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# **CHILD MARRIAGE AND PERSONAL LAWS IN SOUTH ASIA**

**INTERNATIONAL STANDARDS REQUIRING GOVERNMENTS TO END HUMAN RIGHTS  
VIOLATIONS BASED ON RELIGIOUS NORMS**

*Cover Image:* A bride looks on during a mass-wedding ceremony in Karachi, Pakistan, on March 24, 2014. Some 115 couples participated in the mass-wedding ceremony organized by a local charity welfare trust.  
**Photography:** ASIF HASSAN/AFP/Getty Images.

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**In South Asia**, marriages, including child marriages, are typically performed according to the religious custom or tradition of the concerned parties.<sup>1</sup> In most countries in the region, personal laws, which apply only to members of a particular religious group and may be codified or uncodified, set forth the requirements for marriage under that specific religion, including the minimum legal age of marriage. Personal laws were granted legal prominence by colonial governments that conceded the regulation of issues pertaining to family and property rights as a means to negotiate for broader legal reforms.<sup>2</sup> One exception is Nepal, which was never colonized by a foreign power, although its legal system is rooted in principles of Hindu law that were codified in the 1800s.<sup>3</sup> Personal laws continue to exist in Afghanistan, Bangladesh, India, Pakistan, and Sri Lanka.<sup>4</sup> Where personal laws are recognized in law, they are given wide deference by citizens and government officials, even when they reflect discriminatory traditional and patriarchal norms that contradict national constitutional protections of gender equality and nondiscrimination.

Personal laws often undermine national legislation intended to prohibit child marriage by establishing weaker legal standards concerning the minimum legal age of marriage, the legal status of marriages performed below such an age, and married girls' right to dissolve such marriages.<sup>5</sup> (See "Personal Laws and Child Marriage in India," p.3.) These laws often perpetuate child marriage by codifying or giving legal weight to harmful customs and traditional attitudes that discriminate against women and girls or place them in subordinate roles. The interplay and tension between national legislation—which is generally applicable to the population regardless of religious affiliation—and personal laws can result in ambiguity around women's and girls' rights with regard to child marriage and can lead to violations of constitutionally and internationally protected rights that manifest in sexual violence and a continuum of reproductive health harms. The United Nations' (U.N.) 2006 World Report on Violence against Children highlights the detrimental role of personal laws, noting that they often undermine protective legislation by supporting traditional attitudes that condone harmful practices.<sup>6</sup> Similarly, **the 2014 report of the Office of the High Commissioner for Human Rights on preventing and eliminating child marriage identifies the continued legal recognition of personal laws that violate human rights standards as a key challenge to the enforcement of laws prohibiting child marriage**, and calls on governments to harmonize their national laws with international human rights standards.<sup>7</sup>

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## PERSONAL LAWS AND CHILD MARRIAGE IN INDIA

In India, child marriage is regulated under general legislation—namely, the Prohibition of Child Marriage Act—and by a range of personal laws. The inconsistencies between the PCMA and personal laws exemplify the legal maze that girls throughout the region often find themselves in when facing child marriages. The section below highlights the contradictions that persist in India's plural legal system<sup>8</sup> with regard to consent, the minimum legal age of marriage, punishments for child marriage, and married girls' right to dissolve child marriages.

**Prohibition of Child Marriage Act (PCMA):** Under the PCMA, involvement by parents or guardians, religious officials, or others in promoting, negligently failing to stop, or attending and participating in the marriage of a girl below the age of 18 and a boy below the age of 21 is punishable by law.<sup>9</sup> Marriages involving girls below 18 years are void if the girl was taken by force or "enticed" away from home.<sup>10</sup> While child marriages in general are not explicitly recognized as forced, they are recognized as voidable within two years of a girl reaching 18 years of age.<sup>11</sup> To dissolve a child marriage under the PCMA, a girl must obtain a decree of nullity.<sup>12</sup>

**Hindu Marriage Act (HMA):** Under the HMA, marriages of girls and boys below the age of 18 are punishable. However, the punishment provisions apply only to the couple themselves; even where a child marriage occurs without the agreement of the parties themselves, there is no penalty for the parents or guardians who arranged the marriage or for the officials who solemnized it.<sup>13</sup> Marriages below the age of 18 are voidable only if a girl was married before the age of 15 and challenges the marriage before she turns 18.<sup>14</sup> This means that a girl married after the age of 15, even if married without regard to her preference, is considered to be in a valid marriage. While the HMA does not explicitly require consent for marriage, it requires that neither party be 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."<sup>15</sup> Further, marriages are voidable where the "consent of the petitioner...was obtained by force or by fraud."<sup>16</sup> Child marriages, however, are not specifically recognized as involving force or fraud. To dissolve a child marriage under the HMA, a girl must seek a divorce.<sup>17</sup>

**Muslim personal laws:** Though uncodified in India, Muslim personal laws establish puberty—which is presumed to be 15 years of age—as the minimum age of marriage.<sup>18</sup> Since marriage is considered a contract under Muslim law, the marriage of a girl above this age without her consent is legally void.<sup>19</sup> Parents or guardians are permitted to arrange marriages on behalf of girls below the age of 15,<sup>20</sup> but girls can utilize the "option of puberty" to render such marriages void—however, this option is only available if a girl challenges the marriage before turning 18 and if the marriage has not yet been consummated.<sup>21</sup> This decision must be confirmed by a court.<sup>22</sup>

