

# Childhood to Womanhood- Child Brides and the Inefficiency of the Indian State

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## Introduction

Lakshmi – 48, Hindu, Karnataka, married off 13- looks into my eyes and describes passionately when I ask her why Hindu women wear bindis on their foreheads. She clarifies that a married woman has to wear 5 different signs; bindi, ear rings, a tali, bangles and toe rings. She believes these practises are for the protection of woman, she believes that by exposing these materials a woman or a young girl shows to the external world that she is married and will not be disturbed by other men. “Bindi shows that a woman belongs to a man and is protected so she is no longer available” concludes Lakshmi.<sup>1</sup>

The explanation given by Lakshmi illustrates the gender bias and how girl child is perceived in India, as a burden that desperately needs to be protected and whose responsibility should be passed to another family as soon as possible. The vast majority of girl children’s basic human rights are constrained by the patriarchal structure of the society which measures their worth “in terms of their economic value or cost as commodity items.”<sup>2</sup> The socialisation of the girl child in India is described by Chatterjee (1990) by six themes- “unwanted, neglected, underdeveloped, used, liability and exploitation”, and her life cycle as a difficulty “beginning with conception and birth, through early childhood, into school-going years, adolescence and womanhood”.<sup>3</sup>

In relation to the inferior position of the girl child in Indian society, the practice of child marriage is rooted in a complex mix of economic, social, and cultural factors.<sup>4</sup> Child marriages in India still take place supported by the centuries old socio-cultural and religious practises despite the legislation that restrains it from 1929.<sup>5</sup> Despite the fact that new Child Marriage Prohibition Act of 2006 solves some anomalies, women’s and child’s rights organizations agree upon that grey areas remain untouched. The child marriage question of India is still far from resolved. Nationwide, 44.5 percent of 20-24 years-old girls were married by age 18, whereas

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<sup>1</sup> Informal interview with Lakshmi, Panaji, 12 May 2009.

<sup>2</sup> Forum on Marriage and the Rights of Women and Girls “Early Marriage, Sexual Exploitation and Human Rights of Girls”, Nov 2001, p. 7

<sup>3</sup> Chattarjee, M, *A Report on Indian Woman from Birth to Twenty*, New Delhi, NIPCCD, 1999 and Sharma, Adarsh and Gopalakrishman, “Gird Child in India: a Quest for Equality”, in *Girl Child in Indian Society*, Bhadra, M. (ed.) Japipur, Rawat Publications, 1999, p. 24 (23-59)

<sup>4</sup> The author recognizes the fact that child marriage affects the boy children as well. However, because of the strong gender roles in India, the boy is generally married off later in order to be the sole bread winner of the household. Further, the affects of child marriages on girl child creates gross human rights violations.

<sup>5</sup> Sagade J. “The Age of Marriage and the debate on human rights” in *Family Violence in India: Human Rights, Issues, Actions and International Comparisons*, Swati S., (ed.), New Delhi: Rawat Publications, 2009, p. 82

16.0 percent of 15-19 year old cohort were already mothers or pregnant during the survey.<sup>6</sup> Although there is a decrease of 10 points in the percentage of women of 20-24 years-old who were married by the age of 18 nationwide compared to NFHS-1<sup>7</sup> and NFHS-2 data<sup>8</sup>, almost half of the girl children in India have to suffer through marriage.

Child marriage violates interconnected rights including but not limited to right to life, the right to attain highest standard of health, right to equality on the grounds of sex and age, right to education, the right to marry and found a family, the right to development and the right to be free from slavery. These rights are guaranteed under the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriages and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.<sup>9</sup>

The reason child marriage continues to take place in India is not a result of lack of laws. In a broader picture India has a large number of laws to protect and promote the rights of children; however child rights issue is seen more as a welfare issue than a rights issue. Although India ratified the Convention on the Rights of the Child in 1992 and passed new legislation and announced new policies, positive changes are extremely slow.<sup>10</sup> On the other hand there are conflicting laws of different religious communities that rule marriage and the Article 375 of the Indian Penal Code that reinforces the sexual abuse of the girl child.<sup>11</sup>

Non-governmental organisations working on the issue of child marriage in India in South and North believe that poverty is the main cause of child marriage. On the other hand, varying reasons are the lack of insecurity in the rural areas where the girl child has to work in fields and has to walk long distances to reach school<sup>12</sup> and urban slums where she is responsible for staying home and taking care of her siblings<sup>13</sup>; marriage is seen as a way to protect the girl child. In addition to this gender bias hinders the education of girl children since the main place of a woman is considered to be home and her main duty is mothering. Further, the ancient customs reinforce child marriage since it is believed that the chastity of the girl child can only be assured by this way.

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<sup>6</sup> IIPS. *National Family Health Survey (NFHS-3)*. Mumbai: International Institute of Population Sciences, 2006

<sup>7</sup> During 1992-1993 the NFHS-1 was conducted, 54.2 percent of women were married before 18 year old for the 20-24 year old age cohort. See IIPS, NFHS-1, Mumbai, International Institute of Population Sciences, Fact Sheet, 1993

<sup>8</sup> During 1998-1999 the NFHS-2 was conducted, 50 percent of women were married before 18 year old for the 20-24 year old age cohort. See IIPS, NFHS-2, Mumbai, International Institute of Population Sciences, Fact Sheet, 1999

<sup>9</sup> Silva de Alwis, R. *Child Marriage and the Law: Legislative Reform Initiative Paper Series*, UNICEF Working Papers, June 2008, p. 9

<sup>10</sup> *Status of Children in India Inc.*, HAQ Centre for Child Rights Report, 2005, p. 113

<sup>11</sup> Article 375 of 1860 Indian Penal Code that defines rape introduces an exception for the marriage "Sexual intercourse by a man with his wife, the wife not being under fifteen years of age, is not rape".

<sup>12</sup> Interview with K. Budappa, Chair of REACHS-I (Bijapur, Karnataka), Bangalore, 21 May 2009

<sup>13</sup> Interview with Sudha Sundararaman, General Secretary of All Indian Democratic Women's Association, New Delhi, 11 June 2009 and Interview with A.R. Sindhu, General Secretary of Centre of Indian Trade Unions, All India Federation of *Anganwadi* Workers and Helpers, New Delhi, 12 June 2009

This report will argue that there has not been strong political will to solve the issue of child marriage in India. Child marriage is continued to be practised under the blankets of customs. Instead of mobilizing their resources to solve the problem, politicians prefer not to touch the subject. Different governments introduced various schemes to empower the girl child and women but their success has been limited. Governments were more concerned with avoiding strong reactions from the supporters of child marriage and hence no effective action has been taken so far. The ill-effects of child marriages are fully known by the governing power since they have been repeatedly indicated by health experts, academicians and woman and child rights organizations and will not be repeated in this report. The attendance of politicians in the mass marriages where child marriages take place signifies tacit consent in the simplest sense. Unless child marriage is treated as a crime and policies that aim to eliminate the practise are introduced the commitment of the Indian state to international human rights can considered to have failed.

## **1. METHODOLOGY**

The research was planned as a qualitative study to perceive and present the reasons of continuous practise of child marriage. In order to be able to present a multidimensional picture of the question, informal interviews were conducted with the following institutions and people: Nistha Desai and Emidio Pinho, Child Rights in Goa; Kavita Ratna, Center for Working Child, Bangalore; Niranjana Adadhyan, Center for Law and Child, Bangalore; K. Bhudappa, REACHS-I, Bijapur; Ashok Yaragatti, Karnataka Integrated Development Services, Dharwad; Suchitra Rao from Department of Social Welfare of Karnataka; Enakshi Ganguly Thukral and Bharti Ali, HAQ, New Delhi; Mrinal Pande, Hindustan Times, New Delhi; Sudha Sundararaman, All Indian Democratic Women's Association (AIDWA), New Delhi; A.R. Sindhu, Centre of Indian Trade Unions, All India federation of Anganwadi Workers and Helpers, New Delhi and Uma Chakravarty, Delhi University, New Delhi.

