]
- ⁶⁵ For example, in Bangladesh, the ambiguity in the law has led to contrary interpretations by courts concerning whether girls below 18
- can consent to marriage and whether parental consent is needed.
- ⁶⁶ Shirkat Gah, *AGE OF MARRIAGE: A POSITION PAPER* 3 (2010), available at http://www.shirkatgah.org/_uploads/_files/_160-Age-of-Marriage-%28PDF%29.pdf.
- ⁶⁷ Indian Christian Marriage Act (India), *supra* note 28; Hindu Marriage Act (India), *supra* note 27; Parsi Marriage and Divorce Act (India), *supra* note 28; The Parsi Marriage and Divorce Act, No. 3 of 1936 (Bangl.) [hereinafter Parsi Marriage and Divorce Act (Bangl.)].
- ⁶⁸ Hindu Marriage Act (India), *supra* note 27, arts. 5(ii).
- ⁶⁹ *Id.* art. 12(1).
- ⁷⁰ *See, e.g.*, Christian Marriage Act (Bangl.), *supra* note 25, art. 19 (where a minor is to be married, parent or guardian must consent); Muslim Family Laws Ordinance (Bangl.), *supra* note 65.
- ⁷¹ *See, e.g.*, Shiite Personal Status Law (Afg.), *supra* note 26, art. 99(1); Christian Marriage Act No. 9 of 1872, art. 19 (Pak.) (if either party is under the age of 21, that party's guardian or parent must consent) [hereinafter Christian Marriage Act (Pak.)]; Parsi Marriage and Divorce Act (Bangl.), *supra* note 68, art. 3(c) (consent if party is under 21); Hindu Widow's Re-marriage Act, No. 15 of 1856, art. 6.5(a) (India) (a widow's guardian's consent to remarriage is required if the widow is a minor and the marriage has not been consummated); Parsi Marriage and Divorce Act 3 of 1936, art. 3(c) (Pak.), (if either party has not completed 21 years of age, the consent of that party's father or guardian must be obtained); Muslim Family Laws Ordinance (Bangl.), *supra* note 65.
- ⁷² *See, e.g.*, Muslim Marriage and Divorce Act (Sri Lanka), *supra* note 25, art. 23.
- ⁷³ *Id.* art. 18 (consent required unless religious official provides an exemption).
- ⁷⁴ Civil Code (Afg.), *supra* note 13, art. 61 (marriage registration is required with a court; a marriage deed is issued following registration); Bangladesh, India, Nepal, and Pakistan permit nonreligious marriages to be solemnized through legal registration of marriage, but none have legislation requiring marriage registration, *see also* CENTER FOR REPRODUCTIVE RIGHTS (CRR), *WOMEN OF THE WORLD: LAWS AND POLICIES AFFECTING THEIR REPRODUCTIVE LIVES, SOUTH ASIA* 221 (2004) (citing Special Marriage Act (Pak.), *supra* note 16, art. 2) (allows optional registration for all marriages except Muslim); Special Marriage Act (Bangl.), *supra* note 18, art. 13; Special Marriage Act (India), *supra* note 60, art. 13; Marriage Registration Act (Nepal), sec. 11. Bangladesh also allows registration of marriages performed under certain personal laws consistent with their individual requirements. The Births, Deaths and Marriages Registration Act, No. 6 of 1896, art. 6 (Bangl.). Registration of marriage with government authorities is optional under general law in Sri Lanka. Marriage Registration Ordinance (Sri Lanka), *supra* note 23.
- ⁷⁵ Smt. Seema v. Ashwani Kumar, 2 S.C.C. 578 (2006) (India) [hereinafter Smt. Seema v. Ashwani Kumar (India)]. There are some cities and states that have compulsory marriage registration: The Bombay Registration of Marriages Act, No. 5 of 1954 (India) (amended in 1977); The Karnataka Marriages (Registration and Miscellaneous Provisions) Act, No. 2 of 1984 (India); The Himachal Pradesh Registration of Marriages Act, No. 21 of 1997 (India); The Andhra Pradesh Compulsory Registration of Marriages Act, No. 15 of 2002 (India). However, under all these laws, non-registration of marriage does not affect the validity of the marriage.
- ⁷⁶ *See, e.g.*, Christian Marriage Act (Bangl.), *supra* note 25, art. 27; Muslim Family Laws Ordinance (Pak.), *supra* note 28, art. 5(1); Muslim Marriages and Divorces (Registration) Act, No. 52 of 1974, arts. 3, 5 (Bangl.); Kandyan Marriage and Divorce Act No. 39 of 2006, art. 16 (Sri Lanka); Muslim Marriage and Divorce Act (Sri Lanka), *supra* note 25, art. 17;

Christian Marriage Act (Pak.), *supra* note 72, art. 27; Parsi Marriage and Divorce Act (India), *supra* note 28, art. 6; Parsi Marriage and Divorce Act (Bangl.), *supra* note 68, art. 6.

⁷⁸ Email from Sara Hossain, Advocate, Supreme Court of Bangladesh, to Payal Shah, Senior Legal Advisor, Center for Reproductive Rights (Aug. 31, 2013) (on file with the Center for Reproductive Rights) (providing an unofficial translation of the relevant provision of the Hindu Marriage Registration Act (2012) (Bangl.); *among others*; Hindu Marriage Act (India), *supra* note 27, art. 8.

⁷⁹ See, e.g., Muslim Marriages and Divorces (Registration) Act No. 52 of 1974, art. 5 (Bangl.); Muslim Marriage and Divorce Act (Sri Lanka), *supra* note 25, art. 16; Law of Registration of Marriage and Divorce, Report No. 211, p. 6 (India) (“nowhere [does] failure to register a marriage which is otherwise compulsory, affect[] the validity of marriage in any way”).

⁸⁰ See, e.g., RIGHTS & DEMOCRACY, A WOMAN’S PLACE: PERSPECTIVES ON AFGHANISTAN’S EVOLVING LEGAL FRAMEWORK 27, 30 (2010) [hereinafter RIGHTS & DEMOCRACY, A WOMAN’S PLACE]; FORUM FOR WOMEN, LAW AND DEVELOPMENT (FWLD) AND UNITED NATIONS DEVELOPMENT FUND FOR WOMEN (UNIFEM), CHILD MARRIAGE: LEGAL RESPONSES 18 (2007) [hereinafter FWLD AND UNIFEM, CHILD MARRIAGE: LEGAL RESPONSES].

⁸¹ See, e.g., UNICEF Regional Office for South Asia, *Early Marriage in South Asia: a discussion paper*, at 3, available at [www.unicef.org/rosa/earlymarriage\(lastversion\).doc](http://www.unicef.org/rosa/earlymarriage(lastversion).doc) [hereinafter UNICEF, *Early Marriage in South Asia*]; RIGHTS & DEMOCRACY, A WOMAN’S PLACE, *supra* note 80, at 27, 30.

⁸² See, e.g., Muslim Marriage and Divorce Act (Sri Lanka), *supra* note 25, art. 17.

⁸³ The Births and Deaths Registration Act, No. 29 of 2004, arts. 5, 18(3) (Bangl.).

⁸⁴ Law for Registration of Population Records, art. 11 (1955) (Afg.); The Registration of Births and Deaths Act, No. 18 of 1969, art. 8 (India); An Act to Amend and Consolidate the Law Relating to the Registration of Births, Deaths, and Still-Births, art. 15 (1954) (Sri Lanka); Birth, Death and Other Personal Events (Registration) Act, 1976, sec. 4(1)(a) (Nepal).

⁸⁵ Birth, Deaths and Marriage Registration Act No. 9 of 1886, art. 4 (Pak.) (no penalty for failing to register births).

⁸⁶ UNICEF, STATE OF THE WORLD’S CHILDREN 2008: CHILD SURVIVAL, fig. 1.20 (2008), available at <http://www.unicef.org/sowc08/docs/Figure-1.20.pdf>.

⁸⁷ Anita Raj and Ulrike Boehmer, *Girl Child Marriage and Its Association With National Rates of HIV, Maternal Health, and Infant Mortality Across 97 Countries*, VIOLENCE AGAINST WOMEN 2 (2013) [hereinafter Raj and Boehmer, *Girl Child Marriage and HIV, Maternal Health, and Infant Mortality*].