**Indian Christian Marriage Act (ICMA):** The ICMA requires that a preliminary notice for all marriages involving girls below the age of 18 and boys below the age of 21 be published at least 14 days prior to the marriage.<sup>23</sup> Minors (defined as anyone below the age of 21) are not allowed to marry before the preliminary notice period has expired, unless there is consent from a parent or guardian.<sup>24</sup> After this notice period, a marriage involving minors can go forward without consent from a parent or guardian.<sup>25</sup> No consent is required for the marriage of anyone above the age of 21.<sup>26</sup> The section discussing penalties for the marriage of minors lays out penalties only with regard to marriages performed without the parents' or guardians' consent before the preliminary notice period has expired.<sup>27</sup> In other words, the marriage of minors is considered valid; being a minor at the time of marriage is not recognized as a ground for dissolution of marriage under the Indian Divorce (Amendment) Act, 2001, which sets forth regulations for divorce for Christians.<sup>28</sup>

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*(Personal Laws and Child Marriage in India continued...)*

**Parsi Marriage and Divorce Act (PMDA):** Under the PMDA, the marriage of a girl under the age of 18 is considered invalid.<sup>29</sup> However, in the provision on grounds under which a marriage can be declared void, age is not included.<sup>30</sup> The failure of the PMDA to clearly state whether a child marriage is invalid from the outset or needs to be invalidated through a legal process creates ambiguity about girls' right to leave such marriages.<sup>31</sup> The PMDA is silent on the issue of consent. It also fails to discuss penalties for the violation of the minimum age of marriage.

**Jewish personal laws:** Under Jewish personal laws, which are uncodified, the minimum age of marriage for girls is puberty, which is presumed to occur at 12 years.<sup>32</sup> Marriage before puberty is strictly prohibited, but any marriage after that age is recognized as legal and valid.<sup>33</sup>

The PCMA does not discuss personal laws other than to modify the punishments under the HMA.<sup>34</sup> The lack of clarity over which law prevails with regard to the minimum legal age of marriage has resulted in inconsistent judgments by state high courts throughout India. Despite the existence of high court cases where personal laws continue to be referred to as the primary source of law in determining the legal status of child marriages,<sup>35</sup> some recent high court decisions—including a 2013 Karnataka High Court ruling that the PCMA is applicable to all girls, even those who are Muslim—have affirmed the primacy of the PCMA:

**The prime reason for bringing in the [PCMA] is the prohibition of the solemnization of the child marriage. When the prescribed marriageable age of the girl is 18 years, this Court cannot be called upon to issue the sought declaration that the provisions of the [PCMA] are not applicable for the petitioner, as she belongs to Muslim community. The courts have the power coupled with the duty to prevent and not to promote the child marriages. This Court cannot and would not pass an order by virtue of which little girls become child brides.**<sup>36</sup>

The Supreme Court of India has yet to render a decision on the primacy of the PCMA over personal laws. Reports indicate that in the absence of clear recognition that the PCMA supersedes personal laws, local governments in other states, such as Kerala, have passed circulars permitting the registration of the marriage of Muslim girls under the age of 18 as permitted under Muslim personal law.<sup>37</sup>

Importantly, in concluding observations issued by the Committee on the Rights of the Child in June 2014, the government of India has been urged to clarify that the PCMA supersedes personal status laws.

**“The Committee urges the State party to ensure the effective implementation of the Prohibition of Child Marriage Act (PCMA, 2006), including by clarifying that the PCMA supersedes the different religious-based Personal Status Laws.”**

— *Concluding Observations issued by the Committee on the Rights of the Child (CRC Committee) to India on June 13, 2014.*<sup>\*</sup>

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<sup>\*</sup>CRC Committee, Concluding Observations: India, para. 52, U.N. Doc. CRC/C/IND/CO/3-4 (2014).

## I. INTERNATIONAL HUMAN RIGHTS STANDARDS: RECOGNITION OF VIOLATIONS RESULTING FROM DISCRIMINATORY PERSONAL LAWS

International human rights law obligates governments to ensure that religiously based laws, including personal laws, are not used to justify or legitimize violations of women's and girls' rights. The failure to harmonize personal laws with international human rights standards constitutes a violation of several human rights, including the following:

### RIGHT TO EQUALITY AND NONDISCRIMINATION

International human rights treaties guarantee women's right to equality and nondiscrimination.<sup>38</sup> For example, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires states parties to “condemn discrimination against women in all of its forms” and “to 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 inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”<sup>39</sup>

In addition, U.N. treaty monitoring bodies have stated that personal laws permitting child marriage are discriminatory towards women.<sup>40</sup> In its General Recommendation 29 concerning equality in marriage, the Committee on the Elimination of Discrimination against Women (CEDAW Committee), which monitors states' compliance with CEDAW, affirms that **“identity-based personal status laws and customs perpetuate discrimination against women and that the preservation of multiple legal systems is in itself discriminatory against women.** Lack of individual choice relating to the application or observance of particular laws and customs exacerbates this discrimination.”<sup>41</sup> The committee recognizes that women's rights under CEDAW are violated where countries have adopted constitutions that uphold women's equality and nondiscrimination but fail to protect women from the discriminatory effects of marriage under customary practices and religious laws.<sup>42</sup> It has affirmed that “variations in law and practice relating to marriage have wide-ranging consequences for women, invariably restricting their rights to equal status and responsibility within marriage.”<sup>43</sup> Similarly, the U.N. Special Rapporteur on violence against women, its causes and consequences (SRVAW) has expressed concern over personal laws' discriminatory provisions on the dissolution of marriage and maintenance provisions, which cause “many women [to] stay in violent marriages out of fear that their *de jure* and *de facto* legal status will be negatively impacted, and also that they will be denied financial support if they are divorced or separated.”<sup>44</sup> The SRVAW has also noted that **women's rights may be violated where customary practices and forums of arbitration or sentencing create barriers to women's access to justice and due process.**<sup>45</sup>

