



Office of the High Commissioner for Human Rights (OHCHR)  
Palais Wilson- 52, rue de Pâquis  
CH-1201 Geneva, Switzerland

February 5, 2016

Re: Non-governmental stakeholder submission in response to the request for submissions supporting the report of the Office of the High Commissioner for Human Rights on child, early and forced marriage to the Human Rights Council pursuant to resolution A/HRC/RES/29/8

The Center for Reproductive Rights (the Center), an independent non-governmental organization that uses the law to advance reproductive freedom as a fundamental human right, respectfully presents the following information in support of the Office of the High Commissioner for Human Rights' (OHCHR) preparation of a report on preventing and eliminating child, early and forced marriage. The Center has offices in Colombia, Kenya, Nepal, Switzerland, and the United States of America, and works globally to advocate for women's reproductive rights. In 2013, the Center prepared a briefing paper (Annex I<sup>1</sup>) and a fact sheet (Annex II<sup>2</sup>) on child marriage in South Asia, which analyze national legal standards to address child marriage –in particular in Afghanistan, Bangladesh, India, Nepal, Pakistan, and Sri Lanka. These publication set forth and discuss implementation of human rights legal standards on child marriage, early pregnancy, and sexual violence within marriage; identify examples of positive experiences and challenges in addressing child marriage and protecting the rights of married girls; and recommend measures governments must take to eliminate child marriage and ensure married girls' rights in line with their constitutional and international legal obligations. This submission highlights portions of these materials and additional analysis that provides information relevant to the call for submissions with regards to the context in South Asia, which accounts for the most child marriages globally.

Because child marriage does not constitute a single violation of girls' rights, but triggers a continuum of harm – including reproductive health harms and sexual violence – that continues through married girls' lives, this submission discusses compliance with the human rights standards pertaining both to preventing child marriage as well as providing remedies to married girls where the practice persists.

## 1. Updates on Regional Efforts to End Child Marriage in South Asia

In August 2014, the South Asia Initiative to End Violence against Children (SAIEVAC), an intergovernmental apex body of the South Asian Association for Regional Cooperation, adopted the Regional Action Plan to End Child Marriage in South Asia (RAP).<sup>3</sup> The RAP, which was finalized after a series of expert meetings convened by SAIEVAC,<sup>4</sup> reflects recognition of child marriage as a regional human rights concern and ending this practice as a regional priority. The RAP has seven expected outcomes, including an increase in the minimum age of marriage to 18 for boys and girls; increased prevention of child marriage by addressing root causes including violence against women and girls; enhanced advocacy for women's and girls' sexual and reproductive health information and services and recourse from violence in the home, including the voidance of marriages; access to quality education; increased mobilization of religious and community leaders; and the collection of new and existing evidence.<sup>5</sup>

After the adoption of the RAP, a regional convening on using the law to promote accountability to end child marriage was organized by SAIEVAC in partnership with the Center for Reproductive Rights and hosted by the Government of Nepal.<sup>6</sup> It was attended by government officials as well as experts and advocates from South Asian Association for Regional Cooperation (SAARC) member states, including Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.<sup>7</sup>

The convening concluded with the adoption of the 12 point Kathmandu Call for Action to End Child Marriage in South Asia (KCA) on November 7, 2014.<sup>8</sup> The KCA reflects a commitment by governments and civil society in South Asia to ensure legal accountability for child marriage and to support the implementation of the 2015-2018 Regional Action Plan (RAP) to end child marriage.<sup>9</sup> The KCA calls on governments to establish 18 as the minimum legal age of marriage, ensure informed consent of girls to marriage and enable access to legal remedies for girls.<sup>10</sup> It emphasizes the need for a rights-based approach which recognizes the "best interests of the child" and the "evolving capacities of the child."<sup>11</sup> The KCA was presented at the People's SAARC Convergence on November 22, 2014.<sup>12</sup>

The timeframe for implementation of the RAP is 2015-18 and several governments already have initiated implementation activities. For example, high-level meetings have been conducted amongst the different agencies that partnered in the development of the RAP to strengthen political and institutional support for the implementation of the RAP. In November 2015, SAIEVAC started the process of developing specific monitoring and evaluation indicators to measure progress under the RAP and the KCA.

In addition, SAARC-LAW has committed under the RAP to coordinate a discussion among key legal actors including judges, parliamentarians, and law enforcement officials/agencies, about the role of law in ending impunity for child marriage under the RAP, the KCA, human rights and constitutional frameworks.<sup>13</sup> The RAP also envisions a role for South Asian national human rights institutions to end child marriage.<sup>14</sup>

The RAP provides a framework to develop common goals and outcome indicators to guide the governments in the region to take concrete and collaborative steps to eliminate child marriage. SAIEVAC's leadership in bringing together SAARC government officials and representatives of civil society for regional meetings from 2012-2014 was crucial in generating political will to find ways to tackle this human rights crisis together. Further, SAIEVAC's openness and ability to strategically utilize civil society expertise, ranging from quantitative research to legal analysis, was also a critical factor in the achievement of a robust action plan with multi-faceted and clear indicators and activities.