National statistics data from National Family and Health Survey and MAMTA – Health Institute for Mother & Child – Young People's Reproductive and Sexual Health & Rights are integrated into this research as well. Various reports, books, scholarly articles and newspaper articles are also used in the part of desk study.

## **2. CHILD MARRIAGE**

### **2.1. Child Marriage from a Historical Perspective**

There is a general agreement on the introduction of child marriage into Indian culture that starts with the Muslim invasions: foreign wars, expansion of territory and the arbitrary rule of Muslims and their abuse of power by captivating the unmarried girls led the parents to see the girl child as a burden and thus child marriage became and established the practise.<sup>14</sup> Veena Das on the other hand presents a totally different picture. She argues that women were seen in the post-Vedic period as the 'points of entrance' the gateways to the caste system. If men of lower castes were to get sexual access to the women of higher castes not only the purity of the women but also purity of the higher caste would be endangered. Since the main threat to the group came from the female sexuality it became the custom to control it by pre-puberty marriage. Hence, marriage at a very early age, marriage within the caste or even in the sub caste, prohibition of

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<sup>14</sup> See Saxena. S. *Child Marriage in South Asia: Brutal Murder of Innocence*, New Delhi: Regal Publications, 2007, p. 91 and Bose, P., *Organizing Empire, individualism, Collective Agency & India*, Durham, NC: Duke University Press, 2003, p. 122

marriages with lower castes and marriage till the death (the prohibition for the remarriage of widows) were all practises to control female sexuality.<sup>15</sup>

### 3. REASONS OF CHILD MARRIAGE TODAY

Child marriage forces the girl child into sex, childbearing and household tasks before her physical and mental capacities are fully developed. Child marriage is not only an abuse of children but also the most serious impediment to personal development and breaking the cycle of poverty. A girl child that is forced out of school and pushed into marriage also loses her chance to make a livelihood for herself. The reasons of child marriage will be argued as gender inequality, customs and female infanticide and foeticide, poverty – the expense of the wedding and the dowry-, insecurity – child sexual abuse, control of sexuality and customs-.

#### 3.1. Gender Inequality

Barooah mentions that gender bias are entrenched into the culture of India.<sup>16</sup> There is a massive gap between the way girl and boy child are perceived. Barooah points out that Indian society idolises sons and this obsession cuts across different castes, classes and religions. She says:

Sons are considered ritually and economically desirable, essentially not only to light the funeral pyres of their parents in order to release their souls from the bondage of their bodies but also to ensure continuation of lineage and family name. They are also expected to become the economic support of parents in their old age.<sup>17</sup>

On the other hand, a girl child is viewed as a burden that needs the protection of others to be secure and chaste. Investment on her is believed to bring no return since she will ‘belong’ to another family after her marriage. This mind set makes the parents feel “the education of girls is like watering the neighbour’s garden.”<sup>18</sup>

In the patriarchal family structure of India, women are not left to be independent and they are expected to live under the dominion of one male family member, father, husband or son. Indeed the purpose of marriage is “the transference of the father’s dominion over a girl in favour of her husband. Further such transfer is expected to be done at an age before she can question the decision.”<sup>19</sup>

According to Barooah gender inequality and inferior sex roles of women were established and enforced in the traditional social structure.<sup>20</sup> Although Indian constitution recognizes gender equality “the institutions of marriage, caste patriarchal family authority, religion, mores, prevailing value system and ethos are still surcharged with the spirit of male dominance”.<sup>21</sup>

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<sup>15</sup> Cf. Bakshi, S.R. and Bala, Kran, p. 186 in Goswami S., *Female Infanticide and Child Marriage*, New Delhi, Rawat Publications, 2007, p. 110

<sup>16</sup> Barooah P. P. *Handbook on Child, with historical background*, New Delhi: Concept, 1999, p. 24

<sup>17</sup> Ibid, p. 24

<sup>18</sup> Saxena, 2007, p. 106

<sup>19</sup> Karkal M. and Rajan I. “Age at marriage: how much change”, *Economic and Political Weekly*, 1989 in Sagade, J. *Child Marriage in India: Socio-Legal and Human Rights Dimensions*, New Delhi: Oxford University Press, 2005, p. 9

<sup>20</sup> Barooah, 1999, p. 24

<sup>21</sup> Bhadra, M. “Gender Stereotyping, Discrimination and the Girl Child”, in *Handbook on Child*, 1999, p. 60

Status is determined by gender and girl child has the lowest position.<sup>22</sup> The neglect of the girl child is socially accepted which results in continual discriminatory practises of nutritional and educational outcomes for the girl and boy child. The most dreadful result of gender discrimination is the declining sex ratio of girls to boys.

### **3.2. Female Infanticide and Foeticide**

Goswami points out that infanticide has often been interpreted as a ‘primitive method of birth control and a means of ridding a group of its weak and deformed children’ in the historical context.<sup>23</sup> According to her it is difficult to trace the emergence of the practise which firmly became rooted in the medieval period. Historically infanticide was practised by different tribes and castes in various parts of India but only girl child was put to death because of social and economic reasons. While Nagas of the North-Eastern region practised it “in order to save themselves from the annoyance of being harried by wife hunting parties from a stronger clan” the Khonds of Orissa believed “it was better to destroy girls in their infancy than to allow them to grow up and become causes of strife afterwards. Furthermore, since some castes and tribes forbid the marriage of a woman with a man from a lower caste marriage becomes a very costly affair. Securing a bride groom of high social status required a vast amount of dowry.”<sup>24</sup>

Goswami says that according to 2001 census, 50 thousand girl children are missing as compared to the number of male children in Rajasthan which indicated the common practise of foeticide and infanticide.<sup>25</sup> A report of Hindustan Times by Anjul Tomar points out that female infanticide is practised by Gurjar community of the Thagari Village in Karauli district, and against the wishes of the mothers, the girl children were put to death “either by feeding a grain to choke the throat or by strangulating them. Further, the babies were also fed with poisonous milk.”<sup>26</sup> According to another report published in Dainik Bhaskar on 18 November 2002 another leading newspaper of Rajasthan that the royal Jhalawar family married a princess after a gap of 125 years.<sup>27</sup> Therefore female infanticide has more been about the gender bias and the role attributed to a girl child instead of economic factors.

Getting rid of the girl child was not always undertaken by female infanticide but by neglect, by reducing the likeliness to survive. The form of neglect and discrimination may be extremely subtle but can be made on the following factors: “post-natal care, proper clothing, parental surveillance, breastfeeding, food allocation (both quantity and quality), recourse to health facilities (frequency and expenses), immunization, etc.”<sup>28</sup>

Although the incidents of female infanticide have decreased in the recent century<sup>29</sup> with the development of modern science and technology a new form of destruction of female sex has emerged. Amniocentesis was introduced in 1974 “to ascertain birth defects in a sample population,” but “was quickly appropriated by medical entrepreneurs. A spate of sex-selective abortions followed.” Karlekar argues that women who undergo sex determination and abort their

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<sup>22</sup> Forum on Marriage, Nov 2001, p. 7

<sup>23</sup> Goswami, 2007, p. 39.

<sup>24</sup> Ibid, p. 41-42.