⁸⁸ *Id.* at 2; Anita Raj et al., *Changes in Prevalence of Girl Child Marriage in South Asia*, *supra* note 1, at 2027-2029; UNICEF, *Early Marriage in South Asia*, *supra* note 81, at 6-7, 9-14; UNFPA, MARRYING TOO YOUNG, *supra* note 1, at 11-12.

⁸⁹ UNFPA, MARRYING TOO YOUNG, *supra* note 1, at 10-11; SRVAW, *Cultural practices in the family that are violent towards women*, *supra* note 12, para. 91.

⁹⁰ SRVAW, *Cultural practices in the family that are violent towards women*, *supra* note 12, paras. 56, 92; SR on contemporary forms of slavery, *Thematic report on servile marriage*, *supra* note 7, para. 77; Raj and Boehmer, *Girl Child Marriage and HIV, Maternal Health, and Infant Mortality*, *supra* note 87, at 3.

⁹¹ World Health Organization (WHO) Secretariat, *Early marriages, adolescent and young pregnancies: Report by the Secretariat*, para. 11, A65/13 (Mar. 16, 2012) [hereinafter WHO Secretariat, *Early marriages, adolescent and young pregnancies*].

⁹² Uterine prolapse is a condition where the pelvic muscles or ligaments cannot support the uterus and causes it to slip and potentially protrude from the vagina. See, e.g., CENTER FOR AGRO-ECOLOGY AND DEVELOPMENT, NEPAL, UTERINE PROLAPSE STUDY REPORT 31, available at <http://www.advocacynet.org/modules/fck/upload/file/upa/CAED%20Uterine%20Prolapse%20Study%20Report.doc>.

⁹³ Obstetric fistula is a rupture of the vagina, rectum, or bladder which causes leakage of urine or feces. Raj and Boehmer, *Girl Child Marriage and HIV, Maternal Health, and Infant Mortality*, *supra* note 87, at 3.

⁹⁴ UNFPA, THE WORLD AT SEVEN BILLION, *supra* note 5, at 9.

⁹⁵ Véronique Filippi et al., *Maternal health in poor countries: the broader context and a call for action*, 368 THE LANCET 9546, 1535 (2006); WHO Secretariat, *Early marriages, adolescent and young pregnancies*, *supra* note 91, para. 9; Raj and Boehmer, *Girl Child Marriage and HIV, Maternal Health, and Infant Mortality*, *supra* note 87, at 3.

⁹⁶ WHO Secretariat, *Early marriages, adolescent and young pregnancies*, *supra* note 91, para. 8.

⁹⁷ *Id.* paras. 5, 8; SR on contemporary forms of slavery, *Thematic report on servile marriage*, *supra* note 7, para. 77. The WHO has stated that preventing pregnancy before the age of 20 is critical to reducing maternal mortality and morbidity. WHO, WHO GUIDELINES ON PREVENTING EARLY PREGNANCY AND POOR REPRODUCTIVE OUTCOMES AMONG ADOLESCENTS IN DEVELOPING COUNTRIES 4, 12 (2011) [hereinafter WHO GUIDELINES ON PREVENTING EARLY PREGNANCY AND POOR REPRODUCTIVE OUTCOMES].

⁹⁸ UNFPA, MARRYING TOO YOUNG, *supra* note 1, at 40.

⁹⁹ ICRW, TOO YOUNG TO WED: THE LIVES, RIGHTS, AND HEALTH OF YOUNG MARRIED GIRLS 6-7 (2003) [hereinafter ICRW, TOO YOUNG TO WED]; WHO Secretariat, *Early marriages, adolescent and young pregnancies*, *supra* note 91, para. 10.

¹⁰⁰ WHO Secretariat, *Early marriages, adolescent and young pregnancies*, *supra* note 91, paras. 7-8; SR on contemporary forms of slavery, *Thematic report on servile marriage*, *supra* note 7, para. 79; INTERNATIONAL PLANNED PARENTHOOD FEDERATION (IPPF) AND THE FORUM ON MARRIAGE AND THE RIGHTS OF WOMEN AND GIRLS, ENDING CHILD MARRIAGE: A GUIDE FOR GLOBAL POLICY ACTION 11-12 (2006) [hereinafter IPPF, ENDING CHILD MARRIAGE]; Raj and Boehmer, *Girl Child Marriage and HIV, Maternal Health, and Infant Mortality*, *supra* note 87, at 9.

¹⁰¹ In Bangladesh, Pakistan, and Sri Lanka, abortion is criminalized on broad grounds. BANGL. PENAL CODE, sections 312-316; PAK. PENAL CODE, sections 338, 338A-E; SRI LANKA PENAL CODE, sections 303-307. (Bangladesh does allow “menstrual regulation,” which “safely establish[es] nonpregnancy after a missed period,” typically using manual vacuum aspiration. However, serious barriers still exist to menstrual regulation, and unsafe abortion remains a significant problem) See GUTTMACHER INSTITUTE, MENSTRUAL REGULATION, UNSAFE ABORTION, AND MATERNAL HEALTH IN BANGLADESH, available at <http://www.guttmacher.org/pubs/IB-Bangladesh-MR.html>. In India and Nepal, while abortion is legal on broader grounds, women and girls face barriers to accessing abortions due to lack of adequate numbers of skilled providers in many parts of the country and high costs. Ghazaleh Samandari et al., *Implementation of legal abortion in Nepal: a model for rapid scale-up of high-quality care*, 9 REPRODUCTIVE HEALTH 8-9 (2012); GUTTMACHER INSTITUTE, *Facts on Induced Abortion in Asia*, IN BRIEF 1-2 (2012) (60-65% of abortions in South Central Asia are unsafe. In India, only two fifths of abortions are thought to be safe).

¹⁰² UNFPA, State of the World Population 2005, Adolescents Fact Sheet (2005), available at http://www.unfpa.org/swp/2005/presskit/factsheets/facts_adolescents.htm.

¹⁰³ WHO, MAKING HEALTH SERVICES ADOLESCENT FRIENDLY: DEVELOPING NATIONAL QUALITY STANDARDS FOR ADOLESCENT-FRIENDLY HEALTH

- SERVICES 5 (2012); *Adolescents' Access to Reproductive Health Services and Information*, CENTER FOR REPRODUCTIVE RIGHTS, <http://reproductiverights.org/en/project/adolescents-access-to-reproductive-health-services-and-information> (last accessed Aug. 11, 2013); MIRIAM TEMIN AND RUTH LEVINE, START WITH A GIRL: A NEW AGENDA FOR GLOBAL HEALTH, A GIRLS COUNT REPORT ON ADOLESCENT GIRLS 39, 41 (2009).
- 104 Raj and Boehmer, *Girl Child Marriage and HIV, Maternal Health, and Infant Mortality*, *supra* note 87, at 6; WHO GUIDELINES ON PREVENTING EARLY PREGNANCY AND POOR REPRODUCTIVE OUTCOMES, *supra* note 97, at 12; ICRW, TOO YOUNG TO WED, *supra* note 99, at 8.
- 105 SR on contemporary forms of slavery, *Thematic report on servile marriage*, *supra* note 7, para. 73; Raj and Boehmer, *Girl Child Marriage and HIV, Maternal Health, and Infant Mortality*, *supra* note 87, at 2.
- 106 UNFPA, MARRYING TOO YOUNG, *supra* note 1, at 11-12; SR on contemporary forms of slavery, *Thematic report on servile marriage*, *supra* note 7, para. 73.
- 107 WHO, UNDERSTANDING AND ADDRESSING VIOLENCE AGAINST WOMEN: SEXUAL VIOLENCE 6 (2012), available at http://apps.who.int/iris/bitstream/10665/77434/1/WHO_RHR_12.37_eng.pdf.
- 108 CEDAW Committee, *General Recommendation No. 24: article 12 of the convention (women and health)*, (20th Sess., 1999), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 364, para. 8, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008) [hereinafter CEDAW Committee, *Gen. Recommendation No. 24*]; S. Bahgam et al., *Study on Child marriage in Afghanistan 2* MEDICA MONDIALE (2004); ICRW, *Child Marriage and Domestic Violence in Too Young to Wed: Education and Action Toward Ending Child Marriage 1* (2006); WORLD VISION, BEFORE SHE'S READY: 15 PLACES GIRLS MARRY BEFORE 15, 21 (2008).
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146 *See, e.g.*, Sapana Pradhan & Others v. Prime Minister & Council of Ministers & Others, decision no. 7659, N.K.P. 2063, Vol. 3 at 289 (2006) (unofficial translation done by the Center for Reproductive Rights) [hereinafter Sapana Pradhan & Others v. Prime Minister & Council of Ministers & Others (Nepal)]; SUPREME COURT OF NEPAL, ANNUAL REPORT 2068/069 at 88, 107, 156 (2013); SUPREME COURT OF NEPAL, ANNUAL REPORT 2067/068 at 77, 91, 126 (2012); MINISTRY OF HOME AFFAIRS, NATIONAL CRIME RECORDS BUREAU, CRIME IN INDIA, 2012 STATISTICS 419, tbl. 6.11 (2012) [hereinafter MINISTRY OF HOME AFFAIRS, CRIME IN INDIA] (reporting that the total number of people arrested for violating the PCMA in 2012 was 1,843, leading to only 162 trials and 40 convictions); HRLN, CHILD MARRIAGES AND THE LAW IN INDIA, *supra* note 124, at 17; AFPPD ET AL., CHILD MARRIAGE IN SOUTHERN ASIA, *supra* note 10, at 19.