Governments have an immediate obligation under international law to reform personal laws that discriminate against women. The CEDAW Committee has established that states parties must address inequality stemming from personal laws: **“Personal laws should embody the fundamental principle of equality between women and men, and should be fully harmonized with the provisions of the Convention so as to eliminate all discrimination against women in all matters relating to marriage and family relations.”**<sup>46</sup> Further, “[i]n the absence of a unified family law, the system of personal status laws should provide for individual choice as to the application of religious law, ethnic custom or civil law at any stage of the relationship.”<sup>47</sup>

In the context of child marriage, harmonizing personal laws with international legal standards requires not only ensuring a minimum legal age of marriage of 18 years but also eliminating practices that contribute to the marriage of girls—for example, dowry or bride price—and making the registration of marriage compulsory and accessible.<sup>48</sup> Governments must also ensure equal rights concerning the dissolution of marriage, regardless of the provisions of personal laws.<sup>49</sup>

With regard to child marriage, which is recognized as a form of violence against women and girls,<sup>50</sup> governments must ensure that personal laws are not used to condone impunity concerning the practice. The U.N. Declaration on the Elimination of Violence against Women adopted by the U.N. General Assembly affirms that **“States should condemn violence against women and should not invoke any custom, tradition, or religious consideration to avoid their obligations with respect to its elimination.”**<sup>51</sup> In addition, the SRVAW has stated that where personal laws condone child marriage, **“there should be maximum international and national pressure to ensure that religious and customary laws conform to universally accepted international norms,”** including respect for women’s right to full and free consent to marriage.<sup>52</sup> Under international law, a state party’s failure to confront violations of women’s human rights committed in the name of religion is itself a human rights violation.<sup>53</sup>

**“Blind adherence to these practices and State inaction with regard to these customs and traditions have made possible large-scale violence against women. States are enacting new laws and regulations with regard to the development of a modern economy and modern technology and to developing practices which suit a modern democracy, yet it seems that in the area of women’s rights change is slow to be accepted.”**

—*Special Rapporteur on Violence against women, its causes and consequences*<sup>54</sup>

Despite significant economic development in the region and legislative reform in many other areas of law, discriminatory personal laws continue to be deferred to and enforced throughout the region because the reform of such laws is often viewed as politically inexpedient. Government inaction on these laws is due largely to the patriarchal roots of child marriage and the role of personal laws in upholding societal and religious power structures.<sup>55</sup> The SRVAW and the U.N. Special Rapporteur on freedom of religion or belief have both affirmed that cultures are not static and immutable; rather, prevalent religious principles that

oppress women typically emerge through the male-led interpretations of ideology, which often reflect an “attitude of male superiority” and perpetuate prejudicial stereotypes about women as primarily wives and mothers rather than decision-makers or breadwinners.<sup>56</sup> According to the SRVAW, “[c]ontrary to what some may claim or fear, such an engagement with culture does not erode or deform local culture but rather challenges its discriminatory and oppressive aspects. This of course may provoke resistance from those who have a vested interest in preserving the status quo. **Negotiating culture with human rights inherently questions, delegitimizes, destabilizes, ruptures, and, in the long run, destroys oppressive hierarchies.**” The SRVAW has maintained that the process of negotiating culture with human rights must not perpetuate existing hierarchies by engaging solely with presumed religious leaders; instead, it must also engage in outreach to marginalized groups within cultures, including women.<sup>57</sup> (See “Comparative Examples of Positive Reform in the Region”).

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## COMPARATIVE EXAMPLES OF POSITIVE REFORM IN THE REGION

Comparative developments within the region illustrate how the positive reform of child marriage laws can occur. Since 1998, the CEDAW Committee has called on states parties to “tak[e] into consideration the experiences of countries with similar religious backgrounds and legal systems that have successfully accommodated domestic legislation to commitments emanating from international legally binding instruments.”<sup>58</sup>

Nepal provides a leading example of how religion-based laws can be reformed to better uphold women’s rights. The country’s legal code, the Muluki Ain, is rooted in Hindu religious principles. In the 1990s, while Nepal was still officially a Hindu kingdom, women’s rights activists launched a campaign to reform the Muluki Ain to eliminate discriminatory provisions. Following a review of the Muluki Ain that led to the identification of over 100 sex- and gender-based discriminatory provisions and in response to a legal petition arguing that the inheritance provisions of the Muluki Ain were inconsistent with the constitutional rights to equality and nondiscrimination in force at the time, the Supreme Court of Nepal ordered the legislature to amend the existing discriminatory laws against women as mandated by the constitution within one year.<sup>59</sup> Women’s rights activists used the momentum from this decision in their advocacy campaign, which ultimately resulted in the Eleventh Amendment to the Muluki Ain. This amendment reformed a range of discriminatory provisions, including those pertaining to marriage, abortion, and ancestral property.<sup>60</sup>

More recently, the provincial legislature in Sindh, Pakistan, enacted the Sindh Child Marriage Restraint Act 2013, a groundbreaking law declaring the minimum legal age of marriage to be 18 years for girls and boys.<sup>61</sup> This legislation marks a major step forward in Pakistan, where the general law on child marriage establishes 16 as the minimum age of marriage for girls.<sup>62</sup> The 2013 law was passed in a national context where the establishment of any minimum legal age of marriage has been opposed by religious groups that view such legal provisions as violations of Islam and have argued that girls as young as nine can be married if they have reached puberty.<sup>63</sup>

Governments have a nonderogable obligation to initiate the reform of discriminatory personal laws or to provide a secular alternative that is consistent with human rights standards. The failure to reform personal laws cannot be justified on the premise that the communities in question lack the political will to uphold women's rights. The Committee on Economic, Social and Cultural Rights, which monitors states' implementation of the International Covenant 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,"**<sup>64</sup> but rather must be undertaken by governments themselves. Further, the CEDAW Committee has recognized that **governments "must address patriarchal traditions and attitudes and open family law and policy to the same scrutiny with regard to discrimination against women that is given to the 'public' aspects of individual and community life."**<sup>65</sup> (See "The Right to Freedom of Religion and Belief Does Not Permit Violations of Women's Rights," p.9.)