<sup>25</sup> Hindustan Times, (Jaipur Edition), 27 April, 2001, p.1 in Goswami, 2007, p. 75

<sup>26</sup> Ibid, p. 76

<sup>27</sup> Ibid, p. 76

<sup>28</sup> Guilamoto C. Z. “Characteristics of Sex-Ratio Imbalance in India, and Future Scenarios”, LPED/IRD, 4th Asia Pacific Conference on Reproductive and Sexual Health and Rights, Oct 29-31 2007, Hyderabad, India

<sup>29</sup> Goswami, 2007, p. 77

female foetuses take a decision against the right to life and equality of girl child. However she also recognizes that women do not make this decision individually but are “merely victims of a dominant family ideology based on preference for male children”.<sup>30</sup> Although there are statues against the practise like the Pre-Natal Diagnostic Techniques (regulation and Prevention of Misuse) Act 1994, the law alone is incompetent to fight with this gross human rights violation.<sup>31</sup>

Private medical professionals have been using different advertisement methods to promote amniocentesis. Lingam mentions that catchy advertisements were used on bill-boards which assured the birth of sons. Dr Bhandari of Amritsar, for instance, advertised: ‘Spend Rs 500 now and save Rs 50,000 later,’ which referred to the price of the test and the cost of dowry during the time of marriage.<sup>32</sup> It should be mentioned though that advertisement by a doctor or clinic for conducting sex determination of a foetus is liable under the mentioned Act of 1994.<sup>33</sup> Nanda, the executive director of Population Foundation of India says that

The issue of the missing girls is the most important challenge of the 21st century in India. It can be tackled with a collective rights-based approach. The need of the hour is to have advocacy programmes to change the mindset on issues like family lineage, inheritance, performance of last rites and the dowry system.<sup>34</sup>

The figures of the 2001 census show that girl to boy sex ratio is lower in urban areas than the rural areas which signify the commonly used method of sex selective abortion.

**Table 1. Sex ratio (girls per thousand boys)**

|  |              |       |
|--|--------------|-------|
| <b>0-6 age</b>                                     | <b>India</b> | 933   |
|  | <b>Rural</b> | 946   |
|  | <b>Urban</b> | 900   |
| State with Highest Female Sex Ratio                | Kerala       | 1,058 |
| State with Lowest Female Sex Ratio                 | Haryana      | 861   |
| Union Territory (UT) with Highest Female Sex Ratio | Pondicherry  | 1,001 |
| UT with Lowest Female Sex Ratio                    | Daman & Diu  | 710   |

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30 Karlekar M. “The Girl Child In India: Does She have any rights?”, *Canadian Woman Studies*, Vol 15, Nos 2,3 1995, 55-57

<sup>31</sup> Patel, D “Cruelty and physical torture against children in family: socio-legal dimensions” in *Family Violence in India: Human Rights, Issues, Actions and International Comparisons*, p. 183

<sup>32</sup> Lingam., L “Sex Detection Tests and Female Foeticide: Discrimination Before Birth”, 209-218. In *Understanding Women's Health Issues - A Reader* ed. Lingam. L. Kali for Women. 1998, Accessed at <http://gendwaar.gen.in/sawsg/text/articles/ForFO/Foet6.htm>

<sup>33</sup> “Girl Child on India Inc Agenda”, *The Financial Express*, June 6, 2004, Accessed at <http://www.financialexpress.com/news/girl-child-on-india-inc-agenda/107832/>

<sup>34</sup> Ibid.

|  |                     |       |
|--|---------------------|-------|
| District with Highest Female Sex Ratio | Mahe (Pondicherry)  | 1,147 |
| District with Lowest Female Sex Ratio  | Daman (Daman & Diu) | 591   |

Source: Census of India, 2001

A field study conducted by Kulkarni in 1986 in Mumbai, 84 percent of the gynaecologists admitted that they have performed sex determination tests. They reported very few cases of genetic defects and added that the overwhelming majority of ‘patients’ were from middle and upper middle class and only interested in knowing the sex of the foetus.<sup>35</sup> The medical experts that undertook the female foetus abortion explained their reasoning as empathising with the women bearing a girl child in a study conducted in 2003. They believed that the lives of women are put at stake in case they cannot produce a son and unwanted girl children would run the risk of severe neglect and ill treatment in their natal homes.<sup>36</sup>

While one expects education to be one of the main determinants of woman’s empowerment it is not always the case. If women do not have a say on their sexuality and reproduction: education will not serve as a factor for the betterment of the position of the girl child and the woman in the society. The table above indicates that an increase in the mother’s education level is far from helping to solve the issue. Considering that the education level is higher in urban areas as well as the availability of the amniocentesis tests and the prevalence of the gender inequality, the girl child’s right to life continues to be violated.

**Table 2. Sex ratio (boys to 100 girls) of last birth by population characteristics, India, 2001**

| <b>Background Characteristics</b> |                  | <b>Sex ratio of births during 2006</b> |
|-----------------------------------|------------------|--|
| <b>All</b>                        |                  | 110.4                                  |
| <b>Residence</b>                  |                  |  |
|                                   | <b>Rural</b>     | 110.4                                  |
|                                   | <b>Urban</b>     | 110.6                                  |
| <b>Religion</b>                   |                  |  |
|                                   | <b>Hindu</b>     | 110.9                                  |
|                                   | <b>Muslim</b>    | 107.4                                  |
|                                   | <b>Christian</b> | 103.8                                  |
|                                   | <b>Sikh</b>      | 129.8                                  |
|                                   | <b>Buddhist</b>  | 108.4                                  |
|                                   | <b>Jain</b>      | 118                                    |

<sup>35</sup> Kulkarni, S. *Pre-natal Sex Determination Tests and Female Foeticide in Bombay City*. The Foundation for Research in Community Health, Bombay, 1986 in Tandom Lata S. And Sharma R “Female Foeticide and Infanticide in India: An Analysis of Crimes against Girl Children”, *International Journal of Criminal Justice Sciences*, Vol.1, No. 1. Jan 2006

<sup>36</sup> Bandewar, S. “Abortion Services and Providers’ Perceptions: Gender Dimensions”, *Economic and Political Weekly*, Vol. XXXVIII No.21, May 24-30 2003, 2075-2081.

|                                 |  |       |
|---------------------------------|--|-------|
| <b>Caste/Tribe</b>              |  |       |
|                                 | <b>Scheduled Tribe</b>                     | 106.4 |
|                                 | <b>Scheduled Caste</b>                     | 108.6 |
|                                 | <b>Others</b>                              | 111.5 |
| <b>Mother's education level</b> |  |       |
|                                 | <b>Illiterate</b>                          | 108.7 |
|                                 | <b>Literate but below primary</b>          | 110   |
|                                 | <b>Primary but below middle</b>            | 111.8 |
|                                 | <b>Middle but below matric/secondary</b>   | 113   |
|                                 | <b>Matric/Secondary but below graduate</b> | 115.3 |
|                                 | <b>Graduate and above</b>                  | 114.1 |
| <b>Numbers (in millions)</b>    |  | 19.9  |

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Source: Guilmoto, 2007.

### 3.3.Poverty

Poverty is considered as one of the most significant reasons of child marriage by the NGO workers I interviewed with.<sup>37</sup> They mentioned that the huge food price increases hit the poorest families of India hardest. The UNICEF Nutrition Officer for Madhya Pradesh, Vandana Agurwal, mentioned that in some villages child malnutrition was as high as 80 percent.<sup>38</sup> Hence, by poverty parents may be forced to marry their daughters with the hope of giving them a better life while at the same time, cutting the family expenses down. While arguing the impact of poverty on child marriage it is very important to consider the astronomic expenditures for the dowry and the wedding provided by the girl's family.

Kakar and Kakar mention that economically a daughter is perceived as an 'unmitigated expense' "someone who will never contribute to the family income and who, upon marriage, will take away a considerable part of her family's fortune as her dowry."<sup>39</sup> It is mentioned repeatedly by the people I have interviewed that many poor families were pushed into heavy debt for the wedding and dowry expenses of their daughters.

