ACCOUNTABILITY FOR CHILD MARRIAGE

KEY U.N. RECOMMENDATIONS TO GOVERNMENTS IN SOUTH ASIA ON REPRODUCTIVE HEALTH AND SEXUAL VIOLENCE
MISSION AND VISION

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Center for Reproductive Rights
120 Wall Street, 14th Floor
New York, NY 10005
United States
Tel +1 917 637 3600
Fax +1 917 637 3666
publications@reprorights.org
www.reproductiverights.org

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KEY U.N. RECOMMENDATIONS TO GOVERNMENTS IN SOUTH ASIA ON REPRODUCTIVE HEALTH AND SEXUAL VIOLENCE
Accountability involves a process and set of actions that are central to ensuring that states fulfill their human rights obligations. Accountability for the practice of child marriage may be understood as being composed of two components: (1) addressing the harmful impact of child marriage, including the continuum of negative reproductive health outcomes and sexual violence, and (2) correcting systemic failures in order to prevent future child marriages. International human rights bodies play a critical role in holding states accountable by monitoring compliance with their obligations under the human rights treaties to which they are bound.

Over the years, U.N. TMBs have exposed specific barriers to protecting and promoting the reproductive rights of girls married before the age of 18. As discussed in the briefing paper accompanying this fact sheet, U.N. TMBs have identified crucial gaps and failures in existing policies and programs that have contributed to child marriage and recommended concrete steps to eliminate the practice. The failure of South Asian governments to comply with these recommendations amounts to impunity and signifies a complete lack of respect for their obligations under international law; noncompliance is indicative of the refusal of these governments to be held accountable. This factsheet focuses on the impact of child marriage on the sexual and reproductive health of girls, and it highlights key recommendations made by human rights bodies and experts that governments are obliged to implement in order to be held accountable for this human rights crisis.

**CHILD MARRIAGE IN SOUTH ASIA: A PERVERSIVE AND WIDESPREAD CRISIS**

South Asia has more than double the number of women ages 20-24 who were married before age 18 of any region in the world.1 India accounts for the majority of these child marriages in South Asia, with 47% of all girls ages 20-24 reporting that they were married before 18, despite national legislation prohibiting marriage below 18 for girls.2 In Bangladesh, the numbers are even more alarming, with 66% of girls reporting having been married under 18 years of age, and of them, 38% of girls ages 20-24 reporting having been married before the age of 15.3 Nepal also has high rates of child marriage, with 33% of girls reporting being married by 15 and more than 40% of women ages 20-24 reporting having been married by the age of 18.4 In Pakistan—unlike in India, Nepal, and Bangladesh—child marriage is still legal under general law without penalty where a girl is over 16 years of age.5 Twenty-four percent of women ages 20-24 in Pakistan report having been married before the age of 18, while almost 7% report having been married by age 15.6 Similarly, in Afghanistan, marriage of girls is permitted without penalty at 15 years of age with parental consent and 16 years without this consent.7 Forty-six percent of marriages involve girls who are under 18 years of age.8 In this region, only Sri Lanka has managed to bring down the incidence of child marriage; currently, 2% of women ages 20-24 report being married before the age of 15 and 12% report being married by the age of 18.9 However, reports have been emerging concerning high rates of child marriage in conflict-affected parts of the country and where customary laws apply.10
I. SEXUAL AND REPRODUCTIVE HEALTH IMPACT OF CHILD MARRIAGE IN SOUTH ASIA

“[Married] girls are not only at risk of early and unwanted pregnancies, but the complications associated with pregnancy and childbirth are among the leading causes of death for girls aged 15-19 worldwide. Child brides are also more likely to experience discrimination and violence. Too often, they have little or no ability to leave abusive partners and secure the social and legal support they need to improve their situation.”


Girls who marry young are essentially forced into sexual relationships that expose them to early pregnancy at the cost of their physical and mental health.\textsuperscript{2} Because of pressure to become pregnant immediately or soon after marriage, child marriage means early sexual activity and early and frequent pregnancies.\textsuperscript{3} However, because their bodies are not yet fully developed and they have repeated and too closely timed pregnancies, girls who marry before the age of 18 experience much higher rates of life-threatening or debilitating conditions as a result of pregnancy such as obstetric fistula, uterine prolapse, hemorrhaging, and even death.\textsuperscript{4,5} Notably, complications from pregnancy and childbirth continue to be the leading cause of death among girls aged 15-19 globally,\textsuperscript{6} accounting for 70,000 deaths each year.\textsuperscript{7} The risk of unplanned pregnancies is significantly higher for girls married before the age of 18 as they often lack access to reproductive health information and services and are powerless to demand the use of contraception.\textsuperscript{8}