147 For example, effective PCMA implementation is premised on the appointment of district-level Child Marriage Prohibition Officers (CMPOs), which all states are required to appoint. Prohibition of Child Marriage Act (India), *supra* note 13, art. 16(1). In 2011, 21 out of 28 states had developed rules for CMPOs, but only 15 had appointed any officers. United Nations Children's Fund (UNICEF), UNICEF Information Sheet: Child Marriage, 3 (2011) (referencing a 2011 e-mail exchange with the Ministry of Women and Child Development of India from December 14, 2011).

148 *See, e.g.*, UNICEF SRI LANKA, CHILD MARRIAGE IN SRI LANKA, *supra* note 126, at 53; FWLD AND UNIFEM, CHILD MARRIAGE: LEGAL RESPONSES, *supra* note 80, at 58.

149 UNICEF, *Early Marriage in South Asia*, *supra* note 181, at 2; FWLD AND UNIFEM, CHILD MARRIAGE: LEGAL RESPONSES, *supra* note 80, at 58.

150 FWLD AND UNIFEM, CHILD MARRIAGE: LEGAL RESPONSES, *supra* note 80, at 12; UNICEF SRI LANKA, CHILD MARRIAGE IN SRI LANKA *supra* note 126, at vi.

151 *Vishaka v. State of Rajasthan*, A.I.R. 1999 SC 3011 (India); CRR, LITIGATING REPRODUCTIVE RIGHTS: USING PUBLIC INTEREST LITIGATION AND INTERNATIONAL LAW TO PROMOTE GENDER JUSTICE IN INDIA 70 (2006) available at <http://reproductiverights.org/en/document/litigating-reproductive-rights-using-public-interest-litigation-and-international-law-to-pr> [hereinafter CRR, LITIGATING REPRODUCTIVE RIGHTS]; PBS NOW, *Child Brides*, <http://www.pbs.org/now/shows/341/transcript.html> (last accessed Sept. 8, 2013).

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- 156 CRC Committee, *Concluding Observations: Cameroon*, para. 59, U.N. Doc. CRC/C/CMR/CO/2 (2010).
- 157 CRC Committee, *Concluding Observations: Afghanistan*, para. 53, U.N. Doc. CRC/C/AFG/CO/1 (2011); *Togo*, para. 55, U.N. Doc. CRC/C/TGO/CO/3-4 (2012).
- 158 CRC Committee, *General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child*, (33rd Sess., 2003), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 416, para. 20, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008) [hereinafter CRC Committee, *Gen. Comment No. 4*].
- 159 CRC Committee, *General Comment No. 13: The right of the child from freedom of all forms of violence*, 56th Sess., para. 72(g), U.N. Doc. CRC/C/GC/13 (2011) [hereinafter CRC Committee, *Gen. Comment No. 13*]; CRC Committee, *Concluding Observations: Bangladesh*, para. 67, U.N. Doc. CRC/C/BGD/CO/4.26 (2009); *India*, para. 60, U.N. Doc. CRC/C/15/Add.228.26 (2004).
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- 174 CRC Committee, *Concluding Observations: Pakistan*, para. 65, U.N. Doc. CRC/C/PAK/CO/3-4 (2009).
- 175 CRC Committee, *General Comment No. 15: The right of the child to the enjoyment of the highest attainable standard of health (Art. 24)*, 62nd Sess., para. 12, U.N. Doc. CRC/GC/C/15 (2003) [hereinafter CRC Committee, *Gen. Comment No. 15*].
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- 194 CEDAW Committee, *General Recommendation No. 5: Temporary Special Measures*, (7th Sess., 1988), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 320, para. 2, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008); CEDAW, *supra* note 152, art. 4.
- 195 ESCR Committee, *General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social, and cultural rights (Art. 3)*, (34th Sess., 2005) in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 199, para. 27, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (2008) [hereinafter ESCR Committee, *Gen. Comment No. 16*]; CEDAW Committee, *Concluding Observations: Italy*, paras. 52, 53, U.N. Doc. CEDAW/C/ITA/CO/6 (2011); CRC Committee, *Concluding Observations: Bangladesh*, para. 32, U.N. Doc. CRC/C/BGD/CO/4.26, (2009); *Pakistan*, para. 29, U.N. Doc. CRC/C/15/Add.217 27 (2003); Human Rights Committee, *Concluding Observations: Yemen*, para. 10, U.N. Doc. CCPR/CO/75/YEM (2002).
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- 200 *Id.*
- 201 CEDAW Committee, *Gen. Recommendation No. 21*, *supra* note 110, para. 39. See also Human Rights Committee, *Concluding Observations: Azerbaijan*, para. 7, U.N. Doc. CCPR/C/AZE/CO/3.
- 202 CEDAW, *supra* note 152, art. 16(2). Even where reservations to Article 16 exist, the CEDAW Committee has affirmed that in General Recommendation 21 that "States parties should resolutely discourage any notions of inequality of women and men which are affirmed by laws, or by religious or private law or by custom, and progress to the stage where reservations, particularly to article 16, will be withdrawn." CEDAW Committee, *Gen. Recommendation No. 21*, *supra* note 110, para. 44.
- 203 CEDAW, *supra* note 152, art. 16(2); ICESCR, *supra* note 152, art. 10(1); ICCPR, *supra* note 152, art. 23(3).
- 204 ICCPR, *supra* note 152, art. 23(4), CEDAW, *supra* note 152, art. 16(1).
- 205 Human Rights Committee, *Gen. Comment No. 28*, *supra* note 155, para. 23
- 206 *Id.*
- 207 CEDAW Committee, *Gen. Recommendation No. 25*, *supra* note 193, para. 12; CEDAW Committee, *Gen. Recommendation No. 28*, *supra* note 192, para. 21.
- 208 *Id.* para. 18.
- 209 CEDAW, *supra* note 152, art. 14(2)(b); CEDAW Committee, *Concluding Observations: South Africa*, para. 134, U.N. Doc. A/53/38/Rev.1 (1998); CRC Committee, *General Comment No. 4*, *supra* note 158, para. 6; CRC Committee, *General Comment No. 12: the right of the child to be heard*, para. 101, U.N. Doc. CRC/C/GC/12.
- 210 CEDAW Committee, *Gen. Recommendation No. 19*, *supra* note 119, para. 14; Human Rights Committee, *Final draft of the guiding principles on extreme poverty and human rights, submitted by the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona**, 21st Sess., paras. 24-25, 34 (2012).
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- 213 CEDAW, *supra* note 152, art. 5(A); see also, *Convention on Consent to Marriage*, *supra* note 167, preamble.
- 214 Human Rights Committee, *Gen. Comment No. 28*, *supra* note 155, para. 11.
- 215 ESCR Committee, *Concluding Observations: Chad*, para. 19, U.N. Doc. E/C.12/TCDD/CO/3 (2009); see also, ESCR Committee, *Concluding Observations: Colombia*, para. 18, U.N. Doc. E/C.12/COL/CO/5 (2010). See also *India*, paras. 13, 33, U.N. Doc. E/C.12/IND/CO/5 (2008).
- 216 CEDAW Committee, *Concluding Observations: Burundi*, para. 12, U.N. Doc. CEDAW/C/BDI/CO/4 (2008); Human Rights Committee, *Concluding Observations: Kuwait*, para. 7, U.N. Doc. CCPR/CO/69/KWT (2000).
- 217 ESCR Committee, *Gen. Comment No. 16*, *supra* note 195, para. 27; *Universal Declaration*, *supra* note 153, art. 16(2).
- 218 CEDAW Committee, *Gen. Recommendation No. 21*, *supra* note 110, para. 38.
- 219 Human Rights Committee, *Concluding Observations: Cameroon*, para. 9, U.N. Doc. CCPR/C/CMR/CO/4 (2010).
- 220 ESCR Committee, *Concluding Observations: Democratic Republic of Congo*, para. 20, U.N. Doc. E/C.12/MDG/CO/5 (2009); CEDAW Committee, *Concluding Observations: Albania*, para. 24, U.N. Doc. CEDAW/C/ALB/CO/3 (2010).
- 221 CEDAW, *supra* note 152, preamble.
- 222 *Id.* art. 16(1)(e).
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- 224 *Id.*
- 225 See SRVAW, *Cultural practices in the family that are violent towards women*, *supra* note 12, para. 8; CAT Committee, *Concluding Observations: Yemen*, para. 31, U.N. Doc. CAT/C/YEM/CO/2, (2009); CEDAW Committee, *Concluding Observations: Italy*, para. 52-53, U.N. Doc. CEDAW/C/ITA/CO/6 (2011); *Zambia*, para. 33, 34, U.N. Doc. CEDAW/C/ZMB/CO/5-6 (2011); CEDAW Committee, *Gen. Recommendation No. 19*, *supra* note 119, para. 11.
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- 247 ESCR Committee, *Gen. Comment No. 14*, *supra* note 178, para. 21.
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- 365 Sapana Pradhan & Others v. Prime Minister & Council of Ministers & Others (Nepal), *supra* note 146, at 289, paras. 4, 5.
- 366 *Id.* para. 4.
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- 369 *Id.* para. 3.
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- 403 *Id.* para. 23.
- 404 *Id.* para. 32.
- 405 T. Sivakumar v. The Inspector Of Police, H.C.P. No. 907 of 2011, para. 1, Madras H.C. (2011) (India) [hereinafter *T. Sivakumar v. The Inspector of Police (India)*].
- 406 *Id.* para. 2.
- 407 *Id.* para. 9.
- 408 *Id.* paras. 2, 3, 15.
- 409 *Id.* para. 15.
- 410 *Id.* para. 18.
- 411 *Id.* para. 33.
- 412 *Id.* para. 32.
- 413 *Id.*
- 414 *Id.* para. 57.
- 415 *Id.* para. 34.
- 416 *Id.* para. 39.
- 417 *Id.* para. 57(vi).
- 418 *Id.* para. 58.
- 419 *Id.* para. 59.
- 420 *Id.*
- 421 *Id.* para. 59.
- 422 NEPAL (INTERIM) CONST. art. 20(2).
- 423 Lakshmi & Others v. Government of Nepal, Decision No. 8464, N.K.P. 2067, (Vol. 9) at 1551, paras. 23-24 (2009) (unofficial translation done by the Center for Reproductive