The obligation to ensure that traditional, religious, and cultural practices and laws do not violate women's rights is a "core aspect" of CEDAW, meaning that the failure to comply with these provisions cannot be justified even where a state has made declarations or reservations to articles pertaining to equality generally or equality within marriage.<sup>66</sup> For example, despite India's own constitutional directive principle envisioning the introduction of a uniform civil code,<sup>67</sup> the government has maintained declarations to CEDAW article 5(a) requiring the elimination of stereotypes and prejudicial customary and other practices and article 16(1) guaranteeing women's equal rights within marriage. In explaining these declarations, the Indian government stated that it would "abide by and ensure these provisions [only] in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent."<sup>68</sup> Bangladesh also maintains reservations to CEDAW articles 2 and 16(1)(c) on equality and women's equal rights in the dissolution of marriage, stating that these provisions conflict with Sharia law.<sup>69</sup> Such declarations are inconsistent with state obligations under CEDAW itself, and are thus considered invalid under international human rights law. More importantly, they expose the unwillingness of these governments to recognize and eliminate discrimination against women based on religious grounds.

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## THE RIGHT TO FREEDOM OF RELIGION AND BELIEF DOES NOT PERMIT VIOLATIONS OF WOMEN'S RIGHTS

The Human Rights Committee has affirmed that while the right to freedom of religion or belief is a fundamental human right, it cannot be invoked to justify discrimination.<sup>70</sup> Similarly, the Special Rapporteur on freedom of religion or belief has recognized that the right to freedom of religion does not mean that cultural practices that are discriminatory toward women are permissible: "Not all traditions are equally valid, and those which run counter to human rights must be combated. It is essential to distinguish between tolerance, which is necessary, and blind acceptance of customs which may involve degrading treatment or blatant violations of human rights. In order to ensure that freedom of religion does not undermine women's rights, it is vital that the right to difference which that freedom implies should not be interpreted as a right to indifference to the status of women."<sup>71</sup>

The Special Rapporteur on freedom of religion or belief has emphasized that the role of the law is to prevent discrimination arising from religious beliefs, and has called on states to take a number of measures in this regard: enact legislation to eliminate customs and practices that are discriminatory or harmful to women, including child marriage; introduce legal literacy training strategies at all levels of society, with the aim of altering discriminatory cultural norms and attitudes; and adopt necessary measures to ensure that religious and cultural customs do not hamper women's advancement, particularly with regard to marriage and its dissolution.<sup>72</sup>

**"It can no longer be taboo to demand that women's rights take priority over intolerant beliefs that are used to justify gender discrimination....In a number of countries, such denial of their rights is supported by discriminatory legislation and justified in the name of religion or tradition. There can never be true gender equality in the public arena if women continue to be oppressed by the weight of discrimination within their homes, all too often in the name of divine sanction."**  
—*Special Rapporteur on freedom of religion or belief*<sup>73</sup>

## RIGHT TO HEALTH

Personal laws that permit child marriage or restrict girls' right to leave such marriages trap married girls in situations that endanger their health and survival. Married girls face grave risks to their bodily integrity stemming from early pregnancy and sexual and other forms of physical violence.<sup>74</sup> International human rights law recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”<sup>75</sup> Governments have an immediate obligation to ensure this right without discrimination, including by adopting **“effective and appropriate measures to abolish harmful traditional practices affecting the health of children, particularly girls, including early marriage.”**<sup>76</sup> Ensuring the right to health requires states to refrain from imposing or enforcing discriminatory practices relating to women's health status or needs.<sup>77</sup> Where personal laws undermine legal protection against child marriage and expose girls to risks of sexual violence and reproductive health harm that often occur within child marriages, the right to health requires states to take corrective action. **The CEDAW Committee has specifically criticized states parties whose official policies reflect the influence of religious ideologies that compromise women's health.**<sup>78</sup> Governments have an obligation to review and, where necessary, amend laws to ensure the protection of the right to health without discrimination.<sup>79</sup> This requires the enactment and effective enforcement of laws prohibiting the marriage of girls, regardless of parental consent, under the age of 18.<sup>80</sup>

## RIGHT TO FREEDOM FROM TORTURE AND CRUEL, INHUMAN, OR DEGRADING TREATMENT

Child marriage exposes girls to severe physical and mental suffering, including the trauma of early pregnancy and marital rape, which, in circumstances where the girl has no practical or legal recourse for her suffering, may rise to the level of torture or cruel, inhuman, or degrading treatment.<sup>81</sup> Under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, states parties must ensure that constitutional and legislative protections against gender-based discrimination trump customary laws that condone discriminatory practices.<sup>82</sup> The Committee against Torture, which monitors states' implementation of this convention, has called for urgent legislative measures in cases where states parties allow personal laws to permit the marriage of girls, stating that **the failure to reform personal laws “amounts to violence against [girls] as well as inhuman or degrading treatment.”**<sup>83</sup> The committee has also affirmed that governments cannot absolve themselves of this obligation by allowing communities to create their own individual ages for marriage under personal laws.<sup>84</sup> Furthermore, the U.N. Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment has recognized that **where states create and implement discriminatory laws that trap women in situations of violence, they are complicit in the violence that women suffer.**<sup>85</sup> Similarly, where governments grant legal recognition to personal laws allowing child marriage and fail to harmonize these laws with human rights standards, they are accountable for the severe pain and suffering caused as a result.