## **2. Status of Progress of Law Reform on Child Marriage: Supplemental Information for Country Profiles of High Prevalence Countries in South Asia**

The following section provides updates since the last OHCHR report on legislative reform in high prevalence countries in South Asia—namely, Nepal, India, Pakistan, and Bangladesh. These updates discuss the status of law reform efforts to increase the minimum legal age of marriage for boys and girls and to raise penalties, as well as highlight additional areas where reform or greater implementation is necessary to effectively prevent and provide remedies for child marriage, such as personal laws and laws on gender-based violence, education, child labor, statutory rape, dowry, and property.

**Nepal.** Nepal has been at the forefront of efforts in the region to legislate against child marriage. In 2015, Nepal both introduced a ban on child marriage in its new constitution<sup>15</sup> and progressively reformed its legal provisions on the practice. The marriage of girls and boys below the age of 18 has been penalized since 2002—the minimum legal age was established as 18 with parental consent and 20 without such consent.<sup>16</sup> The parental consent exception was removed in 2015, effectively revising the minimum legal age of marriage to 20 years for both women and men in 2015.<sup>17</sup> Nepal has also drafted a national strategy to end child marriage, which is expected to be adopted in 2016.

Implementation of these positive measures will require broader legal reform. Child marriage is voidable in Nepal, meaning that marriages below the age of 20 can still be recognized as valid unless properly challenged on limited grounds prescribed under the law.<sup>18</sup> These circumstances can be quite restrictive—for example, there is a precondition that the couple must not have children at that time,<sup>19</sup> which can act as a barrier for girls seeking to leave a child marriage due to correlation between child marriage and early pregnancy.<sup>20</sup>

Early pregnancy, which typically occurs within marriage, also is linked to increased risk of maternal mortality and morbidity such as fistula and uterine prolapse. These risks are compounded due to barriers in access to reproductive health care, despite constitutional recognition of women's reproductive health as a fundamental right and progressive law reform and jurisprudence on abortion.<sup>21</sup> Recent studies have indicated that there is a higher incidence of maternal death among girls under age 20 than for women in their twenties.<sup>22</sup>

Globally, Nepal co-sponsored the Human Rights Council's 2013 procedural resolution on child marriage, making it the only high-prevalence member state to co-sponsor any of the Human Rights Council and General Assembly resolutions on child marriage at all.<sup>23</sup> Regionally, as part of its efforts to implement the RAP, Nepal's Ministry of Women, Children and Social Welfare hosted the 2014 Regional Convening on Using the Law to Promote Accountability to End Child Marriage discussed above, which resulted in the adoption of the KCA.<sup>24</sup>

**India.** In India, the 2006 Prohibition of Child Marriage Act establishes penalties for the marriage of a girl below the age of 18 years and a boy below the age of 21 years.<sup>25</sup> However, such marriages may be considered legally valid unless challenged by either party to the marriage who was a minor at the time of solemnization within two years of reaching the age of majority.<sup>26</sup> Additional gaps and weaknesses in the law, including the disparity in the age of marriage for boys and girls and the failure to clarify the PCMA's primacy over contradictory personal status laws, remain unaddressed by the government. Although the government prepared a national strategy on child marriage and initiated the drafting of a national action plan, there has been no public progress on these efforts in recent years.<sup>27</sup>

National laws on sexual violence continue to allow child marriage to exempt perpetrators of what would otherwise be considered statutory rape from prosecution—marriage provides an exception to criminal penalties for rape unless it involves a girl below 15 years of age, despite the fact that sex with a child below the age of 18 years is generally criminalized.<sup>28</sup> Child marriage has yet to be recognized as a form of domestic violence under the Protection of Women from Domestic Violence Act.<sup>29</sup> Marriage registration is still not required by national legislation, despite an order by the Supreme Court calling for the same.<sup>30</sup> Laws prohibiting dowry and requiring birth registration have been introduced but continue to be poorly implemented.<sup>31</sup> Despite the recognition of the role of education in preventing child marriage under human rights law,<sup>32</sup> the national law mandating compulsory and free education only includes children until the age of 14 years.<sup>33</sup>

Despite recent jurisprudence recognizing women's reproductive rights as part of their fundamental rights and laws and policies guaranteeing women and girls access to abortion on multiple grounds and to the full range of contraceptive information and services, human rights bodies have continued to express concern about adolescent girls' lack of access to reproductive health services.<sup>34</sup> This is particularly problematic due to the recognized link between child marriage and negative reproductive health outcomes, including maternal mortality and morbidity, unsafe abortion, and early and unwanted pregnancy.<sup>35</sup>

The Indian government also has introduced policies and programs aimed at addressing child marriage, including conditional cash transfer programs. An important recent evaluation conducted by the non-governmental organization International Center for Research on Women found that although conditional cash transfers in the context of child

marriage have received significant attention, such efforts may actually perpetuate the practice. This study of a prominent conditional cash transfer scheme implemented by the state government of Haryana in India entitled *Apni Beti Apna Dhan* (ABAD) (“Our Daughters Our Wealth”) indicates that economic incentives are inadequate in delaying the age of marriage and instead can have an adverse impact of advancing the stereotyped notions of girls as commodities and economic burdens.<sup>36</sup> Instead, ABAD increased the likelihood of marriage of the girl immediately upon reaching 18 years, when families are eligible to receive the cash transfer under the scheme from the government, which was often then used for dowry.<sup>37</sup>