#### 3.3.1. Dowry and Wedding Expenses

Bringing a dowry to the bridegroom's family is an ancient custom in India and it is often associated with the higher castes. Traditionally the dowry "denoted a woman's share of the family wealth, transferred to her at the time of marriage. The practice was both socially and religiously sanctioned. A properly dowered daughter reflected well on her father and his social standing."<sup>40</sup> However, after the independence of India the practise of giving and receiving a dowry was spread to different religious and ethnic groups.<sup>41</sup> Although dowry seems to be

<sup>37</sup> Especially Niranjani Adadhyan stressed the negative effect of globalization on poor families. Interview with Adadhyan, Center for Child and Law, Indian University of Law, Bangalore, 20 May 2009

<sup>38</sup> Crowe, S. "Food crisis ravages India's poorest children", UNICEF –India, Accessed at [http://www.unicef.org/infobycountry/india\\_44409.html](http://www.unicef.org/infobycountry/india_44409.html)

<sup>39</sup> Kakar S. and Kakar K.. *The Indians: Portrait of a People*, New Delhi: Viking, 2007, p. 45

<sup>40</sup> Chacko E., "Marriage, Development and the Status of Women in Kerala, India" in *Gender, Development and Marriage*, Sweetman C. (ed.), London: Oxfam, 2003, p. 55

<sup>41</sup> Ibid, p. 55



introduced with ‘good’ intentions, it can be used as a reason for discrimination towards the girl child by the family since a sizeable dowry should be accumulated for her. A study undertaken by Rao Vijayendra justifies that in rural India, families spend up to six times of their annual income for the dowry which forces them into debt and destitution.<sup>42</sup>

Considering that the dowry demands have increased drastically in the last decade, the girl’s family has to accept paying more –in terms of dowry- for a chosen bridegroom. The younger the bridegroom, the lower is the dowry.<sup>43</sup> This is one of the reasons that reinforce the child marriage. Besides that the status of a woman “within the marriage, particularly in the eyes of her in-laws, is often determined by the size and quality of her dowry. If they are dissatisfied, it is likely that she will be subjected to ill-treatment and harassment as a means of trying to extract more wealth from her family.”<sup>44</sup> Therefore, dowry can indeed be named as a form of groom-price.<sup>45</sup>

Jain argues that the definition of dowry in The Dowry Prohibition Act (originally passed in 1961 and amended three times in 1980s) is very problematic as well as ambiguous. It is almost impossible to make a distinction between the voluntary gift and what is given under the pressure of the demand.<sup>46</sup> A close look at the act proves Jain’s point and it is obvious that the law under these conditions is not sufficient to fight with the practise. In the Act dowry is defined as ‘any property or valuable security given or agreed to be given either directly or indirectly’

(a) by one party to a marriage to the other party to the marriage; or  
(b) by the parents of either party to a marriage or by any other person to either party to the marriage or to any other person;<sup>47</sup>

Demanding, giving or taking dowry is prohibited however the Act proves to be incompetent and inadequate if one considers the significance attributed to the dowry as well as dowry deaths.<sup>48</sup> Rao argues that if women had options outside of marriage, the dowries would not have increased. She says “Women who had better opportunities in the labour market or benefited from more favourable inheritance laws could choose to not get married or stay unmarried for a longer time. This would have reduced the demand for grooms, and also reduced the surplus supply of brides of marrying age.”<sup>49</sup> This is an interesting point of view which could be the subject point of another study but it is obvious patriarchy has a significant role on the dowry.

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<sup>42</sup> See Vijayandra, R. “The Rising Price of Husbands: A Hedonic Analysis of Dowry Increases in Rural India” *The Journal of Political Economy*, Vol.101, No.4, Aug 1993, 666-677

<sup>43</sup> “Restraining Child Marriage”, Editorial, *Economic & Political Weekly*, April 11, 2009 vol xlv no 15, p. 7

<sup>44</sup> Vijayandra, 2006.

<sup>45</sup> Ibid.

<sup>46</sup> Jain S. Sanyaj “Taking Women seriously: An introspection on law’s engagement with the evil of dowry” in “Family Violence in India” 2009, 114-136, p. 114-115

<sup>47</sup> The Dowry Prohibition Act, 1961, (Act No.28 of 1961)[20th May. 1961], Accessed at

<http://www.sudhirlaw.com/DOWRYACT.htm>

<sup>48</sup> Janyala S. “Stove-burst deaths unusually high, Gujarat cops say hands tied”, Indian Express, Dec 18, 2006, Accessed at <http://www.indianexpress.com/news/stoveburst-deaths-unusually-high-gujarat-co/18850/>

<sup>49</sup> Rao V. “The Economics of Dowries in India”, Oxford Companion to Economics (ed.) Basu K., Oxford University Press, 2006

Dowry is not the only economic burden in marriage. Wedding expenses are also turning into extremely big and expensive events as emphasized by Niranjana Adadhyani.<sup>50</sup> Rao asks the question “what drives the large wedding celebrations?” What is the underlying factor that even very poor families undertake the burden of lavish weddings? Bloch, Rao and Desai found that the main drive is the social status in the study they conducted in rural India.<sup>51</sup> Especially when a marriage takes place between two parties that are from different village and unequal social status, the parents of the girls feel compelled to show their social status to the inhabitants of the other village where their daughter gets married.<sup>52</sup> Bingley mentions that the practise of hypergamy -the custom of marrying up- compels a woman to marry in a group equal or superior to her stand. He says “The result of these restrictions is a surplus of women in the higher sects leading to a competition for husbands, and an enormous increase in the cost of getting a daughter married.”<sup>53</sup>

Poverty stands as one of the most significant reasons of child marriage. Parents in rural areas or the slum dwellers live under harsh conditions where money is limited and their lives are uncertain. In order to make some savings on the socially created expenses, poor families choose to marry all their daughters at the same time. Mrinal Pande makes the following observation:

In fact, in Rajasthan and Madhya Pradesh, where most families still live jointly, once the eldest girl reaches the age of 11-12, parents try to marry off all the girls from their family at the same time; ditto for boys. If a number of boys are available for marriage in a single joint family, several of the girls from another family will be married to them, so parents on both sides incur a one-time expense. The young brides and their mothers are happy as the sisters can continue to live together. Sometimes, in very poor communities in Rajasthan, a child may be married when a feast is held to mark an old family member’s death.<sup>54</sup>

Poverty creates a vicious circle effect with child marriage. Parents marry their daughters in order to release themselves from the economic burdens of bringing up a daughter. The girl child that is pushed out of school and married off will depend on the husband and will not be able to make an independent livelihood. That is the reason child marriage maintains the feminisation of poverty by preventing girls from attaining their full potential for development.<sup>55</sup>

### **3.4.Insecurity**

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<sup>50</sup> Interview with Adadhyani, 20 May 2009

<sup>51</sup> See Bloch, Francis, Vijayendra Rao and Sonalde Desai, “Wedding Celebrations as Conspicuous Consumption,” *Journal of Human Resources*, Vol. XXXIX, No. 3, 2004, 675-695 in Rao, 2006

<sup>52</sup> Ibid.