## RIGHT TO PRIVACY

Under international human rights law, states that allow personal laws to deprive women of their legally recognized human rights are in violation of the right to freedom from arbitrary or unlawful interference with privacy, family, and home and to the protection of law from such interference or attacks.<sup>86</sup> The Human Rights Committee, which monitors states' compliance with the International Covenant on Civil and Political Rights (ICCPR), has stated that interference with individual privacy may be considered “unlawful” if it is conducted on the basis of a national law that is in violation of the ICCPR, and is considered “arbitrary” if it is based on a lawful interference that is not reasonable and not in conformity with the ICCPR.<sup>87</sup> Personal laws that contain discriminatory provisions, including ones that recognize a minimum legal age of marriage below 18 or that grant legal status to child marriages, violate the ICCPR and thus can be considered both unlawful and arbitrary. The Human Rights Committee has stated that article 17, which recognizes the right to privacy, **requires states parties to abolish discriminatory provisions of personal laws, including those on consent.**<sup>88</sup> Personal laws that do not require the informed consent of both parties violate women's right to privacy by exposing them to arbitrary interference with an important private decision. This violation is compounded where laws allow parental consent to substitute for individual consent.

## II. CONCLUSION AND RECOMMENDATION

Eliminating child marriage in South Asia requires that governments in the region ensure that violations of women's and girls' rights resulting from child marriage are not legitimized through discriminatory personal laws and that their legal systems consistently and clearly condemn child marriage. The ambiguity and legal barriers created by personal laws that undermine national laws against child marriage are not justifiable on any grounds. Governments that recognize and allow the enforcement of discriminatory personal laws are complicit in the violations of women's and girls' rights resulting from child marriage. **Governments have an immediate legal obligation to eliminate discriminatory provisions in personal laws and to harmonize all laws on child marriage with international human rights standards.** Models from Nepal and Pakistan show that despite political concerns, positive reforms to marriage and family laws are achievable with sufficient prioritization by the government. Government leadership in eliminating discriminatory provisions from personal laws is essential for sending a clear signal that impunity for child marriage will not be tolerated and that women's and girls' dignity and legal rights must be respected.

## ENDNOTES

Payal Shah, Senior Legal Adviser for Asia, was this fact sheet's primary author. Melissa Upreti, Regional Director for Asia, led the conceptualization of the fact sheet, supervised the research and edited multiple drafts. Kathryn Bailey, Global Legal Program Assistant, supported the finalization of the fact sheet by fact-checking and cite-checking the sources. Johanna Fine, Legal Adviser and Manager for Projects & Operations, reviewed a final draft and provided helpful feedback. Carveth Martin, Senior Creative and Designer, and Chi Nguyen, Graphic Designer, designed the cover and layout. The factsheet was copyedited by Morgan Stoffregen. This fact sheet was supported by a grant from the Ford Foundation.

<sup>1</sup> See UNICEF, EARLY MARRIAGE: A HARMFUL TRADITIONAL PRACTICE 4, available at [http://www.unicef.org/gender/files/Early\\_Marriage\\_Harmful\\_Traditional\\_Practice.pdf](http://www.unicef.org/gender/files/Early_Marriage_Harmful_Traditional_Practice.pdf).

<sup>2</sup> See, e.g., Special Rapporteur on Violence against Women (SRVAW) Yakın Ertürk, Intersections between culture and violence against women, para. 58, U.N. Doc. A/HRC/4/34 (2007) [hereinafter SRVAW Yakın Ertürk, *Intersections between culture and violence against women*].

<sup>3</sup> Md. Ershadul Karim and Sirjana Sharma Pokhrel, *Research Guide of the Legal System of Kingdom of Nepal* (2012), available at <http://www.nyulawglobal.org/globalex/Nepal.htm#legalandpolit>; CENTER FOR REPRODUCTIVE RIGHTS, WOMEN OF WORLD: SOUTH ASIA, CHAPTER ON NEPAL 118, 121 (2004).

<sup>4</sup> See, e.g., Shiite Personal Status Law (amended), art. 99 (2009) (Afg.) [hereinafter Shiite Personal Status Law (Afg.)]; The Christian Marriage Act, No. 15 of 1872, (Bangl.) [hereinafter Christian Marriage Act (Bangl.)]; The Hindu Marriage Act, No. 25 of 1955, art. 13(2)(iv) (India) [hereinafter Hindu Marriage Act (India)]; 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); The Indian Christian Marriage Act, No. 15 of 1872, (India) [hereinafter Indian Christian Marriage Act (India)]; The Parsi Marriage and Divorce Act, No. 3 of 1936 (India) [hereinafter Parsi Marriage and Divorce Act (India)]; Muslim Family Laws Ordinance No. 8 of 1961, art. 12 (Pak.); Kandyan Marriage and Divorce Act (amended in 1995) (Sri Lanka); Muslim Marriage and Divorce Act (1954) (Sri Lanka) [hereinafter Muslim Marriage and Divorce Act (Sri Lanka)].