**Pakistan.** Pakistan’s Child Marriage Restraint Act penalizes the solemnization of a marriage of a girl before 16 years of age and a boy below 18 years of age.<sup>38</sup> Similar to India, the child marriage law only recognizes such marriages as legally voidable but not automatically void, contains weak penalties including a maximum fine of USD 10, and is silent on the intersection with personal laws.<sup>39</sup> Under the Special Marriage Act, which governs civil marriages not occurring under religious laws, however, marriage is permitted with parental consent for girls as young as 14.<sup>40</sup> Inconsistencies persist in related laws impacting girls’ vulnerabilities to and risks within child marriage, including a failure to mandate marriage registration and a birth registration law that carries no penalties for failing to register a birth<sup>41</sup> and ambiguities in the penal code on marriage as a defense to rape that has led courts to rule against recognition of marital rape.<sup>42</sup> Restrictive abortion laws that only permit abortion to very limited grounds<sup>43</sup> and policies on maternal health and contraceptives have made limited progress in addressing the maternal mortality ratio and unmet need for contraceptives.<sup>44</sup> This further leave adolescent girls vulnerable to the reproductive health risks recognized to be correlated to child marriage, including early and unwanted pregnancy, unsafe abortion, and maternal mortality and morbidity.

At the national level, efforts to raise the minimum legal age of marriage from 16 to 18 years for girls have not yet succeeded.<sup>45</sup> A recent bill introduced by a lawmaker in 2015 to increase the minimum legal age of marriage to 18 and to strengthen penalties was withdrawn after it was rejected by the Parliamentary Standing Committee on Religious Affairs and Interfaith Harmony due to opposition by the Council of Islamic Ideology characterizing the measure as “un-Islamic.”<sup>46</sup> At the state level, however, there have been positive developments, including in Sindh and Punjab provinces. The Sindh Child Marriage Restraint Act was passed in 2014 and raised the minimum legal age of marriage to 18 years of age while also increasing penalties for the practice.<sup>47</sup> In 2015, the Punjab province also passed legislation strengthening penalties for child marriage.<sup>48</sup> Other provinces are reportedly exploring similar legislation.<sup>49</sup> Currently, this means that there are inconsistent laws in various states, in addition to incongruous standards between national laws and personal laws.

**Bangladesh.** Under the Child Marriage Restraint Act of 1929, marriage prior to the ages of 18 years for females and 21 years for males is recognised as a crime and punishable with fines and imprisonment.<sup>50</sup> Weaknesses in the law impede its enforcement, including light punishments (set at a maximum of one month imprisonment or a fine of Tk 1000 or

USD 13)<sup>51</sup> and restrictions requiring any offences under the law to be reported within one year of the marriage.<sup>52</sup> Despite a commitment by Prime Minister Sheikh Hasina in July 2014 at the Girl Summit to end the marriage of children before 15 by 2021 and age 18 by 2041, her government proposed an amendment that same year—which eventually was not passed—to lower the minimum legal age of marriage for girls to 16 years.<sup>53</sup> These measures also stand in contrast to the prime minister’s commitment during the Girl Summit to the development of a national plan of action by 2014.<sup>54</sup>

Inconsistencies in the legal framework also impede implementation, including personal laws which permit child marriage and the failure to criminalize rape within marriage for women and girls above the age of 13.<sup>55</sup> Lack of enforcement of laws requiring birth registration and prohibiting dowry and violence against women also undermine efforts to prevent and provide legal remedies in cases of child marriage.<sup>56</sup> Restrictive abortion-related laws and lack of adequate implementation of even these limited provisions have resulted in barriers in access to safe abortion services, including specifically for adolescent girls who report being denied care because they are “too young” or currently had no children.<sup>57</sup>

### 3. Notable Judicial Decisions from Nepal and India

There have been several positive judicial decisions from Nepal and India that reflect recognition of child marriage as a human rights and fundamental rights concerns. This section presents summaries of key decisions in the region, including some which predate the initial OHCHR report but have not been superseded by subsequent decisions. It is important to note that there have been very few cases brought concerning implementation of laws criminalizing child marriage in South Asia; as the case discussion below indicates, girls in marriages arranged by their parents often face barriers to utilizing the law. Instead, many cases are instead brought by parents against daughters who have initiated their own marriages, indicating that judicial relief for child marriage remains elusive for the majority of married girls who were married off without any regard for their preference. The cases from Nepal focus on discriminatory provisions related to marriage and lack of implementation of laws prohibiting child marriage, while the case discussion from India highlight the courts’ recognition of harm resulting from child marriage and law reform as well as complementary government efforts needed to end the practice.