Rights) [hereinafter Lakshmi & Others v. Government of Nepal]; see also, Prakashmani Sharma & Others v. Government of Nepal, Decision No. 8001, N.K.P. 2065 (Vol. 8) at 956, paras. 5, 39 (2008) (unofficial translation done by the Center for Reproductive Rights) [hereinafter Prakashmani Sharma & Others v. Government of Nepal].

424 Consolidated Decision, Laxmi Mandal v. Deen Dayal Harinagar Hospital & Others, W.P. (C) No. 8853/2008 & Jaitun v. Maternal Home MCD, Jangpura & Others, W.P. (C) Nos. 8853 of 2008 & 10700 of 2009 3 Delhi High Court (2010) (India) [hereinafter Consolidated Decision (India)].

425 Sandesh Bansal v. Union of India & Others, W.P. (C) No. 9061 of 2008, paras. 39-40 (2012) [hereinafter Sandesh Bansal v. Union of India & Others].

426 Prakashmani Sharma & Others v. Government of Nepal, *supra* note 423, at 956, para. 42.

427 Payal Shah, *Uterine Prolapse and Maternal Morbidity in Nepal: A Human Rights Imperative*, 2 DREXEL LAW REVIEW 491, 493-494 (2010).

428 Prakashmani Sharma & Others v. Government of Nepal, *supra* note 423, at 956, para. 39.

429 Consolidated Decision (India), *supra* note 424, 3.

430 *Id.* at 43-46.

431 Sandesh Bansal v. Union of India & Others, *supra* note 425.

432 *Id.* para. 22.

433 Lakshmi & Others v. Government of Nepal, *supra* note 423, at 1551, para. 27.

434 *Id.*

435 *Id.* para. 17.

436 *Id.* para. 36.

437 *Id.* para. 25.

438 Dr. Mangla Dogra et al. v. Anil Kumar Malhotra et al, Ajay Kumar Pasricha et al. v. Anil Kumar Mahotra et al., CR No. 6337 of 2011, para. 22, HC Punjab and Haryana at Chandigarh (2011) (India).

439 HRLN, *The High Court of Madhya Pradesh allowed a pregnant female prisoner to exercise her reproductive rights under the Medical Termination of Pregnancy Act*, Jan. 19th, 2013, available at <http://www.hrln.org/hrln/reproductive-rights/pils-a-cases/1209-the-high-court-of-madhya-pradesh-allowed-a-pregnant-female-prisoner-to-exercise-her-reproductive-rights-under-the-medical-termination-of-pregnancy-act-act.html> (last accessed Sept. 8, 2013) [hereinafter HRLN, *The High Court of Madhya Pradesh allowed a pregnant female prisoner to exercise her reproductive rights*].

440 *Id.*

441 Bangladesh National Women Lawyers Association (BNWLA) v. The Government of Bangladesh, W.P. 5916/2008, H.C.D. Bangladesh 23, 24 (2009) [hereinafter BNWLA v. Government of Bangladesh]; Meera Dhungana for FWLD v. Government of Nepal, *supra* note 55, at 164, para. 27.

442 Medha Kotwal Lele & Others v. Union of India & Others, W.P. (C) No. 173-177/1990 S.C. (2012) (emphasis added).

443 BNWLA v. Government of Bangladesh, *supra* note 441, at 12.

444 Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty on 15 December, 1995, A.I.R. 922 (1996).

445 Meera Dhungana for FWLD v. Government of Nepal, *supra* note 55, at 164, para. 23.

446 *Id.*

447 *Id.* para. 18, see also Jit Kumari Pangeni & Others v. Office of the Prime Minister and Council of Ministers & Others, decision no. 7973, N.K.P. 2065 (Vol. 6) at 664, paras. 3, 8 (2008) (unofficial translation done by the Center for Reproductive Rights) [hereinafter Jit Kumari Pangeni & Others v. Office of the Prime Minister and Council of Ministers & Others (Nepal)] (recognizing that prevailing provision that provides lower punishment for marital rape than rape outside of marriage is discriminatory and that rape “creates a negative impact on the physical, mental and family life of the victim but also has an impact on society”).

448 Meera Dhungana for FWLD v. Government of Nepal, *supra* note 55, at 164, para. 18; see also Jit Kumari Pangeni & Others v. Office of the Prime Minister and Council of Ministers & Others (Nepal), *supra* note 447, at 664, paras. 3, 8.

449 ASJR v. Union of India & Others, *supra* note 386.

450 See Court On Its Own Motion (Lajja Devi) v. State (India), *supra* note 398; T. Sivakumar v. The Inspector Of Police, H.C.P. No. 907 of 2011, Madras H.C. (2011), *supra* note 405.

451 See, e.g., T. Sivakumar v. The Inspector of Police (India), *supra* note 405; Meera Dhungana for FWLD v. Government of Nepal, *supra* note 55, at 164, paras. 18-19; Prakashmani Sharma & Others v. Government of Nepal, *supra* note 423, at 956, para. 5; Lakshmi & Others v. Government of Nepal, *supra* note 423, at 1551, paras. 23-31.22.

452 Noting that the failure of the government to clarify whether the PCMA supersedes personal laws as a legal barrier to elimination of child marriage, see also Court On Its Own Motion (Lajja Devi) v. State (India), *supra* note 398; T. Sivakumar v. The Inspector of Police (India), *supra* note 405.