Being unable to negotiate contraceptive use, including condoms, also puts girls at high risk for contracting sexually transmissible infections and HIV.\textsuperscript{9}

Child marriage has been recognized under international law as a form of violence against women.\textsuperscript{10} In patriarchal societies in South Asia where fixed gender roles are imposed on girls, marriage is generally understood as constituting consent to sexual and reproductive health services, awareness-raising campaigns about the negative effects of child marriage, and steps to eliminate and provide remedies for gender-based violence arising from child marriage. Further, U.N. TBMs have recommended establishing a minimum age of marriage of 18 in all domestic law; enforcing and strengthening existing legislation; and improving birth and marriage registration to curb the practice of child marriage.\textsuperscript{13} The recommendations of U.N. TBMs on legal aspects of child marriage and human rights standards relating to marriage are crucial, and are discussed in more depth in the briefing paper accompanying this fact sheet.

“Violence against women is the most pervasive human rights violation that we face today….Every country in the world has the responsibility to take effective measures to prevent and respond to all forms of violence against women, and, it is ultimately up to State authorities to make elimination of violence a priority. Violence against women cannot be addressed in isolation of context, including the historical, political, economic, social and cultural contexts and realities that impact and shape the lives of women.”

–Statement of the U.N. Special Rapporteur on Violence against Women following her 2013 visit to Bangladesh. The full report discusses child marriage as a form of violence experienced by women and girls in Bangladesh.\textsuperscript{14,15,16}
ACCESS TO ADOLESCENT-FRIENDLY SEXUAL AND REPRODUCTIVE HEALTH INFORMATION:

Barriers to adolescent-friendly sexual and reproductive health information and services compound the harm girls are exposed to within marriage. High rates of early pregnancy and pregnancy-related injuries and fatalities among adolescents, whether married or not, are indicative of human rights violations resulting from the systematic neglect of their specific health needs.

- **Afghanistan:** The Committee on the Rights of the Child (CRC Committee) expressed concern that in Afghanistan “specific health assistance for adolescents as well as reproductive health education are not adequately provided” and recognized the connection between child marriage and maternal mortality.21 In the case of Afghanistan, the committee urged the government to “undertake a comprehensive study of the shortcomings of adolescent health services, with the full participation of adolescents, and use the outcome of this study to formulate adolescent health policies and programmes, with particular focus on prevention of early pregnancy.”22

- **Bangladesh:** The CRC Committee expressed concern regarding the “inadequate attention to the health of adolescents, especially females” in Bangladesh,23 and noted that of urgent concern for adolescent health were “issues arising from violence against girls and early marriages.” The committee specifically expressed concern about the inadequate facilities and counselling services for reproductive health for adolescents.24

- **India:** The CRC Committee called on India to “strengthen sexual and reproductive health education, mental health and adolescent-sensitive counselling services and make them accessible to adolescents” as a measure to combat child marriage.25

- **Pakistan:** The CRC Committee expressed concern that “adolescent reproductive health has still gained little acceptance in the Pakistani society” and criticized “the lack of access to sexual and reproductive health counselling and services, especially in rural areas.”26 The committee called on Pakistan to “establish more programmes and confidential services in the area of adolescent health” and “elaborate clear policies and, when applicable, legislation addressing adolescent health-related issues, in particular early marriage and pregnancies.”27

- **Sri Lanka:** The CRC Committee recommended that the Sri Lankan Government “increase the availability of confidential and youth friendly health services throughout the country, to enhance the availability of contraceptive services and to promote sex education targeted at adolescent girls and boys, with special attention to the prevention of early pregnancies and sexually transmitted diseases.”28 The CRC Committee stated that where adolescents experience high levels of early pregnancies and where abortion is a significant cause of maternal deaths, states parties should “review legislation on abortion, with a view, in particular, to guaranteeing the best interest of pregnant teenagers.”29

AWARENESS CAMPAIGNS:

Human rights bodies have also stressed the importance of awareness-raising and public education programs to address discriminatory attitudes that promote child marriage and the negative effects of child marriage, including the reproductive health impact on girls, as a means to prevent and eliminate the practice.

