**Excepts from alternative report on CRC**

**Chapter 1: General Measures of Implementation**

**1.4.1. New Legislation**

Paras 29-32: The adoption of the 2006 PCMA is welcome. However, it has quirks. It’s provision that a child marriage can only be made void when and if a contracting party turns

18 years, and then seeks annulment, is questionable and unethical. Child marriage is a form of violence, and the rescue of children -- girls in particular, but boys as well -- is a protection issue. Why has a prohibition law not provided that such a marriage stands annulled? The official stance that all changes between the 1929 restraint law and the new Act “have been made keeping the welfare and best interests of the child as the paramount consideration” is an affront to children.

Para 31: The 2006 and 2007 Supreme Court rulings that all marriages must be registered, across all religious identities, are positive. The report views this as a major step forward as the age at marriage will have to be given. How does this actually prevent child marriages, if minority personal laws condone early marriage, and registration will legalise them? Does the law ban all marriages below the 18/21 bar?

**2013 UPDATE**:

Decisions of two state high courts have shown that application of PCMA, and of the registration ruling hinge on how judges interpret them. In one, a child marriage was disallowed despite minority law; in the other, directions were issued to register marriages of children in deference to the same minority law. (See annexure 3).[[1]](#footnote-1) If children’s best interests are to be upheld, there should be endless variations on what best interests are. Pro-child PCMA judgments should not end up in appeals and litigation -- or subterfuge.

**UPDATE**: The new 2013 National Policy for Children extends its purview to 18 years; it has no legal force. The 2006 Prohibition of Child Marriage Act already legislates protection for all children up to the legal ages of 18 and 21 years.[[2]](#footnote-2)

The Protection of Children from Sexual Offences Act (POCSO) defines the child as any person up to the age of 18 years. But the rape law in the 1876 Indian Penal Code holds that a girl child aged between 15 and 18 who is already married is not covered by the POCSO protections. What about her rights as a child?

Until all other laws amend their provisions, the legal anomaly persists to the detriment of children. There is no move to amend the Constitution.

In 2001, the Govt. of India had defended this, by arguing that CRC defines an age of childhood, rather than of ‘majority,’ and therefore allows for ‘full legal capacity’ on ‘various matters at different ages.’ The present Periodic Report sticks to this stand,[[3]](#footnote-3) conceding only that ‘harmonising the definition of ‘child’ under different Acts is a progressive exercise.’ Neither the 2001 periodic report nor the present one under review cites the fact that the 1875 Majority Act, which sets the age of majority at 18 years for “every person domiciled in India” still stands.

The question of a child’s basic right to safety -- and to be a child -- also arises. The Govt of India is in agreement in principle with a South Asian inter-governmental acceptance of child marriage as a form of violence against children and is officially associated with a regional initiative to address and reduce child marriage by 2015.

Legal age of marriage, Legal marital status and age of consent:

The Prohibition of Child Marriage Act 2006 (PCMA) is a welcome replacement for the 1929 Child Marriages Restraint Act. It reaffirms the legal age for marriage at 18 years for females and 21 years for males, and is significant in that it (i) applies to all citizens of India irrespective of prevailing personal laws of different religious communities; (ii) provides for the voiding of marriages in which either or both parties are below the legal marriageable age;

and (iii) provides for maintenance and residence support to the girl child who is the female contracting party.

What does the law imply for children aged below 18 belonging to the Muslim community which is entitled to follow its personal laws? Interpretation in actual cases calls for clearer directives on enforcement. The present Periodic Report gives no information on the impact of the prohibition law. Two recent judgments highlight the need for clear and rights based enforcement. (See annexure 3)

It is a concern that since most Indian laws do not apply to the state of Jammu and Kashmir (due to special constitutional provisions), children in and of that state are outside the purview of whatever equity and benefits these laws may offer, with all their age provisos. The Protection of Human Rights Act 1993 does extend to the whole of India, and does uphold India’s commitment to the International Covenants to the Universal Declaration of Human Rights, but its basic provision is to set up the national human rights commission, and state commissions. It is unlikely that the national commission could seek due protective cover for children of that state under present laws. The writ of the NCPCR does not extend to Jammu and Kashmir state.

It is curious that the issue of child marriage is not included in the chapter on special protection measures. With evidence that adolescent girl children are being ‘exported’ from some states to become ‘brides’ in girl-deficit states, there are both official and civil society efforts to address this ominous new dimension of child marriage. Two paragraphs in Chapter 3 acknowledge this fact; one paragraph reports adoption of the PCMA, remarking that it has “some forward-looking provisions.” Does that suffice in a report submitted in mid-2011? Some questions that now invite consideration:

1. How is the legislation being implemented across all religious groups?
2. What actions are planned to off-set potential anomalies in the enforcement of PCMA?
3. Is there official tracking of child marriages which come to light? The PCMA is weak on both annulment and rehabilitative provisions for child-brides.
4. In the Government’s good move to register all pregnancies, are there cases of under-age marriages coming on record?
5. In the years since PCMA adoption, how many have been punished for violation and what kind of punishment enforced?

Compulsory Registration of Marriage Act 2012: This is a welcome and commendable law. The challenge is to ensure it is applied; ‘compulsory’ does not automatically translate into ‘actual.’ With PCMA and registration law coexisting, the issue is already “live.”

Despite the Supreme Court mandate of 2007 and the Act to make registration of marriage compulsory, some states are still to formulate laws to enforce this. So, in practice, compulsory registration of marriage is still not nationwide. Compulsory registration could support PCMA implementation with the recording of the ages of those entering marriage.

2.1.1 Age of Criminal Responsibility

The age of criminal responsibility continues to be seven years. The report cites the legal proviso that anything done by a child aged between 7 and 12 years who ‘has not attained sufficient maturity of understanding to judge the nature and consequences’ is not an offence.

**Annexure – 3: Childrens’ interests come first**

The prohibition of Child Marriages Act (PCMA) is set to challenge both the judiciary and society to uphold the best interests of children in dealing with this human rights violation.

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| **Update:** The current year has thrown up two significant examples:1. A June 2013 circular of the Kerala State High Court directs administrative and civic authorities to register marriages of Muslims who have not reached the age of 18 years.
2. A February 2013 judgment of the Karnataka State High Court dismisses a writ petition seeking permission for a girl aged 16 “who has attained puberty” to marry, under provisions of personal law. The state government opposed the petition. It argued that the 2006 Act is in the best interest of the child and opposed religion being used as a shield. Judge ruled that the childhood of a person is precious. On the child attaining the age of majority, anything may be given to it…but what cannot be got back is childhood. What is therefore of paramount importance is that the child should fully enjoy his or her childhood…In whatever form it is, child marriage is a gross violation of human rights.”

**The government will need to clarify how child marriage registration efforts are to become both rights-conscious and age-conscious. The Karnataka judgment may yet be challenged in the Supreme Court. Whatever happens, it has already made a historic decision to place children first.** **The new National Policy for Children, 2013 has tonned down children and their interests from paramount to primary ranking. The Karnataka Judge has been clear about paramountcy.** |

1. Karnatake State High Court , Kerala State High Court 2013. [↑](#footnote-ref-1)
2. 18 for females and 21 for males. [↑](#footnote-ref-2)
3. India 3rd/4th Periodic Report: Chapter 2, Section/sub-section 2.1:’Palpably there has been no uniformity in respect of the definition of ‘child’ under different Acts and other Instruments.’ Govt of India 2011. [↑](#footnote-ref-3)