**Nepal.** In 2006, in *Sapana Pradhan Malla for Forum for Women, Law and Development (FWLD) and Others v. Nepal Government, the Office of the Prime Minister and the Council of Ministers and Others*, the petitioners challenged discriminatory legal standards established by Nepal’s 1971 Marriage Registration Act as well as poor implementation of the law by the government.<sup>58</sup> This led the Supreme Court of Nepal to issue directives to the government to make necessary amendments to laws to ensure consistency and uniformity in the age of marriageability of boys and girls, and require the government to implement the law effectively.<sup>59</sup> Despite the laws, child marriage was rampant and the offenders were not punished, in violation of the government’s obligations to children under international human rights law.<sup>60</sup> The Court underscored the

threat posed to girls' lives and health by child marriage and expressed concern about the low level of prosecution of offenders.<sup>61</sup>

In a 2007 case, *Rama Panta Kharel & Others v. Government of Nepal*, the Supreme Court of Nepal upheld its findings from 2006 and issued directives to the government to amend inconsistencies in legal provisions relating to child marriage and eliminate child marriage through effective enforcement of the law.<sup>62</sup>

**India.** In the 2010 case of *Association for Social Justice and Research (ASJR) v. Union of India*, where a non-governmental organization filed a *habeas corpus* petition<sup>63</sup> to trace an underage girl who had been married to a 40 year old man,<sup>64</sup> the Delhi High Court discussed the many human rights violations resulting from child marriage, stating that it impacted girls' development, prevented them from accessing an education, rendered them vulnerable to abuse, and had adverse health impacts due to early sexual initiation and child bearing.<sup>65</sup> The Court emphasized that child marriage disproportionately affected girls, citing that "child marriage perpetuates an unrelenting cycle of gender inequality, sickness, and poverty."<sup>66</sup>

The Delhi High Court affirmed the *ASJR* decision in a full bench decision in the 2012 case *Court on its own motion (Lajja Devi) v. State (NCT of Delhi) and Others* which concerned a 14-year-old Hindu girl who left home and got married without her parents' consent.<sup>67</sup> The Delhi High Court emphasized that child marriage is a violation of human rights including the "right to lead a life of freedom and dignity."<sup>68</sup> The Delhi High Court also criticized the Indian Penal Code provisions that permitted marriage to justify what would otherwise be considered sexual abuse.<sup>69</sup> The Court further condemned gaps in the PCMA that enable the practice, such as the status of child marriages as voidable which requires the married girl to take affirmative steps to void her marriage, instead of declaring them legally void, and the failure to clarify if the PCMA supersedes personal laws.<sup>70</sup>

In 2011, in *T. Sivakumar v. The Inspector of Police*, the case of a petition filed by the father of a 17-year-old girl against a man he alleged had kidnapped his daughter and married her, but the girl had stated she married voluntarily,<sup>71</sup> the Madras High Court emphasized the recognition of child marriage as a human rights violation. The Madras High Court also clarified the relationship between PCMA and personal law, stating that PCMA will apply to all citizens irrespective of religion and will override inconsistent provisions in personal laws.<sup>72</sup> The Court further highlighted the harms of child marriage with respect to girl's education, her overall development and her health.<sup>73</sup> The Court clarified the legal status of child marriages, noting that marriage of a girl under the age of 18 was voidable, and was "not a valid marriage" and ruled that that the husband thus could not be the girls' guardian.<sup>74</sup> The Madras High Court also called for the police to take action against offenders and directed the government to raise awareness about the law and the harms of child marriage.<sup>75</sup>

In the March 2015 case of *Mohammad Abbas v. Chief Secretary* before the Madras High Court, the petitioner filed a public interest litigation petition requesting for the

government's non-interference in the marriage of a minor girl by her parents that would be valid per Muslim personal law but in contravention of PCMA.<sup>76</sup> The Madras High Court denied the petition and held that performance of a child marriage is not protected by right to freedom of religion under Articles 25 and 26 of Constitution of India;<sup>77</sup> rather it is a violation of the girl's fundamental rights under Articles 14 and 15 of the Constitution of India.<sup>78</sup> It further cited the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), as well as constitutionally protected fundamental rights and directive principles of state policy to say that girls should be empowered and that child marriage is not in girls' interest.<sup>79</sup> That same month, the Madras High Court also ruled in favor of a child marriage prohibition officer seeking an injunction to stop the marriage of a 15 year old girl, despite opposition from the petitioner, who claimed that the marriage should be permitted as it would be valid under Muslim personal laws.<sup>80</sup>

Three other state high courts in 2015 also issued rulings consistent with the Madras High Court's decision in *Mohammad Abbas v. Chief Secretary*, finding that even where child marriages were valid under the PCMA, they would be voidable under the PCMA—the Gujarat High Court,<sup>81</sup> the Kolkata High Court,<sup>82</sup> and the Punjab and Haryana High Court.<sup>83</sup> Courts in these cases, which involved self-initiated marriages, criticized the failure of the legislature to declare all child marriages as automatically void but rather as voidable.