453 Smt. Seema v. Ashwani Kumar (India), *supra* note 74.

454 Court On Its Own Motion (Lajja Devi) v. State (India), *supra* note 398, para. 35.

455 T. Sivakumar v. The Inspector of Police (India), *supra* note 405, para. 59.

456 Smt. Seema v. Ashwani Kumar (India), *supra* note 74.

457 Md. Abul Hossain v. Government of Bangladesh & others 31 BLD (HCD) 183 (2011); Sapana Pradhan & Others v. Prime Minister and Council of Ministers & Others (Nepal), *supra* note 146, at 289, para. 20; ASJR v. Union of India & Others, *supra* note 386 para. 9; T. Sivakumar v. The Inspector of Police (India), *supra* note 405, para. 32; Court On Its Own Motion (Lajja Devi) v. State (India), *supra* note 398, para. 9.

458 ASJR v. Union of India & Others, *supra* note 386, para. 9. See also T. Sivakumar v. The Inspector of Police (India), *supra* note 405, para. 18.

BOXES

GLOBAL COMMITMENT TO THE ELIMINATION OF CHILD MARRIAGE

- 1 See Cheryl Thomas, *Forced and Early Marriage: A Focus on Central and Eastern Europe and Former Soviet Union Countries with Selected Laws from Other Countries* 2, U.N. Doc. EGM/GPLHP/2009/EP.08 (2009), available at http://www.un.org/womenwatch/daw/egm/vaw_legislation_2009/Expert%20Paper%20EGMGPLHP%20_Cheryl%20Thomas%20revised_.pdf.
- 2 See World Conference of the International Women's Year, Mexico City, Mexico, June 19-July 2, 1975, *Declaration of Mexico on the Equality of Women and Their Contribution to Development and Peace*, para. 28, U.N. Doc. E/CONF.66/34 (July 2, 1975); *Programme of Action of the International Conference on Population and Development*, Cairo, Egypt, Sept. 5-13, 1994, para. 5.5, U.N. Doc. A/CONF.171/13/Rev.1 (1995) [hereinafter *ICPD Programme of Action*]; *Beijing Declaration and the Platform for Action, Fourth World Conference on Women*, Beijing, China, Sept. 4-15, 1995, para. 107(a), U.N. Doc. A/CONF.177/20/Rev.1 (1996) [hereinafter *Beijing Declaration and the Platform for Action*].
- 3 *ICPD Programme of Action*, *supra* note 2, para. 6.11; *Beijing Declaration and the Platform for Action*, *supra* note 2, para. 107(a).
- 4 *ICPD Programme of Action*, *supra* note 2, para. 4.21.
- 5 *Id.*, Nairobi, Kenya, July 15-26, 1985, para. 158/11a, U.N.

- Doc. A/CONF.116/28/Rev (1985).
- ⁶ *Report of the World Summit for Social Development*, Copenhagen, Denmark, Mar. 6-12, 1995, sec. C, Commitment 6(y), U.N. Doc. A/CONF.166/9 (1995).
- ⁷ Human Rights Council Res. 23/25, Accelerating efforts to eliminate all forms of violence against women: preventing and responding to rape and other forms of sexual violence, preamble, U.N. Doc. A/HRC/23/L.28-1 (June 25, 2013); Human Rights Council Res. 22/32, Rights of the child: the right of the child to the enjoyment of the highest attainable standard of health, paras. 22-23, U.N. Doc. A/HRC/RES/22/32 (Apr. 17, 2013); Human Rights Council Res. 19/37, Rep. of the Human Rights Council, 19th Sess., U.N. Doc. A/HRC/19/2, at 104, para. 17(b) (May 24, 2013).
- ⁸ The Universal Periodic Review is a state-driven review of the human rights records of all U.N. Member States. *Universal Periodic Review*, OFFICE OF THE HIGH COMMISSIONER OF HUMAN RIGHTS (OHCHR), <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx> (last accessed Aug. 5, 2013). See, e.g., Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Afghanistan*, paras. 95.36, 95.39, U.N. Doc. A/HRC/12/9 (2009); *Bangladesh*, para. 94.15, U.N. Doc. A/HRC/11/18 (2009); *India*, para. 138.41, U.N. Doc. A/HRC/21/10 (2012); *Pakistan*, para. 122.102, U.N. Doc. A/HRC/22/12 (2012); *Sri Lanka*, para. 49, U.N. Doc. A/HRC/8/46 (2008).
- ⁹ Commission on the Status of Women, *Draft agreed conclusions submitted by the Chair of the Commission, Ms. Marjon V. Kamara (Liberia), on the basis of informal consultations: The elimination and prevention of all forms of violence against women and girls*, para. 34(qq), U.N. Doc. E/CN.6/2013/L.5 (Mar. 19, 2013).
- ¹⁰ HIGH-LEVEL PANEL OF EMINENT PERSONS ON THE POST-2015 DEVELOPMENT AGENDA, A NEW GLOBAL PARTNERSHIP: ERADICATE POVERTY AND TRANSFORM ECONOMIES THROUGH SUSTAINABLE DEVELOPMENT 30 (2013).

WHO RECOMMENDATIONS CONCERNING CHILD MARRIAGE AND EARLY PREGNANCY

- ¹ WORLD HEALTH ORGANIZATION (WHO), WHO GUIDELINES ON PREVENTING EARLY PREGNANCY AND POOR REPRODUCTIVE OUTCOMES AMONG ADOLESCENTS IN DEVELOPING COUNTRIES 24-101 (2011); WHO Secretariat, *Early marriages, adolescent and young pregnancies: Report by the Secretariat*, para. 15, A65/13 (Mar. 16, 2012) [hereinafter WHO Secretariat, *Early marriages, adolescent and young pregnancies*].
- ² WHO Secretariat, *Early marriages, adolescent and young pregnancies*, *supra* note 1, paras. 16-18.

IN FOCUS: LEGAL BARRIERS AND DETERRENENTS FOR GIRLS SEEKING TO CHALLENGE CHILD MARRIAGES

- ¹ See, e.g., Committee on the Rights of the Child (CRC Committee), *General Comment No. 12: The right of the child to be heard*, (51st Sess., 2009), paras. 76-77, U.N. Doc. CRC/C/GC/12 (2009).
- ² ICRW AND PLAN ASIA REGIONAL OFFICE, ASIA CHILD MARRIAGE INITIATIVE: SUMMARY OF RESEARCH IN BANGLADESH, INDIA, AND NEPAL 27 (2013).
- ³ See, e.g., *T. Sivakumar v. The Inspector Of Police, H.C.P. No. 907 of 2011, Madras H.C. (2011) (India)* [hereinafter *T. Sivakumar v. The Inspector of Police (India)*]; *Court On Its Own Motion (Lajja Devi) v. State, W.P. (Cr.) No. 338/2008, Delhi H.C. (India) (2012)* [hereinafter *Court On Its Own Motion (Lajja Devi) v. State (India)*] (cases seeking

- clarification concerning inconsistencies between India's general law prohibiting child marriage and personal laws). See, e.g., *T. Sivakumar v. The Inspector of Police (India)*, *supra* note 3; *Court On Its Own Motion (Lajja Devi) v. State (India)*, *supra* note 3.
- ⁴ See, e.g., *Dissolution of Muslim Marriages Act, No. 8 of 1939, art. 2(vii) (Bangl.)* [hereinafter *Dissolution of Muslim Marriages Act (Bangl.)*]; *The Dissolution of Muslim Marriages Act, No. 8 of 1939, art. 2(vii) (Pak.)*; *Dissolution of Muslim Marriages Act, No. 8 of 1939, art. 2(vii) (India)*.
- ⁵ *The Muluki Ain [General Code], part 4, ch. 17, no. 2 (9) (1963) (Nepal)*.
- ⁶ *Dissolution of Muslim Marriages Act (Bangl.)*, *supra* note 5, art. 2(vii); *The Prohibition of Child Marriage Act, No. 6 of 2007, art. 3(3) (India)*.
- ⁷ *Afghanistan's Penal Code fails to discuss marital rape. Pakistan's Penal Code fails to recognize marital rape as a crime, although all sex with girls below 16 is considered rape under the amendments of the Protection of Women (Criminal Laws Amendment) Act 2006.*
- ⁸ *Shiite Personal Status Law (amended), art. 100 (2009) (Afg.)*.
- ⁹ *The Criminal Law (Amendment) Act, No. 13 of 2013, art. 8, INDIA CODE (2013); SRI LANKA PENAL CODE, art. 363(e)*.
- ¹⁰ *Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian, Thematic report on servile marriage*, para. 92, U.N. Doc. A/HRC/21/41 (July 10, 2012); *Special Rapporteur on violence against women, its causes and consequences, Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk – Addendum – Mission to Afghanistan*, para. 41, U.N. Doc. E/CN.4/2006/61/Add.5 (Feb. 15, 2006).