- **Afghanistan:** The Committee on Economic, Social and Cultural Rights (ESCR Committee) noted that in Afghanistan the “persistence of stereotypes and customary practices” marginalizes women and called on the state to “launch awareness-raising campaigns to combat harmful traditional practices against women, and educate parents, particularly mothers and children, as well as the community leaders.”30

- **Bangladesh:** The Committee on the Elimination of Discrimination against Women (CEDAW Committee) expressed concern about the “persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men” in Bangladesh and called on the state to “take, as a matter of priority, all necessary measures, including through awareness-raising campaigns among all sectors of the society, particularly traditional and religious communities, the media and civil society, on the importance of adopting a uniform family code which provides women with equal rights,” specifically with regard to ending the practice of child marriage.31

- **India:** In India, the CRC Committee urged the state party to “strengthen educational and awareness programmes, in cooperation with NGOs and community leaders, with a view to preventing early and forced marriage.”32

- **Nepal:** The CEDAW Committee urged the government to “undertake awareness-raising measures throughout the country on the negative effects of early marriage on women’s enjoyment of their human rights, especially their right to health and education.”33 The CRC Committee also urged Nepal to “develop sensitization programmes, involving community and religious leaders and society at large, including children themselves, to curb the practice of early marriage.”34 The CRC Committee noted that similar national awareness-raising measures were ordered by the Supreme Court of Nepal in the case Sapana Pradhan Malla and Others v. Government of Nepal of 2006.35
ADDRESS VIOLENCE AGAINST WOMEN AND GIRLS:

International bodies and experts have expressed concern at the extent of violence against women and girls in the region, specifically within the context of marriage.

- **Afghanistan:** Following a country visit to Afghanistan, the U.N. Special Rapporteur on Violence against Women (SRVAW) reported that the “practice of child marriages and forced marriages are at the root of most violence that takes place in the household, but ramifications also to other spheres.”37 The ESCR Committee also expressed concern regarding violence against children in Afghanistan, including child marriage, and called on the state not only to review existing legislation to ensure compliance with international human rights law, but also to ensure that women and girls are “able to register complaints with the police without fear of reprisals, that all cases are duly prosecuted without delay, and that perpetrators of violence against women are sanctioned.”38

- **Bangladesh:** The CRC Committee in concluding observations to Bangladesh noted specifically that girls experience gender-based violence as a result of child marriage and called on the government to “introduce gender-sensitive awareness-raising programmes, with the involvement of community leaders, for practitioners, families and the general public to prevent and end harmful practices, especially in rural areas.”39 The SRVAW has also expressed concern about forced and early marriages as a form of violence against women, and called on the government to take “urgent legislative measures to prohibit early and forced marriages” and to “ensure that all forms of violence against women and girls are criminalized...that perpetrators are prosecuted and punished, and that the women and girls who are victims of violence have access to immediate means of redress, rehabilitation and protection.”40

- **India:** The SRVAW expressed concern about violence against women in India rooted in forced and early marriage as well as sexual and reproductive rights violations.41 The SRVAW has called on the Indian Government to implement legislative and policy reform within a “holistic approach that simultaneously targets the empowerment of women, social transformation, and the provision of remedies that ultimately address the continuum of discrimination and violence, and also the pervasive culture of impunity.”42

- **Pakistan:** The CEDAW Committee expressed concern about the weak penalty for marital rape in Nepal and called on the government to significantly increase the punishment for marital rape.43

- **Nepal:** The CEDAW Committee expressed concern regarding the weak penalty for marital rape in Nepal and called on the government to significantly increase the punishment for marital rape.44

- **Sri Lanka:** The CEDAW Committee called on the government to “extend criminalization of marital rape regardless of judicial acknowledgement of separation.”45

III. RECOMMENDATIONS FOR IMMEDIATE ACTION AND ACCOUNTABILITY

Ensuring accountability for child marriage requires governments in South Asia to recognize the critical links between child marriage and the negative sexual and reproductive health outcomes experienced by girls and women in the region. Governments must take immediate steps to prevent the practice and protect girls from serious harm to their reproductive health and from sexual violence. The following recommendations are not exhaustive, but illustrate concrete and discrete steps governments should take to ensure the elimination of and accountability for child marriage.

- **National legislative bodies:** Introduce necessary law and policy reform to establish a minimum age of marriage of 18 and mitigate the harmful reproductive health impact on girls married before the age of 18 by raising awareness about the risks of early pregnancy and enabling girls to delay pregnancy, including by ensuring that they have access to contraceptive information and services, maternal health services, and safe abortion services.