<sup>53</sup> See Bingley, A.H. *History Cast and Culture of Jats and Gujars*, New Delhi, 1978, p. 150

<sup>54</sup> Pande, M, “Some Whys and Wherefores”, *Hindustan Times*, 23 Mar 2009, Accessed at <http://www.livemint.com/2009/03/23210841/Child-marriages-some-whys-and.html>

<sup>55</sup> Naana Otoo-O. and Sonita P., Early marriage and poverty: exploring links and key policy issues, in *Gender, Development and Marriage*, Sept 2003, 42-51

“We are poor. Our girls have to work in distant fields to help the family and often walk home alone. We fear for their safety. We get them married early to protect them”.<sup>56</sup>

These are the common explanations of Indian parents who marry their girl children both in urban and rural areas. Further they mention that they pull out their daughters from school since the schools are far away and they do not feel it is safe to send their daughters. Sundararaman points out that although child marriage is generally considered as a rural problem, in practise girl children living in urban slums are as vulnerable as their counterparts living in the rural areas. The effect of globalization on the poorest segments of the society who lived in rural areas has been very harsh. Forced to migrate to urban areas in order to make ends meet, they live in urban slums where the space and facilities are very limited. Since both parents go to work during the day someone needs to stay home to cook and take care of the other children. Although the boy children continue their education, adolescent girl children are pulled out of the school to take care of the household chores. The dwellings they live in are not secure and often even lack locks.<sup>57</sup> Considering the very high level of child sexual abuse of 53 percent<sup>58</sup> as well as increasing level of sexual activity both in urban and rural areas<sup>59</sup>, a girl child is very vulnerable to rape and coercion into sexual activity.<sup>60</sup>

The feeling of insecurity indeed is related with the control of female sexuality which is perceived as a threat to the social norms. The significance of virginity and the socio-cultural values like honour reinforces child marriage. It is believed that the chastity of the girl can only be ensured if she is married as a child.<sup>61</sup> In case a girl engages in sexual activity her sisters are also stigmatized and they are very unlikely to be able to get married. She may be a victim of forced abortion and honour killing as well as be sold into a brothel.<sup>62</sup> Hence, she is married off before taking any risks of making decisions about her life.

Saxena mentions that “parents agree to marry their daughters in order to escape social stigma, embarrassment and exclusion from the community”<sup>63</sup> There is also pressure on the parents, from both the elder members of the family and the community, to marry off their daughters early. Further, there is a fear that if the marriage does not take place early it will be hard to find a suitable match.<sup>64</sup> Pande mentioned that she has never spoken to any women, neither in rural nor in urban areas, who have suffered from the harmful consequences of being married as a child, did not want the education of their daughters and who wanted to marry their

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<sup>56</sup> Chamaraj K. “Unholy Alliance”, *The Hindu*, 09Apr 2006, Accessed at <http://www.thehindu.com/mag/2006/04/09/stories/2006040900190400.htm>

<sup>57</sup> Interview with Sundararaman, AIDWA, 11 June 2009.

<sup>58</sup> A survey funded by Women and Child Development Ministry and carried out by the NGO Prayas in association with Unicef and the Save the Children in 2007, in 13 states with a sample size of 12,447 shows that 53.22 percent of children reported sexual abuse. The Times of India, “Over 53% children face sexual abuse: survey”, Apr 10, 2007.

<sup>59</sup> See Percentage of women and men age 15-24 who had first sexual intercourse by specific exact ages, percentage who never had intercourse, according to current age and residence, India, Young People’s Reproductive and Sexual Health & Rights

<sup>60</sup> Pande, 2009.

<sup>61</sup> Bhat A., Sen A. And Pradhan U., *Child Marriages and Law in India*, Human Rights Law Network; Delhi, 2005, p. 16

<sup>62</sup> Pande, 2009.

<sup>63</sup> Saxena, 2007, p. 92

<sup>64</sup> Jabbi M.K. ‘Child Marriages in Rajasthan’, *Social Change*, Vol.16, 1986 in Sagade, 2005, p. 13

daughters as children. However these decisions are made by the male elders and they have very little say in these matters.<sup>65</sup>

#### 4. MARRIAGE PERCEPTIONS TODAY

Traditionally in Indian society, marriage is seen as a continuity of life. The perceptions of marriage in the sense of stability and continuity did not change. Further, marriage is seen as a family affair rather than an individual one “where harmony and shared values that come from a common background are more important than individual fascination.”<sup>66</sup> Hence, marriage takes place between the people from the same caste and very similar backgrounds. Traditionally it is believed that if the girl gets married early she will adapt to her new home easier. Additionally, the age gap between her and her mother in law would be smaller and their relationship would be closer. Since joint family model is dominant in India, maintaining the harmony was the main concern and it could have been assessed by child marriage.<sup>67</sup>

Ganguly Thukral and Ratna mention that child marriage is directly related with the perceptions of childhood and adulthood. The understanding of adulthood varies between communities and puberty is mostly seen as the attainment to adulthood which brings the child to the marriageable age. Individual rights and the individuality of the child are not recognized and parents are supposed to make decisions for the best interests of the child.<sup>68</sup> Furthermore, parents believe that even though the marriage takes place when the girl is a child she will start cohabiting with her husband only after she reaches puberty. According to tradition, a girl child does not move to her husband’s house just after the marriage but only after she performs her puberty *gauna* ceremony which means that the girl is old enough to cohabit.<sup>69</sup>

According to a research conducted in Doroli village of Alwar district and Kathapulati slum of Jaipur, Rajasthan in 1999 the *gauna* ceremony does not protect the child brides from the chores of a wife at a tender age. As observed in the table below, more than half of the girls start cohabiting with their husband at 12-15 years old.<sup>70</sup>

**Table 3. The age at marriage and *Gauna* Ceremony**

| Age at Marriage | Doroli village     |                    | Kathaputali colony |                    |
|-----------------|--------------------|--------------------|--------------------|--------------------|
|                 | Marriage           | Gauna              | Marriage           | Gauna              |
| 0-5             | 17 (2.7 percent)   | –                  | 20 (8.2 percent)   | –                  |
| 6-11            | 229 (36.8 percent) | 35 (5.8 percent)   | 70 (28.7 percent)  | 10 (4.3 percent)   |
| 12-15           | 256 (41.1 percent) | 325 (54.3 percent) | 87 (35.6 percent)  | 121 (51.9 percent) |
| 16-19           | 88 (14.1 percent)  | 189 (31.6 percent) | 48 (19.7 percent)  | 77 (33.0 percent)  |

Source: Dubey and Dubey, 1999

<sup>65</sup> Interview with Pande, 11 June 2009.

<sup>66</sup> Kakar and Kakar, 2007, p. 61

<sup>67</sup> Interview with Kavita Ratna, Center for Working Child, 19 May 2009, Bangalore and Interview with Mrinal Pande, The chief editor of Hindustan Times, New Delhi, 3 June 2009

<sup>68</sup> Interview with Enakshi Ganguly Thukral and Bharti Ali, HAQ, New Delhi, 2 June 2009

<sup>69</sup> Saxena, 2007, p. 94

<sup>70</sup> Dubey S. R. and Dubey B. R. (1999), “Child Marriage in Rajasthan”, *Development*, 42(1), SID Online Dialogue

Child brides are removed from school before their marriage, lose the chance to develop skills and often enter households that have clearly defined gender roles and hierarchies.<sup>71</sup> After marriage her social network ties are severely limited. “Compounding the situation, often overriding importance is given to her proving her fertility within the first year of marriage. A survey conducted at one rural and one urban site of Maharashtra indicated that about 85 percent of married adolescents conceived within that year”<sup>72</sup> According to another study conducted in Bihar in 2002, by Bihar Social Welfare Department, 57 percent of child brides conceive within the first 3 years of their marriage and suffer physical and psychological disorders.<sup>73</sup> The social pressure on young brides to bear a child immediately after marriage is enormous. It is often a way of establishing their worth as wife, daughter- and sister-in-law. Child brides lack the autonomy to negotiate with their spouse and the means to delay the birth of their children.<sup>74</sup> They are also (more or less) child labourers working at home and in the fields, ‘with very little decision making-power and extremely vulnerable to sexual and domestic violence.’<sup>75</sup>

The consequences of child marriage can be summarized as the following: it perpetuates the “vicious circle of persistent poverty, high illiteracy, high incidence of infectious diseases – including HIV/AIDS, malnutrition, elevated child mortality rate, high birth rate, low life expectancy of women, reinforcement of the subordinate status of women and most significantly, the inter-generational cycles of all these.”<sup>76</sup>

Saxena assesses the government recognized the unsafe motherhood as a serious impediment to development as welcome news.<sup>77</sup> However the plans and schemes introduced to tackle with the problem ignore the realities of the Indian society where child marriages are rampant. This will be discussed in detail in the next section.