PHULMONEE AND RUKHMABAI: SHIFTING THE DISCOURSE ON CHILD MARRIAGE IN INDIA

- ¹ GEORGE ROBB AND NANCY ERBER, EDs., *DISORDER IN THE COURT: TRIALS AND SEXUAL CONFLICT AT THE TURN OF THE CENTURY* 36 (1999) [hereinafter *ROBB AND ERBER, EDs., DISORDER IN THE COURT*].
- ² *Id.*
- ³ *Dadaji Bhikaji v. Rukhmabai, I.L.R. 9 (Bom.) at 529, vpara. 2 (1885) (India)* [hereinafter *Dadaji Bhikaji v. Rukhmabai (India)*].
- ⁴ *Id.*
- ⁵ ROBB AND ERBER, EDs., *DISORDER IN THE COURT*, *supra* note 1, at 36-37.
- ⁶ TANIKA SARKAR, *HINDU WIFE, HINDU NATION: COMMUNITY, RELIGION, AND CULTURAL NATIONALISM* 214-215 (2001), available at <http://cscs.res.in/dataarchive/textfiles/textfile.2008-07-22.3421675906/file> [hereinafter *TANIKA SARKAR, HINDU WIFE, HINDU NATION*]; *Queen-Empress v. Huree Mohun Mythee, I.L.R. 18 (Cal.) 49, para. 13 (1981) (India)* [hereinafter *Queen-Empress v. Huree Mohun Mythee (India)*].
- ⁷ TANIKA SARKAR, *HINDU WIFE, HINDU NATION*, *supra* note 6, at 214; *Queen-Empress v. Huree Mohun Mythee (India)*, *supra* note 6, at 49, para. 13.
- ⁸ TANIKA SARKAR, *HINDU WIFE, HINDU NATION*, *supra* note 6, at 211; *Queen-Empress v. Huree Mohun Mythee (India)*, *supra* note 6, at 49, para. 13.
- ⁹ *Queen-Empress v. Huree Mohun Mythee (India)*, *supra* note 6, at 49, para. 5.
- ¹⁰ *Id.* at 49, paras. 17, 19. Hari Maiti also faced charges of homicide and voluntarily causing grievous hurt, but the judge instructed the jury that such charges would be difficult to sustain as Hari Maiti claimed he had sexual intercourse with Phulmonee previously without such injuries being sustained, which the judge stated meant that such injuries arising from sexual intercourse with Phulmonee were not foreseeable as required for these charges.

¹¹ *Id.* at 49, para. 6.
¹² GOVERNMENT OF INDIA, LAW COMMISSION OF INDIA, PROPOSAL TO AMEND THE PROHIBITION OF CHILD MARRIAGE ACT, 2006 AND OTHER ALLIED LAWS, REPORT No. 205 41 (2008), available at <http://www.indiankanoon.org/doc/139422/> [hereinafter LAW COMMISSION OF INDIA, PROPOSAL TO AMEND THE PROHIBITION OF CHILD MARRIAGE ACT, 2006 AND OTHER ALLIED LAWS].
¹³ TANIKA SARKAR, HINDU WIFE, HINDU NATION, *supra* note 6, at 210.
¹⁴ Age of Sexual Consent Act, No. 10 of 1891, art. 1 (India), cited in D.E. CRANENBURGH, UNREPEALED ACTS OF THE GOVERNOR-GENERAL IN COUNCIL, [INDIA], VOLUME III, 864 (1894).
¹⁵ See, e.g., LAW COMMISSION OF INDIA, PROPOSAL TO AMEND THE PROHIBITION OF CHILD MARRIAGE ACT, 2006 AND OTHER ALLIED LAWS, *supra* note 12, at 41.

HUMAN RIGHTS LAW DOES NOT RECOGNIZE PARENTAL CONSENT AS A SUBSTITUTE FOR AN INDIVIDUAL PARTY'S CONSENT TO MARRIAGE

¹ Committee against Torture, (CAT Committee), *Concluding Observations: Yemen*, para. 31, U.N. Doc. CAT/C/YEM/CO/2, para. 31.
² See Convention on the Rights of the Child, *adopted* Nov. 20, 1989, art. 5, G.A. Res. 44/25, annex, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) (*entered into force* Sept. 2, 1990) [hereinafter CRC]; International Covenant on Civil and Political Rights, *adopted* Dec 16th, 1966, art. 18(4), G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976).
³ CRC, *supra* note 2, art. 12.
⁴ CRC Committee, *General Comment No. 12: the right of the child to be heard*, 55th Sess., para. 17, U.N. Doc. CRC/C/GC/12 (2009).
⁵ GOVERNMENT OF INDIA ET AL., YOUTH IN INDIA: SITUATION AND NEEDS 2006-2007 222 (2010), see also GUTTMACHER INSTITUTE, *Adolescent Marriage and Childbearing in India: Current Situation and Recent Trends* 9 (2009).
⁶ This principle is mirrored in standards on adolescents' consent to medical treatment. Where an adolescent's consent to medical treatment would lack legal force, an adolescent may still have the right to give or withhold their assent. Assent does not replace the legal requirement of consent, but recognizes that the views of the child are essential in decisions affecting the child. An adolescent's refusal to assent will be considered particularly where voluntary compliance with a procedure is critical to its success; see also B.M. Dickens ET AL., *Adolescents and consent to treatment*, INTERNATIONAL JOURNAL OF GYNECOLOGY AND OBSTETRICS 179, 183 (2005).
⁷ CRC, *supra* note 2, art. 3(1).
⁸ CRC Committee, *General Comment No. 14: on the right of the child to have his or her best interests taken as a primary consideration* (art. 3, para. 1), 62nd Sess., paras. 41-42, 73, 77, U.N. Doc. CRC/GC/C/14 (2013).
⁹ CRC Committee, *Concluding Observations: Bahrain*, para. 67, U.N. Doc. CRC/C/BHR/CO/2-3 (2011).
¹⁰ See CRC Committee, *Concluding Observations: Bahrain*, para. 32, U.N. Doc. CRC/C/BHR/CO/2-3 (2011).
¹¹ CRC, *supra* note 2, art. 18.
¹² CRC Committee, *General Comment No. 13: The right of the child from freedom of all forms of violence*, 56th Sess., para. 61, U.N. Doc. CRC/C/GC/13 (2011).

STATES PARTIES MUST ENSURE PERSONAL LAWS DO NOT LEGITIMIZE CHILD MARRIAGE

¹ Human Rights Committee, *Concluding Observations: Yemen*, para. 7, U.N. Doc. CCPR/CO/75/YEM (2002). See

also Human Rights Committee, *Concluding Observations: Zimbabwe*, para. 12, U.N. Doc. CCPR/C/79/Add. 89 (1998); ESCR Committee, *Concluding Observations: Afghanistan*, paras. 18, 28, U.N. Doc. E/C.12/AFG/CO/2-4 (2010); *Philippines*, para. 18, U.N. Doc. E/C.12/PHL/CO/4 (2008).
² Committee on the Elimination of Discrimination against Women (CEDAW Committee), *Concluding Observations: Israel*, para. 48, U.N. Doc. CEDAW/C/ISR/CO/5 (2011).
³ CEDAW Committee, *General Recommendation No. 21: Equality in marriage and family relations*, (13th Sess., 1994), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 337, paras. 16-17, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008); see also, Human Rights Committee, *Concluding Observations: India*, para. 16, U.N. Doc. CCPR/C/29/Add.81 (1997).
⁴ Committee on Economic, Social and Cultural Rights, *Concluding Observations: Sri Lanka*, para. 15, U.N. Doc. E/C.12/LKA/CO/2-4 (2010).
⁵ Committee against Torture, *Concluding Observations: Yemen*, para. 31, U.N. Doc. CAT/C/YEM/CO/2 (2009).
⁶ Human Rights Committee, *General Comment No. 19: Article 23 (The family)* (39th Sess., 1990), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 199, para. 4, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (2008).