- **National executive bodies:** Formally recognize child marriage as form of violence against women and children, and ensure that women and girls who seek to leave child marriages can benefit from existing policies and programs providing remedies for survivors of violence, including housing in shelter homes, legal support, counseling, and various educational and skill development programs.

- **National human rights institutions:** Initiate a national conversation on child marriage as a human rights concern. Mobilize key actors from government and the private sector to engage in a dialogue about concerted efforts that will be needed to prevent child marriages and end the practice, including consistent legal prohibition of child marriage in all marriage-related laws.

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

“The new agenda must ensure the equal rights of women and girls, their full participation in the political, economic and public spheres and zero tolerance for violence against or exploitation of women and girls. The practice of child marriage must be ended everywhere. Women and girls must have equal access to...the full range of health services, including in the area of sexual and reproductive health and reproductive rights ..., and have an equal voice in decision-making.”

*The Honorable Ban Ki-moon, Secretary General of the U.N.*46
Sofia Khan, former Legal Fellow for Latin America and the Caribbean, Asia, and Europe, was this fact sheet’s primary author. Melissa Upreti, Payal Shah, and Sonali Regmi of the Center for Reproductive Rights (the Center) supported the development of the fact sheet and its finalization by reviewing and editing drafts. Lilian Setapau and Enaya Opoku of the Center reviewed a final draft and provided feedback. The Center would like to thank legal experts Dr. Jaya Sagade and Sara Hossain for their review of and comments to this draft. We also thank Kathryn Bailey, Carvenn Martin, Kyle Holmes, and Halina Schifman-Shilo of the Center and Sara Shap for their contributions in preparing the fact sheet for publication. This fact sheet was authored by a grant from the Ford Foundation.

1. Gender Barrier, Out of Wedlock, Not School, Compelling Children to Work in South Asia 3 (2012) [hereinafter Brown, Out or Who(a)]
BRIEFING PAPER

CHILD MARRIAGE IN SOUTH ASIA

INTERNATIONAL AND CONSTITUTIONAL LEGAL STANDARDS AND JURISPRUDENCE FOR PROMOTING ACCOUNTABILITY AND CHANGE
MISSION AND VISION

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Center for Reproductive Rights
120 Wall Street, 14th Floor
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TABLE OF CONTENTS

4 Glossary of Terms and Abbreviations
8 Acknowledgements
10 Introduction
12 Section I: Child Marriage in South Asia
24 Section II: International Legal Accountability for Child Marriage
42 Section III: Constitutional Norms and Jurisprudence in South Asia
54 Section IV: Conclusion
56 Section V: Recommendations for Action
GLOSSARY OF TERMS AND ABBREVIATIONS

GLOSSARY

ADOLESCENTS People between the ages of 10 and 19

AIHRC Afghanistan Independent Human Rights Commission

ANNULMENT When a marriage is terminated and treated legally as though it never occurred.

BDT Bangladesh taka, currency of Bangladesh

CAT Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: International treaty codifying states duties to eliminate torture and other cruel, inhuman or degrading treatment.

CAT COMMITTEE Committee against Torture: The United Nations body charged with interpreting and monitoring states parties’ implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.


CHILD MARRIAGE A legal or customary union between two people, in which one or both spouses are below the age of 18. The practice largely affects girls and has graver consequences for them as well. Also referred to as early marriage or forced marriage.


DISSOLUTION The termination of a marriage through legal action, requiring a petition or complaint for dissolution by one party. Used interchangeably with “divorce,” but originates from the concept of a no-fault divorce.

DIVORCE The termination of a marriage through legal action, requiring a petition or complaint for divorce by one party. Used interchangeably with “dissolution,” but historically associated with termination of marriage when one or both parties are at fault.

ECLAMPSIA An often-fatal condition of convulsions and coma during pregnancy or delivery. Caused by preeclampsia, a condition during pregnancy characterized by hypertension (high blood pressure), fluid retention, and protein in the urine.


GENDER-BASED VIOLENCE Violence that targets women or affects women disproportionately. Includes acts that inflict physical, mental, or sexual harm.

GENERAL LAW Civil and criminal law that is applicable to the general population. It is sometimes referred to as “secular law.”

HABEAS CORPUS A writ (legal action) that requires a person under arrest to be brought before a judge or into court.