#### **4. Conclusion & Proposed Recommendations**

As this submission highlights, there have been several positive steps forward in South Asia that can be recognized as “best practices” in the global movement to end child marriage, including legislative reform in Nepal, judicial decisions in Nepal and India, and the adoption of a regional action plan by SAARC member states. An analysis of legal and policy developments in high incidence countries in South Asia highlights several critical recommendations for action for governments, including:

1. Harmonize laws and policies—including personal laws and laws on domestic and sexual violence including marital rape, reproductive health, marriage and birth registration, education, property and citizenship, and dowry—with human rights standards and constitutional guarantees to ensure a minimum legal age of marriage of 18 and to address gaps and inconsistencies that leave girls vulnerable to child marriage and limit married girls' access to legal remedies.
  - Undertake high-level reviews of national laws and policies to identify gaps, inconsistencies, and inadequate penalties as well as barriers in access to justice that expose girls to the risks of child marriage and its consequences, and trap girls in harmful marriages.
2. Urgently implement and enforce laws and policies relating to child marriage to effectively prevent child marriage and ensure women and girls who seek to leave child marriages can benefit from existing policies and programs providing legal remedies for survivors of violence, including housing in shelter homes, legal



- support, access to sexual and reproductive health counselling and services, vocational training, and readmission to school.
- Conduct monitoring and evaluation of laws and policies relating to child marriage, including prosecutions where the law is violated, implementation of judicial decisions, and remedies received by women and girls harmed by child marriage to ensure that the legal rights of women and girls are duly protected.
3. Recognizing the risks of early, frequent, and forced pregnancy linked to child marriage, ensure married girls have access to reproductive health care services and information tailored to their needs and situation, including comprehensive sexuality education, contraceptive information and services, safe abortion, and maternal health care.
  4. Encourage national human rights institutions and government agencies to play a stronger role in ensuring the development of laws and policies grounded in human rights and fundamental rights guarantees to tackle a broad range of issues associated with child marriage and implementation and supporting their implementation, including through raising awareness and regular monitoring and evaluation.
  5. Ensure adequate allocation of financial resources to implement laws/policies/programs and ensure girls' access to legal remedies, including any related support needed to help them survive independently and rebuild their lives.

---

<sup>1</sup> CENTER FOR REPRODUCTIVE RIGHTS, CHILD MARRIAGE IN SOUTH ASIA: INTERNATIONAL AND CONSTITUTIONAL LEGAL STANDARDS AND JURISPRUDENCE FOR PROMOTING ACCOUNTABILITY AND CHANGE (2013), *see* Annex 1.

<sup>2</sup> CENTER FOR REPRODUCTIVE RIGHTS, ACCOUNTABILITY FOR CHILD MARRIAGE: KEY U.N. RECOMMENDATIONS TO GOVERNMENTS IN SOUTH ASIA ON REPRODUCTIVE HEALTH AND SEXUAL VIOLENCE (2013), *see* Annex 2.

<sup>3</sup> SOUTH ASIA INITIATIVE TO END VIOLENCE AGAINST CHILDREN (SAIEVAC), REGIONAL ACTION PLAN TO END CHILD MARRIAGE IN SOUTH ASIA (2015-2018) (2014) [hereinafter SAIEVAC REGIONAL ACTION PLAN].

<sup>4</sup> SAARC Secretary General at the Reg. Consultative Meeting to Celebrate the Int'l Day of the Girl Child, Kathmandu, 17-18 December 2012; SOUTH ASIA INITIATIVE TO END VIOLENCE AGAINST CHILDREN (SAIEVAC), 2014 ANNUAL REPORT TO THE SAARC SECRETARIAT 14 (2015).

<sup>5</sup> SOUTH ASIA INITIATIVE TO END VIOLENCE AGAINST CHILDREN (SAIEVAC), IMPLEMENTATION FRAMEWORK OF THE REGIONAL ACTION PLAN (RAP) TO END CHILD MARRIAGE IN SOUTH ASIA 2014-2018, 33-45 (2014).

<sup>6</sup> SOUTH ASIA INITIATIVE TO END VIOLENCE AGAINST CHILDREN (SAIEVAC), 2014 ANNUAL REPORT TO THE SAARC SECRETARIAT 10 (2015).

<sup>7</sup> KATHMANDU CALL FOR ACTION TO END CHILD MARRIAGE IN SOUTH ASIA (2014) [hereinafter KATHMANDU CALL FOR ACTION].

<sup>8</sup> SOUTH ASIA INITIATIVE TO END VIOLENCE AGAINST CHILDREN (SAIEVAC), 2014 ANNUAL REPORT TO THE SAARC SECRETARIAT, *supra* note 6 (2015).

<sup>9</sup> KATHMANDU CALL FOR ACTION, *supra* note 7.