<sup>5</sup> See, e.g., hereinafter Christian Marriage Act (Bangl.), *supra* note 4, arts. 19, 60(1); Muslim Marriage and Divorce Act (Sri Lanka), *supra* note 4 (does not specify a minimum age of marriage); JAYA SAGADE, CHILD MARRIAGE IN INDIA, *supra* note 4, at 79 (describing the Muslim Personal Law in India, which allows for marriage at puberty, presumed to occur at 15 years of age); Sir Dinshah Fardunji Mulla, PRINCIPLES OF MAHOMEDAN LAW 114 (1907) [hereinafter Sir Dinshah Fardunji Mulla, PRINCIPLES OF MAHOMEDAN LAW (1907)] (puberty is presumed to be over by the age of 15). See, e.g., Shiite Personal Status Law (Afg.), *supra* note 4, art. 99 (boys aged 18 and girls aged 16 may marry without parental consent; a guardian can consent for a minor); Kandyan Marriage and Divorce Act (amended in 1995), arts. 4(2), 66(a)-(b) (Sri Lanka) (minimum legal age is 18 years unless the parties cohabit for one year after attaining legal age or if a child is born within marriage before either attains legal age).

<sup>6</sup> Paulo Sérgio Pinheiro, UNITED NATIONS SECRETARY-GENERAL'S STUDY ON VIOLENCE AGAINST CHILDREN: UN WORLD REPORT ON VIOLENCE AGAINST CHILDREN 18, 38 (2006), available at [http://www.unicef.org/lac/full\\_text\(3\).pdf](http://www.unicef.org/lac/full_text(3).pdf).

<sup>7</sup> Human Rights Council, *Preventing and eliminating child, early, and forced marriage*, paras. 42, 52, U.N. Doc. A/HRC/26/22 (2014).

<sup>8</sup> The Special Representative to the Secretary General on Violence against Children (SRSG on Violence against Children) has defined "plural or multiple legal systems" as indicating "the presence of more than one source of law in a country's legal system, including formal statutory legislation in force alongside a system based on tradition and religion. The existence of plural legal systems in a given state is in some cases made explicit in the national constitution." SRSG ON VIOLENCE AGAINST CHILDREN & PLAN, PROTECTING CHILDREN FROM HARMFUL PRACTICES IN PLURAL LEGAL SYSTEMS 10 (2012) available at [http://srsr.violenceagainstchildren.org/sites/default/files/publications\\_final/SRSG\\_Plan\\_harmful\\_practices\\_report\\_final.pdf](http://srsr.violenceagainstchildren.org/sites/default/files/publications_final/SRSG_Plan_harmful_practices_report_final.pdf).

<sup>9</sup> The Prohibition of Child Marriage Act, 2006, No. 6 of 2007, paras. 2(a), 11 (2007) (India) [hereinafter PCMA (India)].

<sup>10</sup> *Id.* paras. 3, 12.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* para. 3.

<sup>13</sup> *Id.* para. 20.

<sup>14</sup> Hindu Marriage Act (India), *supra* note 4, arts. 11, 13(2)(iv).

<sup>15</sup> *Id.* art. 5(ii).

<sup>16</sup> *Id.* arts. 5(ii), 12(1).

<sup>17</sup> *Id.* arts. 11, 13(2)(iv).

<sup>18</sup> JAYA SAGADE, CHILD MARRIAGE IN INDIA, *supra* note 4, at 79; Sir Dinshah Fardunji Mulla, PRINCIPLES OF MAHOMEDAN LAW (1907), *supra* note 5, at 115.

<sup>19</sup> See JAYA SAGADE, CHILD MARRIAGE IN INDIA, *supra* note 4, at 80 (citing F.B. Tyabji, MUSLIM LAW 52 (1968)).

<sup>20</sup> *Id.*

<sup>21</sup> Dissolution of Muslim Marriages Act No. 8 of 1939, art. 2(vii) (India).

<sup>22</sup> See JAYA SAGADE, CHILD MARRIAGE IN INDIA, *supra* note 4, at 80 (citing F.B. Tyabji, MUSLIM LAW 52 (1968)).

<sup>23</sup> Indian Christian Marriage Act (India), *supra* note 4, paras. 3, 60(1).

<sup>125</sup> *Id.* paras. 3, 60(1).

<sup>126</sup> *Id.* para. 19.

<sup>127</sup> *Id.* para. 70.

<sup>128</sup> The Indian Divorce (Amendment) Bill, Act. No. 51 of 2011, para. 5 (2011).

<sup>129</sup> Parsi Marriage and Divorce Act (India), *supra* note 4, arts. 3(1)(c).

<sup>130</sup> *Id.* paras. 30-32.

<sup>131</sup> JAYA SAGADE, CHILD MARRIAGE IN INDIA, *supra* note 4, at 81.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> PCMA (India), *supra* note 9, para. 20.

<sup>135</sup> Mrs. Tahra Begum vs. State of Delhi & Others, W.P. (CRL) No. 446/2012, Delhi H.C. (2012) (India).

<sup>136</sup> Mis. Seema Begaum D/O Khasimsab vs State Of Karnataka, para. 23, W.P. No. 75889/2013, Karnataka H.C. (2013) (India).

<sup>137</sup> THE TELEGRAPH, *Child Marriage Row in Kerala*, [http://www.telegraphindia.com/1130624/jsp/nation/story\\_17041236.jsp#.U2qRM4Xo4hU](http://www.telegraphindia.com/1130624/jsp/nation/story_17041236.jsp#.U2qRM4Xo4hU) (last accessed May 28, 2014).