HCD High Court Division

HIV/AIDS Human Immunodeficiency Virus is a retrovirus that infects cells of the immune system, destroying or impairing their function. As the infection progresses, the immune system becomes weaker and the person becomes more susceptible to infections. AIDS, or Acquired Immune Deficiency Syndrome, is the final stage of this progression.

HRC Human Rights Committee: The United Nations body charged with interpreting and monitoring states parties’ implementation of the International Covenant on Civil and Political Rights.

ICCPR International Covenant on Civil and Political Rights: International treaty protecting individuals’ civil and political human rights.

ICESCR International Covenant on Economic, Social, and Cultural Rights: International treaty protecting individuals’ economic, social, and cultural human rights.
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ACKNOWLEDGEMENTS

This briefing paper is a publication of the Center for Reproductive Rights. Melissa Upreti, Regional Director for Asia, Payal Shah, Senior Legal Adviser for Asia, and Sonali Regmi, Regional Manager for Asia conceptualized the briefing paper. Ms. Shah did extensive research and was the briefing paper’s primary author. Ms. Upreti supervised the research and drafting of the briefing paper, fact-checked portions of the briefing paper, edited the briefing paper, and oversaw its production. Ms. Regmi and Purna Shrestha, Legal Adviser for Asia, participated in the research and fact-checking of the briefing paper, and provided invaluable comments on numerous drafts. Caitlin Segal, former Global Legal Program Assistant, and Kathryn Bailey, Global Legal Program Assistant, contributed to the fact-checking, cite-checking, final editing, and production of the briefing paper. Lilian Sepúlveda, Director of the Global Legal Program and Evelyne Opondo, Regional Director for Africa, reviewed drafts and provided helpful feedback. Several interns also participated in the research and drafting of portions of the briefing paper, including Aimee Arrambide, Shoshana Smolen, and Sheyda Joolharzadeh.

Carveth Martin, Senior Creative, and Kylie Holmes, Designer, designed the cover and layout. The briefing paper was copyedited by Sara Shay.

The Center is grateful to Sara Hossain, Honorary Executive Director of the Bangladesh Legal Aid Services Trust and Advocate in the Supreme Court of Bangladesh, and Dr. Jaya Sagade, Vice Principal and Reader at ILS Law College, Pune, for their in-depth reviews of drafts of the briefing paper and crucial comments and insights concerning child marriage in South Asia. The Center is also thankful to Ms. Hossain and Dr. Sagade, as well as Shyamala Gomez, Country Director, FOKUS WOMEN Sri Lanka, and Asad Jamal, a human rights lawyer and criminal law instructor in Pakistan, for contributing critical information concerning the legal framework relating to child marriage in the region. The Center also deeply appreciates the pro bono research support provided by Kathy La, formerly of Cahill Gordon & Reindel.

This publication was supported by a grant from the Ford Foundation.
**INTRODUCTION**

Child marriage is a human rights crisis occurring on an alarming scale in South Asia. South Asia accounts for almost half of all child marriages that occur globally—the most of any region in the world. Child marriage, defined internationally as marriage where one or both spouses are under the age of 18, is legally prohibited under many national laws in the region as well as by international human rights treaties adopted by South Asian countries; however, the practice persists with impunity. In South Asia, 46% of women between ages 20-24 report having been married before age 18—in 2010, this translated to 24.4 million women in the region. Estimates project that from 2010 to 2030, 130 million more girls in the region will be married. Governments in South Asia have an absolute legal obligation to eliminate child marriage. The extensive repercussions of child marriage violate the international and constitutional obligations of states to protect children’s rights and discriminate-interfere with women’s and girls’ ability to enjoy a broad range of human rights. The persistence of child marriage in South Asia indicates the widespread failure of governments to address one of the most critical human rights issues facing women and girls in the region and the absence of state accountability for violations of their human rights and constitutional rights.

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

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

**Purpose, Scope, Terminology, and Structure**

This briefing paper demonstrates why governments must be held accountable for addressing child marriage in the region and discusses child marriage as a form of early and forced marriage. Child marriage is considered forced marriage under international law, because children—defined as boys and girls under 18 years of age—do not have the legal capacity to provide informed consent to marriage. The phrase “child marriage” is used in this briefing paper rather than “early and forced marriage” because it captures both the elements of age and lack of consent, and because “child” is a more precise term that can be clearly defined and protected in law. Further, childhood represents the vulnerable starting point for the continuum of reproductive and sexual rights violations discussed in this briefing paper.