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

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

- 
- <sup>12</sup> Girls Not Brides, *South Asian governments commit to end child marriage*, Nov. 22, 2014, <http://www.girlsnotbrides.org/south-asian-governments-commit-end-child-marriage>.
- <sup>13</sup> SAIEVAC REGIONAL ACTION PLAN, 1.4.2.
- <sup>14</sup> *Id.* 1.6.
- <sup>15</sup> Constitution of Nepal, 2072 (2015), art. 39 (5) (Nepal).
- <sup>16</sup> In 2002, the Eleventh Amendment to Nepal's Muluki Ain (Country Code) 1963 revised the legal age of marriage to 18 years requiring a guardian's consent and 20 years without a guardian's consent for both women and men. Prior to that the legal age of marriage was 16 years for girls and 18 years for boys requiring a guardian's consent and 18 years for women and 21 years for men without a guardian's consent.
- <sup>17</sup> An Act to Amend Various Acts of Nepal to Ensure Gender Equality and End Gender-Based Violence, 2015; Muluki Ain (Nepal), 1963, Part 4, Ch. 17 on Marriage No. 2(1).
- <sup>18</sup> Muluki Ain (Nepal), 1963, Part 4, Ch. 17 on Marriage No. 2(9).
- <sup>19</sup> *Id.*
- <sup>20</sup> UNFPA, STATE OF THE WORLD POPULATION: MOTHERHOOD IN CHILDHOOD 103 (2013) (adolescent mothers in Nepal give birth to 81 out of every 1,000 children, which is the third highest rate in South Asia).
- <sup>21</sup> Constitution of Nepal, 2072 (2015), art. 38(2) (Nepal); CENTER FOR REPRODUCTIVE RIGHTS, REPRODUCTIVE RIGHTS IN NEPAL (2011).
- <sup>22</sup> AJIT PRADHAN ET AL., NEPAL MATERNAL MORTALITY AND MORBIDITY STUDY: SUMMARY OF PRELIMINARY FINDINGS 6 (2009).
- <sup>23</sup> Human Rights Council, *Strengthening efforts to prevent and eliminate child, early and forced marriage: challenges, achievements, best practices and implementation gaps*, U.N. Doc. A/68/53/Add.1 (2013).
- <sup>24</sup> Press Release, Center for Reproductive Rights, Government of Nepal Hosts Convening on Ending Child Marriage with South Asian Governments (Nov. 6, 2014), *available at* <http://www.reproductiverights.org/press-room/government-of-nepal-hosts-convening-on-ending-child-marriage-with-south-asian-governments>
- <sup>25</sup> Prohibition of Child Marriage Act, No. 6 of 2007, art. 2, 9-11 (India) [hereinafter Prohibition of Child Marriage Act (India)].
- <sup>26</sup> *Id.* art. 3.
- <sup>27</sup> Press Release, Ministry of Women and Child Development, Child Marriages in India (Nov. 20, 2013), *available at* <http://pib.nic.in/newsite/mbErel.aspx?relid=100741>.
- <sup>28</sup> Criminal Law (Amendment) Act, No. 13 of 2013, art. 8, (2013); Protection of Children From Sexual Offences Act, No. 32 of 2012, art. 2(d), (2012).
- <sup>29</sup> The Protection of Women from Domestic Violence Act, 2005.
- <sup>30</sup> Smt. Seema vs Ashwani Kumar on 14 February, 2006, Transfer Petition (civil) No. 291 of 2005, S.C. of India (2006).
- <sup>31</sup> Dowry Prohibition Act, No. 28 of 196, sec. 3 (1961); *see* TATA INSTITUTE OF SOCIAL SCIENCES, CHILD MARRIAGE & EARLY MOTHERHOOD, UNDERSTANDINGS FROM LIVED EXPERIENCES OF YOUNG PEOPLE 25-30 (2015), *available at* <http://coeay.tiss.edu/cmap/wp-content/uploads/2015/10/CMEM-REPORT.pdf>; C. Maya, *Poor implementation of Dowry Prohibition Act*, THE HINDU (Nov. 29, 2006), <http://www.thehindu.com/todays-paper/tp-national/tp-kerala/poor-implementation-of-dowry-prohibition-act/article3054423.ece>; Registration of Births and Deaths Act, No. 18 of 1969, secs. 8, 10; UNICEF, IMPROVING CHILDREN'S LIVES, TRANSFORMING THE FUTURE 25 YEARS OF CHILD RIGHTS IN SOUTH ASIA 27 (2014), *available at* [http://www.unicef.org/publications/files/Improving\\_Children\\_s\\_Lives\\_\\_Transforming\\_the\\_Future\\_9\\_Sep\\_2014.pdf](http://www.unicef.org/publications/files/Improving_Children_s_Lives__Transforming_the_Future_9_Sep_2014.pdf).
- <sup>32</sup> CEDAW Committee and Committee on the Rights of the Child, *Joint General Comment/Recommendation by the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child on harmful practices*, para. 65, U.N. Doc. CEDAW/C/GC/31-CRC/C/GC/18 (2014).
- <sup>33</sup> Right of Children to Free and Compulsory Education Act, No. 35 of 2009, sec. 2(c).
- <sup>34</sup> CENTER FOR REPRODUCTIVE RIGHTS, 2011 UPDATE MATERNAL MORTALITY IN INDIA: USING INTERNATIONAL AND CONSTITUTIONAL LAW TO PROMOTE ACCOUNTABILITY AND CHANGE 15 (2011); Sandesh Bansal v. Union of India & Others, W. P. (C) Decision No. 9061 of 2008, Madhya Pradesh High Court (2008); The Medical Termination of Pregnancy Act of 1971, No. 34 of 1971, (India); Ministry of

---

Health and Family Welfare, National Commission on Population (2014), *available at* <http://populationcommission.nic.in/index.aspx>.