THE POTENTIAL FOR SAARC TO CREATE ACCOUNTABILITY FOR CHILD MARRIAGE: COMPARATIVE EXAMPLES OF PROGRESS IN THE DEVELOPMENT OF REGIONAL STANDARDS

¹ Charter of the South Asian Association for Regional Cooperation (SAARC), *adopted* Dec. 8, 1985, art. 1(b).
² *Id.* (Afghanistan, Bangladesh, India, Nepal, Pakistan, and Sri Lanka are all SAARC member states, Afghanistan joined SAARC in April 2007, see also Joint Declaration on the Admission of the Islamic Republic of Afghanistan into the South Asian Association for Regional for Regional Cooperation SAARC, *adopted* Apr. 3, 2007).
³ Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia, *adopted* Jan. 5, 2002, art. 2(2) [hereinafter Convention on Regional Arrangements for Child Welfare].
⁴ Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, *adopted* Jan. 5, 2002, art. 2 [hereinafter Convention on Preventing Trafficking in Women and Children]; *Rawalpindi Resolution on Children of South Asia*, Rawalpindi, Pakistan, Aug. 20-22, 1996, cited in WOMEN AND CHILDREN: SAARC 79; *Colombo Statement on Children of South Asia*, Colombo, Sri Lanka, July 10, 2009 1 [hereinafter *Colombo Statement*].
⁵ Convention on Regional Arrangements for Child Welfare, *supra* note 3, art. 1; Convention on Preventing Trafficking in Women and Children, *supra* note 4, art. 1(1).
⁶ Convention on Regional Arrangements for Child Welfare, *supra* note 3, art. 7(2).
⁷ *Id.* art. 3(d).
⁸ Convention on Preventing Trafficking in Women and Children, *supra* note 4, art. 1(5).
⁹ See *id.* art. 1.
¹⁰ *Colombo Statement*, *supra* note 4, at 1, 3.
¹¹ SAIEVAC Regional Secretariat, *Report of the Regional Meeting to Celebrate the International Day of the Girl Child*, SAIEVAC, (Sept. 18-29, 2012), <http://www.saievac.org/news-updates/report-of-the-regional-meeting-to-celebrate-the-international-day-of-the-girl-child/>; South Asia Coordinating Group on Actions Against Violence Against Women and Children, *Terms of Reference*, (2010), available

- at <http://www.saievac.org/download/SAIEVAC%20Resources/Terms%20of%20Reference/TORS-not-updated.pdf>.
- ¹² *The creation of a South Asia Forum for Ending Violence against Children* (SAF), <http://www.saievac.org/about-saievac/history/> (last accessed Sept. 8, 2013).
- ¹³ African Charter on the Rights and Welfare of the Child, art. 21(2), O.A.U. Doc. CAB/LEG/24.9/49 (entered into force Nov. 29, 1999).
- ¹⁴ *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, 2nd Ordinary Sess., Assembly of the Union, Maputo, Mozambique, July 11, 2003 art. 6, cl. b, CAB/LEG/66.6 (2005).
- ¹⁵ African Committee of Experts on the Rights and Welfare of the Child (ACEWRC), *Observations from the Committee: Kenya*, art. 1, ACEWRC Doc. SA2590; ACEWRC Committee, *Concluding Observations: Egypt*, para. 6.
- ¹⁶ Council of Europe Convention on preventing and combatting violence against women and domestic violence, *adopted* May 11, 2011, art. 37, CETS No. 210.
- ¹⁷ *Forced marriages and child marriages*, art. 3, 14.2.1, 14.4, PACE Res. No. 1468 (2005).

FUNDAMENTAL RIGHTS AND PRINCIPLES OF STATE POLICY UNDERLYING THE RIGHT TO BE FREE FROM CHILD MARRIAGE IN SOUTH ASIA

- ¹ INDIA CONST. art. 14, 15(1); NEPAL (INTERIM) CONST. art. 13(3), 20(1); PAKISTAN CONST. art. 25; SRI LANKA CONST. art. 12(2); BANGL. CONST. art. 27, 28(1, 2); AFGHANISTAN CONST. art. 22.
- ² PAKISTAN CONST. art. 25(3); SRI LANKA CONST. art. 12(4); INDIA CONST. art. 15(3); BANGL. CONST. art. 28(4); NEPAL (INTERIM) CONST. art. 13(3).
- ³ NEPAL (INTERIM) CONST. art. 20(2, 3).
- ⁴ PAKISTAN CONST. art. 34; BANGL. CONST. art. 10.
- ⁵ Advocate Pun Devi Maharjan "Sujana" v. Government of Nepal & Others, decision no. 7981, N.K.P. 2065, Vol. 6, at 751, para. 24 (2006) (unofficial translation done by the Center for Reproductive Rights).
- ⁶ Humaira Mehmood v. the State, PLD (1999) Lahore 494 (Pakistan); Daniel Latifi & Another v. Union of India, W.P. (Cr.) No. 868 of 1986 SC (2001); CRR, LITIGATING REPRODUCTIVE RIGHTS: USING PUBLIC INTEREST LITIGATION AND INTERNATIONAL LAW TO PROMOTE GENDER JUSTICE IN INDIA 16 (2006) *available at* <http://reproductiverights.org/en/document/litigating-reproductive-rights-using-public-interest-litigation-and-international-law-to-pr>; Dil Bahadur Bishwokarma & others v. Nepal Government, decision no. 7531, N.K.P. 2062 (Vol. 4) at 492 (2005) (unofficial translation done by the Center for Reproductive Rights).
- ⁷ AFGHANISTAN CONST. art. 24; PAKISTAN CONST. art. 14(1).
- ⁸ NEPAL (INTERIM) CONST. art. 12(1).
- ⁹ Vishaka v. State of Rajasthan, A.I.R. 1999 SC 3011 (India).
- ¹⁰ NEPAL (INTERIM) CONST. art. 12(1); INDIA CONST. art. 21; PAKISTAN CONST. art. 9; BANGL. CONST. art. 28(4); AFGHANISTAN CONST. art. 23.
- ¹¹ Sriyani Silva v. Iddamaloda, Officer in Charge, Police Station, Paiyagala and Others, S.C. App. No. 471/2000 (FR) (2003) (Sri Lanka); Wewalage Rani Fernando and others v. Officer in Charge, Minor Offences, Seeduwa Police Station, Seeduwa and others, S.C. App. No. 700/2002 (FR) (2004) (Sri Lanka).
- ¹² See, e.g., Chameli Singh v. State of Uttar Pradesh, 6 S.C.R. at 827, paras. 5, 8 (1995) (India) [hereinafter Chameli Singh v. State of Uttar Pradesh (India)].
- ¹³ Shehla Zia v. WAPDA, PLD (SC) 712, para. 14 (1994) (Pakistan).
- ¹⁴ Farooque v. Government of Bangladesh, W.P. No. 92/1995 (1996).
- ¹⁵ Paschim Banga Khet Mazdoorsamity v. State of West Bengal,