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

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

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

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

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

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

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

GENERAL LAWS ON CHILD MARRIAGE IN SOUTH ASIA

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

While marriage of boys under 18 years of age is penalized under general laws throughout South Asia, several general laws allow for the legal marriage of girls under 18 years, including in Afghanistan and Pakistan.30 In Afghanistan, girls may be legally married at as young as 15 years of age with parental consent and 16 without parental consent.31 In Pakistan, marriage of girls is permitted at 16 years of age under legislation prohibiting child marriage, and at as young as 14 years with parental consent under the Special Marriage Act, which governs nonreligious marriages.32 In Bangladesh and India, legislation specifically concerning child marriage establish penalties for involvement in the marriage of girls below 18 years.33 However, in Bangladesh, the Special Marriage Act, governing nonreligious marriages, also permits girls as young as 14 to be married with consent by a girl’s father or guardian.34 In Nepal, the age of marriage for boys and girls is 18 years with parental consent and 20 years without parental consent.35 In Sri Lanka, marriage of girls and boys below 18 is prohibited in a national marriage law applicable to the general population except for Muslims, who have a separate marriage law.36

In South Asia, general laws often permit marriage to occur legally at a younger age for women and girls than men and boys. The child marriage laws in both Bangladesh and India establish a minimum age of marriage of 18 for girls, but recognize a higher minimum age of marriage of 21 years for boys.37 In Afghanistan and Pakistan, marriage below 18 years of age is not legally permitted for boys, while marriage is permitted for girls as young as 15 in Afghanistan and 16 in Pakistan.38 Only Nepal and Sri Lanka set a consistent minimum age of marriage regardless of sex.39

PERSONAL LAWS ON CHILD MARRIAGE IN SOUTH ASIA

Marriages in South Asia, including child marriages, are typically not performed based on legal practice, but rather on the religious custom or tradition of the individuals involved.40 In the region, personal laws—which may be codified or uncodified—often set forth the requirements for marriage for individual religious communities, including the age at which marriages may be performed. Many personal laws in South Asia permit child marriage,41 allow a lower age of marriage than general law,42 or accord marriage involving children distinct legal status from general law.43 Further, personal laws in Afghanistan, India, and Pakistan recognize a higher age of marriage for boys than girls.44

LEGAL STATUS OF MARRIAGES INVOLVING CHILDREN

Clarity on the legal status of child marriages under the law is required for girls to be able to understand their legal rights and the requirements to leave such a marriage. Child marriages may be regarded as void ab initio, voidable or able to be repudiated, or valid. Marriages that are void ab initio are legally treated as though they have not taken place and can be treated so by the parties to them without having to resort to court action for an annulment. Marriages that are voidable can be ended by court action for annulment due to a defect in the marriage, although this may be limited under certain circumstances. A valid marriage can only be ended by court action for a divorce. General laws may remain silent on the legal status of child marriage,45 or set forth a legal status but allow for ambiguity by deferring to46 or failing to clearly supersede personal laws.47

Under most laws relating to child marriage in South Asia, child marriages that have already been performed are voidable48 or can be repudiated,49 however, these legal pathways out of child marriages are severely restricted by requirements that girls challenge their marriage within a certain amount of time following the marriage40 or before attainment of the age of majority or another specified age,41 consummation of the marriage,42 or the birth of a child.43 For example, child marriage has been recognized as a ground for divorce under India’s Hindu Marriage Act, but a girl can only seek a divorce if she was married before 15 and has repudiated the marriage before 18.48 Nepali law does recognize child marriages as voidable, but only before the couple has had children.49
Very few laws clearly establish that child marriages are legally invalid,\(^{11}\) which allows courts to interpret marriage of girls as valid. Child marriages are considered invalid under the general law in Sri Lanka,\(^{12}\) although this law explicitly does not apply to Muslims. Other than in Sri Lanka, child marriages are only clearly considered void in specific circumstances in other countries in South Asia. For example, while India's Prohibition of Child Marriage Act (PCMA) generally views child marriages as voidable, the PCMA recognizes certain marriages involving minors as void, including marriages where a minor is taken or enticed away from a parent or guardian by force or deceit and sold into marriage, or where a marriage is solemnized despite an injunction against the marriage being ordered.\(^{25}\) Certain personal laws in India also recognize child marriage as void in specific circumstances. India's Muslim personal laws consider marriages without the consent of parties who have reached puberty to be void.\(^{44}\) Under the Indian Parsi Marriage and Divorce Act, marriages below the ages of 18 for a girl and 21 for a boy are invalid, but not declared void.\(^{45}\)