<sup>138</sup> International Covenant on Civil and Political Rights, adopted Dec 16<sup>th</sup>, 1966, G.A. Res. 2200A (XXI), arts. 3, 26, 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) [hereinafter ICCPR]; International Covenant on Economic, Social, and Cultural Rights, adopted Dec. 16th, 1966, G.A. Res. 2200A (XXI), art. 3, U.N. GAOR, Supp. No. 16, U.N. Doc. A/6316 (1966) (entered into force Jan. 3, 1976) [hereinafter ICESCR]; Convention on the Elimination of All Forms of Discrimination against Women, adopted Dec. 18, 1979, G.A. Res. 34/180, U.N. GOAR, 34th Sess., Supp. No. 46, at 47, art. 1, U.N. Doc. A/34/46, U.N.T.S. 13 (entered into force Sept. 3rd, 1981) [hereinafter CEDAW].

<sup>139</sup> CEDAW, *supra* note 38, arts. 2, 5(a).

<sup>140</sup> 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); Committee on Economic, Social and Cultural Rights (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).

<sup>141</sup> CEDAW Committee, *General Recommendation No. 29: on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women- Economic consequences of marriage, family relations and their dissolution*, para. 14, U.N. doc. CEDAW/C/GC/29 (2013) [hereinafter CEDAW Committee, *Gen. Recommendation No. 29*].

<sup>142</sup> *Id.* para. 10.

<sup>143</sup> CEDAW Committee, *General Recommendation No. 21: Equality in marriage and family relations*, (13<sup>th</sup> Sess.,

1994), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 337, para. 17, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008) [hereinafter CEDAW Committee, *Gen. Recommendation No. 21*].

<sup>144</sup> SRVAW Rashida Manjoo, *Mission to Bangladesh (20-29 May 2013)\**, paras. 30-31, U.N. Doc. A/HRC/26/38/Add.2 (2014).

<sup>145</sup> *Id.* para. 75.

<sup>146</sup> CEDAW Committee, *Gen. Recommendation No. 29, supra* note 41, para. 15.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.* paras. 26, 33.

<sup>149</sup> CEDAW Committee, *Gen. Recommendation No. 21, supra* note 43, para. 17.

<sup>150</sup> CRC Committee, *General Comment No. 13: The right of the child from freedom of all forms of violence*, 56<sup>th</sup> Sess., para. 29(e), U.N. Doc. CRC/C/GC/13 (2011); *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). See SRVAW Radhika Coomaraswamy, *Cultural practices in the family that are violent towards women*, para. 8, U.N. Doc. E/CN.4/2002/83 (2002) [hereinafter SRVAW Radhika Coomaraswamy, *Cultural practices in the family that are violent against women*]; CAT Committee, *Concluding Observations: Yemen*, para. 31, U.N. Doc. CAT/C/YEM/CO/2, (2009); CEDAW Committee, *Concluding Observations: Italy*, paras. 52-53, U.N. Doc. CEDAW/C/ITA/CO/6 (2011); *Zambia*, paras. 33-34, U.N. Doc. CEDAW/C/ZMB/CO/5-6 (2011); *General Recommendation No. 19: Violence against women*, (11th Sess., 1992), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 331, para.11, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008).

<sup>151</sup> General Assembly, Declaration on the Elimination of Violence against Women, art. 4, U.N. Doc. A/RES/48/104 (1993).

<sup>152</sup> SRVAW Radhika Coomaraswamy, *Cultural practices in the family that are violent towards women, supra* note 50, para. 8.

<sup>153</sup> SRVAW Yakın Ertürk, *Integration of the human rights of women and the gender perspective: violence against women. The due diligence standard as a tool for the elimination of violence against women*, para. 88, U.N. Doc. E/CN.4/2006/61 (2006).

<sup>154</sup> SRVAW Radhika Coomaraswamy, *Further promotion and encouragement of human rights and fundamental freedoms*, para. 67, U.N. Doc. E/CN.4/1995/42 (1994).

<sup>155</sup> 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 3 (2012), AVAILABLE AT [HTTP://WWW.AFPPD.ORG/FILES/1113/4992/7261/CHILD\\_MARRIAGE.PDF](http://www.afppd.org/files/1113/4992/7261/CHILD_MARRIAGE.PDF); JAYA SAGADE, CHILD MARRIAGE IN INDIA, *supra* note 4, at 7-9, 13; FORUM FOR WOMEN, LAW AND DEVELOPMENT (FWLD) AND UNITED NATIONS DEVELOPMENT FUND FOR WOMEN (UNIFEM), CHILD MARRIAGE: LEGAL



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<sup>56</sup> SRVAW Yakın Ertürk, *Intersections between culture and violence against women*, *supra* note 2, paras. 53, 58; Special Rapporteur on freedom of religion or belief Abdelfattah Amor, *Study on freedom of religion or belief and the status of women in the light of religion and traditions (Addendum)*, paras. 92-93, U.N. Doc. E/CN.4/2002/73/Add.2 (2009).

<sup>57</sup> SRVAW Yakın Ertürk, *Intersections between culture and violence against women*, *supra* note 2, para. 61.

<sup>58</sup> CEDAW Committee, *Gen. Recommendation No. 29*, *supra* note 41, para. 55 citing CEDAW Committee, *Concluding Observations: United Arab Emirates*, para. 45, U.N. Doc. CEDAW/C/ARE/CO/1 (2010).

<sup>59</sup> 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, para. 23 (2006).

<sup>60</sup> Legal Aid and Consultancy Center, *Eleventh Amendment of Country Code (Muluki Ain) on Women's Rights, 2002*, available at <http://archive.today/o5K6q>.