- A.I.R. 1996 S.C. 2426, para. 16 (1996) (India).
- ¹⁶ Chameli Singh v. State of Uttar Pradesh (India), *supra* note 12, paras. 5, 8.
- ¹⁷ Consumer Education and Research Center v. Union of India, 1 S.C.R. 626, para. 26 (1995) (India).
- ¹⁸ NEPAL (INTERIM) CONST. art. 16(2).
- ¹⁹ *Id.* art. 33(h).
- ²⁰ BANGL. CONST. art. 18(1); INDIA CONST. art. 47.
- ²¹ *Id.* art. 16.
- ²² NEPAL (INTERIM) CONST. art. 35(1).
- ²³ PAKISTAN CONST. art. 38(d).
- ²⁴ NEPAL (INTERIM) CONST. art. 20(2).
- ²⁵ BANGL. CONST. art. 35(5); NEPAL (INTERIM) CONST. art. 26(1); SRI LANKA CONST. art. 11.
- ²⁶ PAKISTAN CONST. art.14(2); AFGHANISTAN CONST. art. 29.
- ²⁷ AFGHANISTAN CONST. art. 29.
- ²⁸ Francis Coralie Mullin v. Administrator, Union Territory of Delhi & Others, 1981 SCR (2) 516 (1981) (India).
- ²⁹ BLAST & Another v. Government of Bangladesh & Others, W.P. No. 8283/2005, H.C.D. Bangladesh 11 (2010).
- ³⁰ AFGHANISTAN CONST. art. 24; BANGL. CONST. art. 32; INDIA CONST. art. 21; PAKISTAN CONST. art. 9; NEPAL (INTERIM) CONST. art. 12(2).
- ³¹ SRI LANKA CONST. art. 13(4).
- ³² PAKISTAN CONST. art. 14(2); BANGL. CONST. art. 43(a); NEPAL (INTERIM) CONST. art. 28.
- ³³ BANGL. CONST. art. 43(a); NEPAL (INTERIM) CONST. art. 28.
- ³⁴ NEPAL (INTERIM) CONST. art. 28.
- ³⁵ Gobind v. State of Madhya Pradesh & Another, 3 S.C.R. 946, para. 24 (1975) (India), *see also* Rajgopal v. State of Tamil Nadu, Supp. 4 S.C.R. 353, para 28(1) (1994) (India) ("[T] he right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21.... A citizen has a right to safeguard...[the] privacy of his own, his family, marriage, procreation, motherhood, child bearing and education").
- ³⁶ NEPAL (INTERIM) CONST. art. 17 (1); INDIA CONST. art. 21(a); PAKISTAN CONST. art. 25(a); AFGHANISTAN CONST. art. 43.
- ³⁷ SRI LANKA CONST. art. 27(2).
- ³⁸ AFGHANISTAN CONST. art. 44.
- ³⁹ Bangladesh National Woman Lawyers' Association v. The Government of Bangladesh, W.P. 3598/2010, H.C.D. Bangladesh 20 (2011).
- ⁴⁰ PAKISTAN CONST. art. 11 (1, 2); INDIA CONST. art. 23 (1); BANGL. CONST. art. 34(1); NEPAL (INTERIM) CONST. art. 29 (1,3-4); AFGHANISTAN CONST. art. 49; SRI LANKA CONST. art. 27(7).
- ⁴¹ AFGHANISTAN CONST. art. 49.
- ⁴² NEPAL (INTERIM) CONST. art. 29(2).

JUDICIAL RECOGNITION OF WOMEN'S RIGHT TO FREEDOM

- ¹ Dr. Shipra Chaudhury & Another v. Government of Bangladesh & Others, W.P. No.7977 of 2008, H.C.D. Bangladesh (2008).
- ² *Id.*
- ³ *Id.*; Humaira Mehmood vs. The State & Others, (1999) PLD Lahore 494 (Pakistan); Hafiz Abdul Waheed vs. Miss Asma Jehangir & Another, (1997) PLD Lahore 301 (Pakistan) (recognizing an adult Muslim woman's right to marry without a guardian).

FFDA V. UNION OF INDIA: ATTEMPT TO UTILIZE PUBLIC INTEREST LITIGATION TO ADDRESS CHILD MARRIAGE

- ¹ Forum for Fact Finding and Documentation and Advocacy v. Union of India, W.P. No. 212/2003 SC 9 (2008).
- ² *Id.* at 30.
- ³ *Id.* at 41.

4 *Id.*
5 ANUBHA RASTOGI, CLAIMING DIGNITY: REPRODUCTIVE RIGHTS & THE
LAW viii (2009); E-mail from Katy Gilmour, Human Rights
Law Network, to Payal Shah, legal adviser for Asia, Center for
Reproductive Rights, New York (May 7, 2013) (on file at the
Center for Reproductive Rights) [hereinafter E-mail from HRLN].
6 E-mail from HRLN, *supra* note 5.
7 Forum for Fact Finding and Documentation and Advocacy v. Union
of India, W.P No. 212/2003, S.C. India Record of Proceedings.
8 *Id.*

JUDICIAL RECOGNITION OF THE ROLE OF REGISTRATION OF MARRIAGE IN ELIMINATING CHILD MARRIAGE

1 Smt. Seema v. Ashwani Kumar, 2 S.C.C. 578 (2006) (India).
2 *Id.*
3 Md. Abul Hossain v. Government of Bangladesh & Others,
WP No. 470 of 2010 HCD Bangladesh 183 (2010).
4 *Id.*
5 Bangladesh National Woman Lawyers' Association v.
Government of Bangladesh, WP No. 4781 of 2012 HCD
Bangladesh 2 (2012).
6 Gunaratnam v. Registrar-General, CA No. 1031/01 (2001) (Sri Lanka).
7 *Id.*
8 *Id.*
9 *Id.*
10 *Id.*
11 *Id.*

THE ROLE OF NHRIS IN PROMOTING ACCOUNTABILITY FOR CHILD MARRIAGE

1 AFGHANISTAN CONST. art. 58, *see also* AFGHANISTAN INDEPENDENT
HUMAN RIGHTS COMMISSION (AIHRC), *Law on the Structure, Duties
and Mandate of the AIHRC*, adopted May 12, 2005, art. I.
2 *See, e.g.,* NATIONAL HUMAN RIGHTS COMMISSION (NHRC) OF
BANGLADESH, *Mandate of the NHRC*, available at http://www.nhrc.org.bd/About_NHRC.html ("The mandate of
the NHRC necessarily emanates from the Constitution of
the People's Republic of Bangladesh, the Human Rights
Commission Act and the international human rights instru-
ments to which Bangladesh is a party... the National Human
Rights Commission is being established in order to pro-
tect, promote and foster human rights as envisaged in the
Bangladesh constitution and international instruments.");
NCW (NATIONAL COMMISSION FOR WOMEN) OF INDIA, *Mandate of
the Commission*, available at [http://ncw.nic.in/frmABTMan-
date.aspx](http://ncw.nic.in/frmABTMan-
date.aspx); *Protection of Human Rights Act 1993*, No.10
of 1994 (1994) (India) ("The Central Government shall
constitute a body to be known as the Nation Human Rights
Commission to exercise the powers conferred upon, and to
perform the function assigned to it under this Act."); NHRC
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3 OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, *OHCHR
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tries/nhri/pages/nhrimain.aspx); INTERNATIONAL COORDINATING
COMMITTEE OF NATIONAL INSTITUTIONS FOR THE PROMOTION AND
PROTECTION OF HUMAN RIGHTS, *Roles and types of NHRIs*,
available at [http://nhri.ohchr.org/EN/AboutUs/Pages/
RolesTypesNHRIs.aspx](http://nhri.ohchr.org/EN/AboutUs/Pages/
RolesTypesNHRIs.aspx).
4 Committee on the Rights of the Child (CRC Committee),
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human rights institutions in the promotion and protection of
the rights of the child*, (31st Sess., 2002), in *Compilation of
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*Comment No. 15: The right of the child to the enjoyment
of the highest attainable standard of health (Art. 24)*, 62nd
Sess., para. 103, U.N. Doc. CRC/GC/C/15 (2003).

5 NHRIs in South Asia include Afghanistan's Independent
Human Rights Commission, Bangladesh's National Human
Rights Commission, India's National Commission for
Women, National Human Rights Commission, the National
Commission for Protection of Child Rights, Nepal's National
Women's Commission and the National Human Rights
Commission, Pakistan's National Commission of the Status
of Women and the Human Rights Commission of Pakistan,
and Sri Lanka's Human Rights Commission and National
Child Protection Authority.
6 AIHRC, *Annual Report 2008* 24 (2008).
7 NHRC notice to UP govt on child marriage, low female
literacy, ZEE NEWS, June 03, 2013, http://zeenews.india.com/news/uttar-pradesh/nhrc-notice-to-up-govt-on-child-marriage-low-female-literacy_852602.html (last accessed
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<http://ncw.nic.in/frmReportLaws10.aspx>.
9 NCW OF INDIA, *National Commission for Women Draft on THE
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ncw.nic.in/pdf/files/compmarriagebill.pdf.
10 In *T. Sivakumar v. The Inspector Of Police*, India's Law
Commission, National Commission for Women, and National
Human Rights Commission recommended a more effective
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which resulted in the government repealing and re-enacting
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12 Smt. Seema v. Ashwani Kumar, 2 S.C.C. 578 (2006)
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Compulsory Registration of Marriages*, para. 2 (2006), avail-
able at [http://ncw.nic.in/PDFFiles/review%20of%20mar-
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at <http://www.nhrc.org.bd/news.html>.
14 UNITED NATIONS DEVELOPMENT PROGRAMME BANGLADESH,
*Awareness Campaign on Child rights Issues Held in
Moulvibazar (2012)*, available at [http://www.undp.org.bd/
info/events.php?newsid=1231&t=In%20News](http://www.undp.org.bd/
info/events.php?newsid=1231&t=In%20News).