Many laws also state that marriages are void or voidable where there is force or fraud involved but fail to explicitly recognize child marriage as an example of such a marriage.\(^{46}\) For example, in Nepal, forced marriages are also considered void,\(^{47}\) but the law does not state whether child marriages are per se considered to be forced.\(^{48}\)

AGE RESTRICTIONS RELATED TO SEX AND CRIMINALIZATION OF MARITAL RAPE

In most South Asian countries, rape within marriage is not criminalized, although penal codes do establish a minimum age under which sex with a girl is criminalized. In Bangladesh, Nepal, and Pakistan, sex with a girl who is under 16 years old is considered rape.\(^{49}\) Afghanistan does not establish a minimum age in relation to sex, but punishes any person who through violence, threat, or deceit violates the chastity of another and permits a harsher punishment where the victim is below 18.\(^{50}\) Similarly, Nepal and Sri Lanka recognize harsher punishments for sexual abuses related to younger girls.\(^{51}\) The Shia (Shiite) Personal Status Law in Afghanistan establishes that sexual intercourse with a married woman before she reaches puberty is prohibited.\(^{52}\)

Further, in certain South Asian countries, the law permits marriage to legitimize sex with a girl where it would otherwise be illegal. For example, in India, the 2012 Protection of Children from Sexual Offences Act established that sex with a child under 18 is rape; however, the Indian Penal Code, which was amended in 2013, states that marital rape is only criminalized until a girl is 15 years of age.\(^{53}\) Similarly, in Sri Lanka, sex with a girl under 16 years is considered rape even if she says that she consents; however, the law permits a man to legally have sex with his wife without her consent so long as she is above 12 years of age.\(^{54}\)

In most of South Asia, marital rape involving women or girls older than the ages discussed above is not criminalized.\(^{55}\) Only Nepal clearly penalizes all instances of marital rape, regardless of the age of the wife at the time that the rape occurred.\(^{56}\) Marital rape is also one of the grounds for divorce in Nepal;\(^{57}\) however, the punishment for marital rape remains light.\(^{58}\) Pakistan's penal code does not state that marriage is a defense to rape, which would allow for the recognition of marital rape as a crime; however, the failure to clearly criminalize marital rape has meant that courts in Pakistan continue to allow evidence of marriage to be a bar to a finding of rape.\(^{59}\)

CONSENT TO MARRIAGE

General marriage laws in South Asia typically do not require consent of the parties to marriage. Only Nepal's national law formally requires consent to marriage by both parties.\(^{60}\) General laws in Afghanistan and Sri Lanka do not require consent to marriage.\(^{61}\) In Bangladesh, India, and Pakistan, laws governing nonreligious marriage do not formally require consent, but obligate each party to vow, "I take thee as my lawful spouse."\(^{62}\) Conversely, parental consent is often permitted or required for marriages under specified ages under general marriage laws in South Asia,\(^{63}\) even where consent of the parties themselves would not be required if they were of age.\(^{64}\)

Personal laws vary in their approach to consent to marriage. Muslim law regards marriage as a contract, and, as such, both parties must give their consent and fulfill requirements related to legal capacity—namely, to be “of sound mind” and have attained puberty, which is presumed to occur at 15 years of age.\(^{65}\) Codified Muslim personal laws in Bangladesh do not explicitly discuss consent of the parties as a requirement for marriage,\(^{66}\) which means that ultimately courts determine whether consent required in specific cases when the issue is raised for adjudication.\(^{67}\) In Pakistan, the marriage contract formulated per the rules issued under codified Muslim personal laws includes columns to record consent to marriage; however, this requirement is often circumvented by the failure to ensure marriages are registered.\(^{68}\) Personal laws for other religions do not typically require consent.\(^{69}\) However, lack of consent may be recognized as a barrier to legal recognition of marriage. For example, the Hindu Marriage Act in India does not explicitly require consent, although marriage requires that neither party is incapable of giving consent due to “unsound mind” or “even if capable of giving a valid consent, is not suffering from a mental disorder or insanity.”\(^{70}\) Further, under the Hindu Marriage Act in India, marriages are voidable where “consent of the petitioner…was obtained by force or by fraud.”\(^{71}\)

For marriages involving parties that are under a specified age or have not undergone puberty, certain personal laws allow consent of a parent or guardian to be considered sufficient for marriage.\(^{72}\) Further, certain personal laws may require consent of a parent or guardian or a religious official where parties are under a legally specified age or before puberty. Muslim personal law in Sri Lanka also requires the consent or permission of the male guardian of the bride, regardless of age.\(^{73}\)