## 5. INEFFICIENCY OF THE INDIAN STATE

On May 10, 2005 an *Anganwadi* worker, Shakuntala Verma, was attacked in Bhangarh village, 270km west of the capital of Madhya Pradesh and one of her hands was severed while the other was badly wounded. She was campaigning against the practise of child marriage as *Anganwadi* workers of the state were nominated to fight against the practise. RN Borna, the district police chief reported that the attack was carried out by the brother of a would-be child bride. Another civil servant in M.P. said that the attack may have happened because of Verma’s campaign against the child marriages. However, the reaction of the Chief Minister to the incident symbolizes the position and the lack of political will of the government on the issue of child

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<sup>71</sup> Kapadia-Kundu N, Khale M, Upadhaye, S and Chavan D. Nov 3-9, 2007), “ Whose Mistake? Gender Roles and Physical Violence among Young Married Women”, Review of Women’s Studies in EPW, vol. Xlii, no44, p. 72

<sup>72</sup> IHMP (2004), Baseline Survey Report: Study on Married Adolescents in Maharashtra, pp-15-16 [unpublished] in *ibid*, p. 72

<sup>73</sup> Saxena, 2007, p. 97

<sup>74</sup> UNICEF legal report, 2008, p. 4

<sup>75</sup> “Restraining Child Marriage, Editorial, EPW, vol. Xiiv, no. 15.April 11, 2009, p. 7

<sup>76</sup> Bhat et al, 2005, p. 21

<sup>77</sup> Saxena, 2007, p. 99

marriage. He said about the practise “It is not possible to stop it. Have we been able to end alcoholism or untouchability? If Gandhi could not succeed in this, how can Babulal Gaur?”<sup>78</sup>

The position of the state on the human rights of children and women has been simply indifferent as argued by different child and women’s rights organisations. As mentioned by Sundaraman of AIDWA, the governments have been hesitant to touch upon the issue of child marriage because they were concerned that it would be met with strong reactions. Child marriage is still accepted as a part of culture and the ill effects of it on girl children and -grown up women are largely ignored.<sup>79</sup> Political figures such as Ministers and members of the parliament attend mass marriages where hundreds of couples are married which lack close scrutiny of the age of the couples. Ashok Yaragatti mentions that, the NGO, Karnataka Integrated Development Services of Dharwad, attended 40 mass marriages during the period of February to May 2009 and on average, 10-15 % of these marriages are child marriages. Further, there were state officials and political figures attending these mass marriages.<sup>80</sup>

In 2003, the Forum for Fact-finding Documentation and Advocacy (FFDA), an Indian human rights monitoring organization, filed a public interest litigation before the Supreme Court of India, seeking ban on child marriages in India. After conducting a 2 month, 5-phase research in different districts of Chhattisgarh and Orissa in 2002, the FFDA discovered that 14 478 child marriages were solemnised during this period.<sup>81</sup> The petition was filed on the grounds that state administrations were indifferent and even encouraged the child marriages. Child marriage is a form of camouflage for child sexual abuse and servitude and in breach of the constitution of India. The officials that are liable to prevent the practise should be prosecuted and the victims should be compensated. However only 9 states responded during the time the book has been written. The response of the state of Haryana illustrates the lack of willingness and commitment by state governments:

Compulsory registration of marriages does not appear to be desirable as social legislation could not be effective unless it has a social backing of the community at large. In the absence of a uniform civil code, registration of marriages for different religious communities may pose problems. Child marriage is not common in Haryana. Social awareness against the menace of child marriage amongst the vulnerable sections would be preferable rather than introducing new legislation.”<sup>82</sup>

The percentage of girl children that get married before they are 18 is 27.8 in Haryana and it is lower than the national level. However in Bhiwani, Gurgaon and Mahenragarh districts, more than 40 percent of girl children get married before they reach 18 year-old.<sup>83</sup> Ignoring the practise has been common by the Indian states. The declaration of the Haryana state bears a level of

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<sup>78</sup> BBC News, “Probe of 'child marriage attack' 11 May 2005, Accessed at [http://news.bbc.co.uk/2/hi/south\\_asia/4536579.stm](http://news.bbc.co.uk/2/hi/south_asia/4536579.stm)

<sup>79</sup> Interview with Sudranaman, AIDWA, 11 June 2009

<sup>80</sup> Interview with Yaragatti, Karnataka Integrated Development Services, Bangalore, 21 May 2009.

<sup>81</sup> Bhat et al, 2005, p. 92-93

<sup>82</sup> Ibid, p. 96

<sup>83</sup> Young People’s Reproductive and Sexual Health & Rights, Data on Sexual Health, Percentage of girls that get married before the legal age of 18, New Delhi, 2006.



validity since law is not the only way to protect human rights, but, as will be mentioned in the next section, it is the first step that should be taken to protect its citizens.

International human rights treaties regulate and control how the power of the state is used. However, the states are responsible for preventing the violations of its citizen's human rights violated by the private agents. By attending mass marriages, politicians present, in the simplest sense, tacit consent and contribute to an understanding that child marriage is acceptable. Sagade argues that child marriage violates the standards that have been outlined by the major international human rights instruments. In India, international human rights standards have not been applied to effectively to restore the injustices and disadvantages experienced by the women married as children. She says that:

The reasons for such failure are complex. They include lack of understanding of systematic nature of the subordination of women, failure to recognize the need to characterize the subordination of women as a human rights violation and lack of state practise to condemn discrimination against women.<sup>84</sup>

Girl children and women are citizens of the Indian state and the constitution of India grants them full equality before the law. Further, India has ratified major human rights treaties and would be expected to result in overruling traditions that leads to gender discrimination. The authorities are aware of the ill-effects of child marriage since there has been a movement to eliminate the harmful practise since the late 19<sup>th</sup> century that continuously points out the health, education and socio-economic effects of child marriage. However, the failure to stop the practise shows the Indian state's indifference to the human rights of girl children as the dictates of centuries old patriarchal customs.

Sagade argues that "along with the reforms in the existing laws, a movement creating a legal culture, making the active agents sensitive to the consequences of child marriage, and furnishing meaningful viable alternatives to young girls, is required to be built up. The responsibility for this lies with civil society."<sup>85</sup> However, this does not seem to be the right way to solve the issue. Civil society's role is to support democracy and the democratic governance as well as advocating for transparency and accountability of the state while defending human rights. However, the civil society does not substitute the state. These services should be provided by the state.

## **6.1. CONTRADICTION IN LAWS AND THE PROHIBITION OF CHILD MARRIAGE ACT**

### **6.1.1. The Penal Code and the Personal Laws**

Rajan argues that the Indian state is doing very little to ameliorate the conditions of social practises and customs "especially where abuses against women are concerned."<sup>86</sup> When the issue

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<sup>84</sup> Cook R. *Human Rights of Women*, 1994 in Sagade, 2005, p. xxxvi

<sup>85</sup> Sagade, 2005, p. xxxix

<sup>86</sup> Rajan, R. S., *The Scandal of the State: Women, Law, Citizenship in postcolonial India*, New Delhi: Orient Blackswan, 2003, p. 57

of child marriage is concerned, it can be seen the law is not unified against the practise but there are contradictory laws. First of all, Article 375 of Indian Penal Code defines the rape and the article reads as the sexual intercourse with a woman 'with or without her consent when she is under sixteen years of age' but the exception says that 'sexual intercourse by a man with his own wife, the wife not being under fifteen years of age is not rape.'<sup>87</sup> This provision is one of the best examples how Indian state is not committed to eliminate the practise of child marriage. While prohibiting child marriages since 1929 with the Child Marriage Restraint Act, the Indian state not increasing the age of women in the Indian Penal Code actually excuses and overlooks the child marriages. As mentioned by Suchitra Rao, child marriage should also be punished as minor rape after the consummation of marriage.<sup>88</sup>

Secondly, the differences in personal laws create controversy on which system of laws apply on the issue of child marriage. According to Rajan this dual practise is indeed inherited from British colonial jurisprudence. She believes that the personal law system was recognized by the British as a way to respect and guarantee "the continuation of the traditional laws of the country's diverse religious communities – the majority Hindu as well as the minority Muslim and Christian –in all 'personal' matters (relating to the 'person') such as marriage, divorce, maintenance, succession to property, inheritance, custody, guardianship and adoption of children, etc."<sup>89</sup> Hindu Marriage Act, Muslim Personal Law, Christian Law of Marriage and Persian Law of Marriage all set different ages for the recognition of the marriage. However, the Prohibition of Child Marriage Act is a general law applicable to Indians from all religions. The personal laws could be applied in personal matters as long as they do not contradict with international human rights.