<sup>35</sup> WORLD HEALTH ORGANIZATION (WHO), WHO GUIDELINES ON PREVENTING EARLY PREGNANCY AND POOR REPRODUCTIVE OUTCOMES AMONG ADOLESCENTS IN DEVELOPING COUNTRIES 2 (2011).

<sup>36</sup> INTERNATIONAL CENTER FOR RESEARCH ON WOMEN, MAKING CHANGE FROM CASH? EVALUATION OF A CONDITIONAL CASH TRANSFER SCHEME TO ENHANCE THE VALUE OF GIRLS IN NORTHERN INDIA, IMPACT ON MARRIAGE: PROGRAM ASSESSMENT OF CONDITIONAL CASH TRANSFERS, at 3,6 (2015).

<sup>37</sup> The study noted that program beneficiaries were 43% more likely to be married by age 19 than non-beneficiaries. INTERNATIONAL CENTER FOR RESEARCH ON WOMEN, USAID, AND POPULATION FOUNDATION OF INDIA, MAKING CHANGE WITH CASH? EVALUATION OF A CONDITIONAL CASH TRANSFER SCHEME TO ENHANCE THE VALUE OF GIRLS IN NORTHERN INDIA 4 (2015).

<sup>38</sup> Child Marriage Restraint Act of 1929, No. 19 of 1929, art. 2(a) (Pak.).

<sup>39</sup> *Id.*

<sup>40</sup> This same Act provides that the youngest legal age for males to be married is 18, and that consent of a guardian is required when any party is married under the age of twenty-one. The Special Marriage Act of 1872, No. 3 of 1872, art. 2(2)-(3) (Pak.)

<sup>41</sup> The Birth, Deaths and Marriages Registration Act of 1886, No. 6 of 1886 (Pak.) (no penalty for failing to register births).

<sup>42</sup> Pak. Penal Code, sec.375; *see also* Allah Nawaz v. Station House Officer, Police Station Mahmood Kot Dist., Muzaffargarh, PLD 2013 (Lahore) 243 (Pak.); PBS FRONTLINE, *The Stigma of Reporting a Rape in Pakistan*, (May 28, 2013, 9:31 PM), *available at* <http://www.pbs.org/wgbh/pages/frontline/afghanistan-pakistan/outlawed-in-pakistan/the-stigma-of-reporting-a-rape-in-pakistan/> (last accessed April 10, 2015).

<sup>43</sup> Pakistan Penal Code Act XLV of 1860 (1860); *See also* GUTTMACHER INSTITUTE, *Abortion in Pakistan*, IN BRIEF 2 (2009) *available at* [https://www.guttmacher.org/pubs/IB\\_Abortion-in-Pakistan.pdf](https://www.guttmacher.org/pubs/IB_Abortion-in-Pakistan.pdf) [hereinafter IN BRIEF]. Accordingly, before formation of the fetus' organs (determined as approximately 4 months into pregnancy), abortions are permitted to save the woman's life or to provide necessary treatment; after, abortion is permitted only to save the woman's life. IN BRIEF at 1-2.

<sup>44</sup> National Institute of Population Studies, *Pakistan Demographic Health Survey 2012-13*, at 107, 130 (the maternal mortality ratio in Pakistan is 276 maternal deaths per 100,000 live births which, according to the PDHS, indicates "the dire state of reproductive health care and women's rights;" the unmet need for contraceptives has only come down 5% from 2006-06 to 2012-13).

<sup>45</sup> Maryam Usman, *Bill aiming to ban child marriages shot down*, The Express Tribune (Jan. 15, 2016), *available at* <http://tribune.com.pk/story/1027742/settled-matter-bill-aiming-to-ban-child-marriages-shot-down/>.

<sup>46</sup> *Id.*

<sup>47</sup> Sindh Child Marriages Restraint Act, No. 15 of 2014, secs. 2-5 (Pak.).

<sup>48</sup> Waqar Mustafa, *Second Pakistan province cracks down on child marriage*, REUTERS (Mar. 10, 2015), <http://www.reuters.com/article/2015/03/10/us-pakistan-law-child-marriage-idUSKBN0M619F20150310>.

<sup>49</sup> Pakistan's Fifth Periodic Report to the UN Committee on the Rights of the Child ("State Party Report") 21; SHIRKAT GAH, SUBMISSION ON CHILD, EARLY AND FORCED MARRIAGE 4 (2010).

<sup>50</sup> Child Marriage Restraint Act, No. 19 of 1929, secs. 4-6 (Bangl.).

<sup>51</sup> *Id.* (exchange rate of 0.013 BDT/USD) applicable at February 5, 2015.