<sup>61</sup> Sindh Child Marriage Restraint Act 2013, art. 2(a) (2013) (Bangladesh); see also THE EXPRESS TRIBUNE, *SINDH ASSEMBLY PASSES BILL DECLARING MARRIAGE BELOW 18 PUNISHABLE BY LAW*, [http://tribune.com.pk/story/701321/sindh-assembly-passes-bill-declaring-marriage-below-18-punishable-by-law/?utm\\_source=CM+in+News+Update&utm\\_campaign=539b88532d-Child\\_marriage\\_in\\_the\\_News\\_6\\_May\\_2014&utm\\_medium=email&utm\\_term=0\\_1b4b6c6dbd-539b88532d-381591761](http://tribune.com.pk/story/701321/sindh-assembly-passes-bill-declaring-marriage-below-18-punishable-by-law/?utm_source=CM+in+News+Update&utm_campaign=539b88532d-Child_marriage_in_the_News_6_May_2014&utm_medium=email&utm_term=0_1b4b6c6dbd-539b88532d-381591761) (last accessed May 29, 2014).

<sup>62</sup> The Child Marriage Restraint Act, No. 19 of 1929, art. 2(a) (Pak.).

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<sup>64</sup> ESCR Committee, *Concluding Observations: Sri Lanka*, para. 15, U.N. Doc. E/C.12/LKA/CO/2-4 (2010).

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<sup>68</sup> CEDAW, *Declarations and reservations made upon signature and confirmed upon ratification (India)*, Declaration I, available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en#EndDec).

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<sup>72</sup> Special Rapporteur on freedom of religion or belief Abdelfattah Amor, *Civil and political rights, including the question of religious intolerance: Study on freedom of religion or belief and the status of women in the light of religion and traditions*, para. 198(iii), U.N. Doc. E/CN.4/2002/73/Add.2 (2009); see also Special Rapporteur on freedom of religion or belief Asma Jahangir, *Elimination of all forms of religious intolerance*, para. 15, U.N. Doc. A/65/207 (2010) [hereinafter Special Rapporteur on freedom of religion or belief Asma Jahangir, *Elimination of all forms of religious intolerance*].

<sup>73</sup> Special Rapporteur on freedom of religion or belief Asma Jahangir, *Elimination of all forms of religious intolerance*, *supra* note 72, para. 69.

<sup>74</sup> CENTER FOR REPRODUCTIVE RIGHTS, CHILD MARRIAGE IN SOUTH ASIA: STOP THE IMPUNITY 16-17 (2013) available at [http://reproductiverights.org/sites/crr.civicactions.net/files/documents/ChildMarriage\\_BriefingPaper\\_Web.pdf](http://reproductiverights.org/sites/crr.civicactions.net/files/documents/ChildMarriage_BriefingPaper_Web.pdf).

<sup>75</sup> ICESCR, *supra* note 38, art. 12. See also ECSR Committee, *General Comment No. 14: The right to the highest attainable standard of health (Art. 12)*, (22<sup>nd</sup> Sess., 2000) in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, at 84, para. 30, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (2008) [hereinafter ESCR Committee, *Gen. Comment No. 14*].

<sup>76</sup> ESCR Committee, *Gen. Comment No. 14*, *supra* note 75, para. 22.

<sup>77</sup> *Id.* para. 34.

<sup>78</sup> See, e.g., CEDAW Committee, *Concluding Observations: Ireland*, para. 180, U.N. Doc. A/44/38 (1989).

<sup>79</sup> CRC Committee, *General Comment No. 15: The right of the child to the enjoyment of the highest attainable standard of health (Art. 24)*, 62<sup>nd</sup> Sess., para. 73, 93, U.N. Doc. CRC/GC/C/15 (2003).

<sup>80</sup> CEDAW Committee, *General Recommendation No. 24: article 12 of the convention (women and health)*, (20<sup>th</sup> Sess., 1999), in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, at 364, para. 15(d), U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008); CRC Committee, *General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child*, (33<sup>rd</sup> 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).

<sup>81</sup> CAT Committee, *Concluding Observations: Bulgaria*, para. 26, U.N. Doc. CAT/C/BGR/CO/4-5 (2011); *Yemen*, para. 31, U.N. Doc. CAT/C/YEM/CO/2 (2009); *Madagascar*, para. 13, U.N. Doc. CAT/C/MDG/CO/1

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<sup>82</sup> CAT Committee, *Concluding Observations: Djibouti*, para. 21, U.N. Doc. CAT/C/DJI/CO/1 (2011); *Ethiopia*, para. 32, U.N. Doc. CAT/C/ETH/CO/1 (2011).

<sup>83</sup> CAT Committee, *Concluding Observations: Yemen*, para. 31, U.N. Doc. CAT/C/YEM/CO/2 (2009).

<sup>84</sup> *Id.*

<sup>85</sup> Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment Manfred Nowak, *Rep. of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*, para. 46, U.N. Doc. A/HRC/7/3 (2008).

<sup>86</sup> ICCPR, *supra* note 38, art. 17; Human Rights Committee, *Concluding Observations: Azerbaijan*, para. 7, U.N. Doc. CCPR/C/AZE/CO/3; *Uzbekistan*, para. 13, U.N. Doc. CCPR/C/UZB/CO/3 (2010); CRC, *supra* note 71, art. 16.

<sup>87</sup> Human Rights Committee, *General Comment No. 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Art. 17)*, (32<sup>nd</sup> Sess., 1998), in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, at 191, paras. 3-4, U.N. Doc. HRI/GEN/1/Rev. 9 (Vol. I) (2008).

<sup>88</sup> See Human Rights Committee, *Concluding Observations: Yemen*, para. 10, U.N. Doc. CCPR/C/YEM/CO/5 (2012); *United Republic of Tanzania*, para. 9, U.N. Doc. CCPR/C/TZA/CO/4 (2009).

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