### **The Prohibition of Child Marriage Act, 2006**

The new law regarding child marriage, The Prohibition of Child Marriage Act, 2006<sup>90</sup> has been criticised by experts that it does not bring much improvement and a gender sensitive approach was not adopted during the drafting process. The new Act has now given the child bride and bridegroom the right to get their marriage declared void. However, it does not seem very likely to take place. The law ensures the right to maintenance of the girl until she remarries. Further punishment to persons who facilitate and solemnize the marriage has been enhanced compared to the 1929 Child Marriage Restraint Act. Enakshi Ganguly mentions that during the period the Act was created there was division and confusion in the area. While one set of activists argued that child marriage is a crime and should be treated as a crime, and that - the child marriage should be automatically null and void. A second set of activists believed that if the marriage is declared as null and void the girl child would be unacceptable in the society, especially after the marriage is consummated. The parents should not be penalized since what drives them to marry their daughters is poverty. Further, what will happen to the child once the parents go to jail was another discussion point. As a result, the Prohibition Act emerged as a

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<sup>87</sup> The Indian Penal Code, 1860, Accessed at <http://www.netlawman.co.in/acts/indian-penal-code-1860.php?pageContentID=516>

<sup>88</sup> Interview with Suchitra Rao from Department of Social Welfare of Karnataka, Bangalore, 21 May 2009

<sup>89</sup> Rajan, 2003, p. 45

<sup>90</sup> The Prohibition of Child Marriage Act, 2006 , No. 6, Jan 10 2007, Accessed at [http://www.prsindia.org/docs/acts\\_new/1172732851\\_THE\\_PROHIBITION\\_OF\\_CHILD\\_MARRIAGE\\_ACT\\_2006.pdf](http://www.prsindia.org/docs/acts_new/1172732851_THE_PROHIBITION_OF_CHILD_MARRIAGE_ACT_2006.pdf)



confused law that is unable to stop the practise. Further, Bharti Ali adds that after the consummation of marriage, no girl child will file a petition for the annulment of her marriage since it is impossible for her to remarry. Further, the maintenance that is designed to be paid to the girl child is unlikely to work out.<sup>91</sup>

Recently, the 205<sup>th</sup> report of the Law commission that was presented to the Supreme Court in December 2007 “recommended that child marriage below the age of 16 be made void; the provision of maintenance of the girl till her remarriage be continued and the children, if any, be deemed legitimate; the legal age for a girl to give sexual consent be raised to 16 years; and registration of all marriages be made mandatory.”<sup>92</sup> Although the Prohibition of Child Marriage Act sets the legal marriage age as 18 for women and 21 for men, the report of the Law Commission still reinforces the idea of child marriage by suggesting to declare child marriages under 16-year old illegal, but recognizing the ones between 16 to 18 years old.

It is surprising to see that there is no reference to the Prohibition Act in the website of the Ministry. There is no reference to child marriage practises, policy suggestions or the activities undertaken on the issue other than the Act itself in the Legislations/Acts section.<sup>93</sup> The National Commission for Protection of Child Rights (NCPCR) that was set up in March 2007 as a statutory body by an Act of Parliament is responsible for protecting, promoting and defending child rights in India. The website of the NCPCR mentions that the body believes in the indivisibility of human rights and does not adopt an approach that reinforces the gradation of rights. However the issue of child marriage does not exist on any page of the website.<sup>94</sup> This shows the indifference to the issue.

### **6.1.2.A. Awareness of Law and Developments**

The Center for Social Research (CSR) of New Delhi conducted a survey on child marriage practises in Rajasthan, Uttar Pradesh and Madhya Pradesh to find out the effect of the 2006 Prohibition of Child Marriage Act and found the following figures: the proportion of people whose caste/community still practices child marriage is 41% in Rajasthan. Uttar Pradesh (UP) stands at 10% and Madhya Pradesh (MP) at 77.2%, the highest. However CSR found out that the awareness on Marriage Registration Act is very low and a very small percentage of people get their marriages registered. Only 12 percent of people in UP were aware of the illegality of child marriages, however a high percentage in Rajasthan were aware of the this same fact (74% in Tonk & 98% in Jaipur district). On average, 71.2% of respondents in M.P were aware of the illegality of the issue (Shajapur (80%) and Bhopal (62.4%). Poverty, traditions and practises, community pressures and safety of the girl child are listed as the major causes for the continuation of the practise.<sup>95</sup> These figures show that indeed the awareness level on the

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<sup>91</sup> Interview at HAQ, 2 June 2009

<sup>92</sup> “Restraining Child Marriage”, April 11, 2009, p. 7

<sup>93</sup> Ministry of Women and Child Development last checked on Aug 21, 2009 at <http://wcd.nic.in/>. The Act was not on the website on 25 May 2009.

<sup>94</sup> The National Commission for Protection of Child Rights (NCPCR), last checked on Aug 21, 2009 at [http://www.ncpcr.gov.in/about\\_ncpcr.htm](http://www.ncpcr.gov.in/about_ncpcr.htm)

<sup>95</sup> [A Study of Child Marriage in India Situational Analysis in Three States: Rajasthan, Madhya Pradesh & Uttar Pradesh.](http://www.csrindia.org/Child%20Marriage%20Prohibition%20Act%20openly%20flouted.%20as%20the%20practi%20ce%20continues%20unabated%20.New%20Delhi.%202001%20February%202008.htm) (2007), <http://www.csrindia.org/Child%20Marriage%20Prohibition%20Act%20openly%20flouted.%20as%20the%20practi%20ce%20continues%20unabated%20.New%20Delhi.%202001%20February%202008.htm>

illegality of child marriage considerable. Especially Bhudappa and Yaragatti mentioned the increasing level of awareness during the last 2 years.<sup>96</sup> Suchitra Rao from the Department of Social Welfare of Karnataka mentions that the state began to be involved in the subject starting from 2006. In February 2008, the Department of Child Development began sending letters to the religious, social and cultural groups that organize child marriages. The Department is also planning to appoint certain officials who have a network of informants to stop child marriages. These officials should be penalized in case they fail to prevent child marriages. Further, modules on the prevention of child marriages were sent to the District Administrations and trainings are planned for the police officers. Therefore, it can be said that the state of Karnataka has recently recognized its responsibility in stopping the practise and has begun taking steps towards resolution.

## **7. POSITIVE GOVERNMENT SCHEMES**

The NGO representatives mentioned that child marriage became a human rights issue only during the last decade when the human rights violations began to be discussed. Before this the proponents were against child marriage for the health risks of the mother and the child. Although the Indian state lacks the political commitment to completely eliminate the practise, it should be said there has been development in the last 14 years. 84.5 percent of women in rural areas and 66.3 percent in urban areas from the age cohort of 20-24 years old were married, according to NFHS 1 in 1992-1993.<sup>97</sup> According to NFHS-3 data of 2005-2006, the percentages decreased to 52.5 and 28.1 for rural and urban areas respectively.<sup>98</sup> Suchitra Rao also mentions that there are multiple different projects and schemes introduced at the states and central level to increase the position of the girl child in Indian society but they lack organization and are not well coordinated.