<sup>52</sup> *Id.* sec. 9.

<sup>53</sup> Girl Summit Commitments, Girl Summit 2014, *available at* <http://www.girlsummit2014.org/Commitment/Show>.

<sup>54</sup> *Id.*

<sup>55</sup> Muslim Family Law Ordinance, No. 8 of 1961, sec. 12(1)(a) (Pak.); International Development Law Organization (IDLO), *Strengthening the Legal Protection Framework for Girls in India, Bangladesh, Kenya and Liberia – Bangladesh Country Report* 70 (2010), *available at* [http://www.idlo.org/DOCCalendar/BangladeshReport\\_Final.pdf](http://www.idlo.org/DOCCalendar/BangladeshReport_Final.pdf); The Christian Marriage Act, No. 15 of 1872, sec. 3; BANGL. PENAL CODE, sec. 375.

<sup>56</sup> The Births and Deaths Registration Act, No. 29 of 2004, arts. 5, 18(3) (Bangl.); Dowry Prohibition Act, No. 35 of 1980, (1980); Suppression of Violence Against Women and Children Act, No. 8 of 2000, (2000); Domestic Violence (Prevention and Protection) Act, No. 58 of 2010, (2010); Special Rapporteur on

---

violence against women, its causes and consequences, *Rep. of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo*, paras. 9, 48, U.N. Doc. A/HRC/26/38/Add.2 (April 1, 2014).

<sup>57</sup> BANGL. PENAL CODE, secs. 312-316; Susheela Singh et al., *The Incidence of Menstrual Regulation Procedures and Abortion in Bangladesh*, 38(3) INTERNATIONAL PERSPECTIVES ON SEXUAL AND REPRODUCTIVE HEALTH, 122, 122 (2012) [hereinafter Susheela Singh et al., *Menstrual Regulation Procedures and Abortion in Bangladesh*].

<sup>58</sup> *Sapana Pradhan & Others v. Prime Minister & Council of Ministers & Others*, Decision No. 7659, N.K.P. 2063, Vol. 3 at 289 (2006) (unofficial translation done by the Center for Reproductive Rights) at 289, paras. 4, 5 [hereinafter *Sapana Pradhan & Others v. Prime Minister & Council of Ministers & Others* (Nepal)].

<sup>59</sup> *Id.* paras. 19, 23.

<sup>60</sup> *Id.* paras. 3, 5.

<sup>61</sup> *Id.* paras. 19.

<sup>62</sup> *Rama Panta Kharel & Others v. Government of Nepal*, Writ No. WS-128/2063 B.S. (2007) in CRR, FWLD AND NWC, A COMPILATION OF SUPREME COURT DECISIONS ON REPRODUCTIVE RIGHTS.

<sup>63</sup> A habeas corpus petition is a writ (legal action) that requires a person under arrest to be brought before a judge or into court. BLACK'S LAW DICTIONARY (2<sup>nd</sup> ed. 2001).

<sup>64</sup> *Association for Social Justice & Research [ASJR] v. Union of India & Others*, W.P. (Crl.) No. 535/2010, Delhi H.C. (2010) [hereinafter *ASJR v. Union of India & Others*].

<sup>65</sup> *Id.* para. 9.

<sup>66</sup> *Id.*

<sup>67</sup> *Court On Its Own Motion (Lajja Devi) v. State*, W.P. (Crl.) No. 338/2008, Delhi H.C. (India) (2012) [hereinafter *Court On Its Own Motion (Lajja Devi) v. State (India)*], para. 9.

<sup>68</sup> *Id.* para. 28.

<sup>69</sup> *Id.* para. 23.

<sup>70</sup> *Id.* para. 32.

<sup>71</sup> *T. Sivakumar v. The Inspector Of Police*, H.C.P. No. 907 of 2011, para. 33, Madras H.C. (2011) (India) [hereinafter *T. Sivakumar v. The Inspector Of Police (India)*].

<sup>72</sup> *Id.* para 15.

<sup>73</sup> *Id.* para 32.

<sup>74</sup> *Id.* para 34.

<sup>75</sup> *Id.* para 59.

<sup>76</sup> *Mohammed Abbas v. Chief Secretary*, W.P. (MD) No.3133 of 2015, Madras H.C. (2015)[[hereinafter *Mohammed Abbas v. Chief Secretary*], para. 2.

<sup>77</sup> *Id.* para. 20.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* para. 20.

<sup>80</sup> *Abdul Khader v. K. Pechiammal*, CRL.R.C.No.1441 of 2012, Madras H.C. (2015).

<sup>81</sup> *Yunus Shaikh v. State Of Gujarat*, R/CR.MA No. 8290 of 2015, Gujarat H.C. (2015).

<sup>82</sup> *Ruhul Amin Sekh v. The State Of West Bengal & Ors.*, W. P. No. 8619 OF 2015, Kolkata H.C. (2015).

<sup>83</sup> *Yunus Khan v. State of Haryana*, W.P. No. 1247 of 2013, Punjab-Haryana H.C. (2013).