### **7.1.Integrated Child Development Services**

The Ministry of Women and Child Development launched The Integrated Child Development Services (ISDS) in 1975 after recognizing the needs of children below 6 years who live in an environment that will impede their physical and mental development. It was introduced as a health and nutrition program for children and mothers and introduced to realize the following aims: to improve the health and nutrition status of the children 0-6 years by providing supplementary food, to provide food supplements to pregnant and lactating mothers, to attain effective coordination among the various state departments to promote child development.<sup>99</sup> The

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<sup>96</sup> Interview with Bhudappa and Yaragatti, Bangalore, 21 May 2009.

<sup>97</sup> See NFHS 1, Chapter 3 Household and respondent Background Characteristic, Accessed at <http://www.nfhsindia.org/data/india1/iachap3.pdf>

<sup>98</sup> NFHS-3, National fact Sheet-Provision Data India, 2005-2006

<sup>99</sup> Ministry of Women and Child Development, Child Development Schemes, Accessed at <http://wcd.nic.in/childdet.htm>

researches undertaken on the success of the ICDS point out that the project has been successful in decreasing malnutrition level.<sup>100</sup>

The ICDS is organized through different projects at it is located in *Anganwadi* Center the main point of ICDS services at the village level. Each center covers an area of population of 1000 and 700 in tribal areas. The workers are an *Anganwadi* Worker and a helper, both women and recruited from the village. Sindhu from All India federation of *Anganwadi* Workers and Helpers mentioned the main problems of the project and the problems faced by the *Anganwadi* workers as the following: workers are the representatives of the state and they are the only state officials that have direct communication with women. *Anganwadi* centers has the potential to turn into a center of woman and child as well as adolescent girls where nutrition, child care, health education facilities could be provided in a better manner in case the work is turned into full time. Some states gave the role of prevention of child marriage to the *Anganwadi* workers however they were harassed and punished severely by the local government. That is the reason they are hesitant to act. The Federation has been pressuring the government to institutionalize the ICDS and establish an *Anganwadi* Department which would make sure that they are given authority as well as protection to stop child marriages. Otherwise because of being in fear of their life they will not act.<sup>101</sup>

### 7.2. Janani Suraksha Yojana Scheme

Janani Suraksha Yojana is introduced by the Ministry of Health and Family Welfare aims to modify the existing National Maternity Benefit Scheme (NMBS). While the latter was about providing a better diet for the pregnant women under below poverty line (BPL) families and the former introduces cash assistance and antenatal care during the pregnancy period. The aim of the scheme is to reduce the maternal and infant mortality rates and increase institutional deliveries in BPL families.<sup>102</sup>

The scheme is designed to realize the following benefits: early identification of complicated cases, providing three antenatal care (at least) as well as post delivery visits, involving the *Anganwadi* worker, providing cash assistance to the mother and to the Accredited Social Health Activist (ASHA) with funds. The scheme is planned as the following:

**Table 5. Cash Assistance to the Mother and the Accredited Worker (Rs)**

| Category of States | RURAL AREA                   |                                   |       | URBAN AREA                   |                                   |       |
|--------------------|------------------------------|-----------------------------------|-------|------------------------------|-----------------------------------|-------|
|                    | Assistance Package to mother | Package for the Accredited Worker | Total | Assistance Package to Mother | Package for the Accredited Worker | Total |
| LPS                | 700                          | 600                               | 1300  | 600                          | 200                               | 800   |
| HPS                | 700                          | NIL                               | 700   |                              |                                   |       |

<sup>100</sup> See Kannan K P and Vijayamohan, N.P. "Social Security in India: The Long Lane Treaded and the Longer Road Ahead Towards Universalization", MPRA Paper No. 9601, Centre for Development Studies, Prasanth Nagar, Ullloor, Trivandrum, Kerala, India, June 2007, Accessed at <http://mpra.ub.uni-muenchen.de/9601/>

<sup>101</sup> Interview with A.R. Sindhu, Centre of Indian Trade Unions, All India federation of Anganwadi Workers and Helpers, A.R. Sindhu, 12 June 2009

<sup>102</sup> Janani Soraksha Yojana, Guidelines for Implementation, Ministry of Health and Family Welfare, Government of India, Accessed at [http://www.mohfw.nic.in/layout\\_09-06.pdf](http://www.mohfw.nic.in/layout_09-06.pdf)

LPS: Low Performing States HPS: High Performing States<sup>103</sup>

Although the scheme seems very well planned and beneficial for the mother and the child, the target group is designed in a way which excludes the most vulnerable segments of the society: child brides. The target group of the scheme is pregnant women of BPL families the age of 19 years of age and above and who delivered up to two live births. AIDWA members criticize the scheme harshly arguing that while the government wants to draw the image that it does not tolerate child marriages, pregnant child brides are marginalized even though they need that service most. The scheme ignores the practise of child marriage. The government prefer to not take the responsibility but to criminalize the people.

## **8. POLICY SUGGESTIONS**

The policy solutions that arise as a result of the research can be listed as follows:

1. The first question that should be asked in order to eliminate the practise is “is there a viable option for the family rather than marrying their daughter as a child?”
2. The government should invest in community based programs where the girl children gain skills which can be transferred into income. As long as the girl child can bring money to the household, her marriage will be postponed.
3. The parents of the girl child, community leaders and religious authorities should be trained on the harmful consequences of child marriages.
4. In the last years it is seen that children –boy and girl- became sensitized to the issue thanks to the child rights clubs in their schools and there are examples where girl children informed the police and their marriages have been prevented. Therefore, the empowerment of children should be realized through education and alternative education programs.
5. Child marriage is a crime and should be treated as a crime. The practise continues because people see that even political figures attend to child marriages and they believe it will go unpunished. Therefore both at the central and state level government should monitor their fight against the practise in a decisive manner.
6. The NGOs should focus on the prevention of the child marriage first. However, in case of consummation of marriage the adult man should be tried with minor rape.
7. Three police officers should be trained on child and women rights and they should be responsible from dealing with the cases.
8. Child marriage prevention officers should have both support and the protection of the state.
9. Although there is no certain data it is known that an important percentage of child marriage take place in mass marriages. The possible solutions can be:
  - There is no verification on the registration of the marriage now. There should be at least one month period between the registration of the marriage and the MM.
  - The number of couples getting married in the MMs should be limited.
  - Further, Health Department should take part in mass marriages to make age verification possible.

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<sup>103</sup> The beneficiary states are Bihar Chattisgarh, Jharkhand, Orissa,U.P, Uttaranchal, Rajasthan, Madhya Pradesh, Assam & Jammu & Kashmir. The states of Assam and Jammu & Kashmir would constitute Low Performing States (LPS) and the rest High Performing States (HPS).

## **Conclusion**

Child marriages connate a broad perspective of violation of human rights as it should be considered as an outcome of interrelated familial, social, health, economic and psychological factors as a result of the lack of protection and the inefficiency of services by the state as well as no application of existing law. It should be kept in mind that legal protection is very significant especially for the most vulnerable groups of the society. The protection of the girl child should be made sure through the proper legislation. Child marriage is a crime and it should be treated as a crime. On the other hand it should be kept in mind that just introducing new legislation will not be the cure for the problem. Strong political will, enforcement and accountability should be integrated to the process.

The Indian state is responsible from protecting the rights of its all citizens and its duty is not limited to introduce laws but to train its own officials, and to take measures in order to make sure that the human rights violations of girl child is not realized. On the other hand, the measures are not only limited to non-discriminatory law, but also compensation and redress as well as creating the mechanisms to create livelihoods for previous child brides.

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