REGISTRATION OF MARRIAGE

Registration of marriage can be essential to combating child marriage by requiring documentation of the age of the prospective spouses prior to solemnization. However, Afghanistan is the only country in South Asia that has adopted general legislation applicable to all citizens requiring registration of all marriages.\(^{74}\) Compulsory registration of marriage was ordered by the Supreme Court of India, but national legislation has not been enacted requiring registration of all marriages across the country.\(^{75}\)

Personal laws differ regarding registration of marriage, with registration being required in some laws\(^{76}\) and optional in others.\(^{77}\) Even where registration is required, the failure to register a marriage may not invalidate a marriage.\(^{78}\) Further, requirements of registration of marriage are rarely enforced,\(^{79}\) and the practice is typically not widespread.\(^{80}\) Finally, laws may also permit registration of marriage even where a girl does not meet the minimum age of marriage, such as in Sri Lanka.\(^{81}\)
Together, the gaps, inconsistencies, and unreasonable requirements in national legal frameworks concerning child marriage in the region have denied girls legal protection against child marriage. (See “Legal Barriers and Deterrents for Girls Seeking to Challenge Child Marriages,” pp. 18-19, for more information.) Impunity for child marriage persists throughout South Asia, resulting in grave implications for women’s and girls’ reproductive and sexual health and rights.

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

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

In South Asia, married girls experience significant pressure to become pregnant soon after marriage to prove their fertility29 and produce children, especially sons. This pressure results in early, closely spaced, and frequent pregnancies30 that increase girls’ risk of maternal mortality and morbidity,31 including uterine prolapse32 or obstructive fistula.33 Within the region, there is no greater threat to an adolescent girl’s life than early pregnancy-related complications.34 Early and frequent pregnancies are particularly dangerous for exactly those girls who are most at risk of child marriage—girls with less education who lack decision-making power within their family, are unable to access health care information and services, and are living in poverty.35

Girls in the region often lack basic sexuality education,36 which leaves them unaware of the risks of early pregnancy.37 Studies show that married girls in South Asia are the least likely to use contraceptives globally38 and many pregnant adolescent girls ultimately resort to potentially fatal unsafe abortions when experiencing unplanned, early pregnancies.39 Married girls are often unable to negotiate contraceptive use due to unequal power dynamics and lack of reproductive health information, resulting in greater risk of unplanned pregnancies and sexually transmitted infections (STIs).40 Abortions in South Asia are typically illegal or difficult to access,41 exposing girls with unwanted pregnancies either to the risks of unsafe abortion or to forced, high-risk early pregnancy. Despite the increased risk of maternal mortality and morbidity, adolescent girls, defined by the United Nations Population Fund (UNFPA) as girls between 10 and 19 years of age,42 face distinct barriers to adolescent-friendly reproductive health care43 and typically receive limited, if any, skilled pregnancy-related care.44

Child marriage also leaves girls vulnerable to sexual exploitation and violence throughout their lives. Child brides are often initiated into sex by force or coercion by their husbands, and typically continue to experience nonconsensual sex throughout their marriage.45 Married girls also face other forms of physical, sexual, and psychological abuse by their husbands and potentially others in their families.46 Sexual violence exposes married girls to severe sexual and reproductive health consequences, including early and unintended pregnancy, unsafe abortion, and higher risk of STIs.47 Both sexual violence and the reproductive health consequences associated with child marriage, including early pregnancy, are associated with significant physical and emotional trauma.48 (See “WHO Recommendations Concerning Child Marriage and Early Pregnancy,” p. 17 for more information.)

Each pregnancy and childbirth increases the financial burden on a married girl and her family, pushing her deeper into poverty.49 Girls married as children are often denied educational opportunities that would allow them to generate income and are isolated from society, creating significant barriers for them to transcend stereotypical gender norms of women and girls as wives and mothers. Child marriage results in a lifetime of economic dependence and poverty.50 This financial dependence,51 coupled with social stigma concerning divorce52 and significant legal barriers, means that married girls are often trapped within their marriage without a realistic way to leave. The daughters of women who were child brides are at greater risk of being married as girls themselves,53 perpetuating cycles of poverty and disempowerment.

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

Why Child Marriage Persists in South Asia

Child marriage persists in South Asia because governments have not done enough to end the practice. Child marriage is rooted in and perpetuates existing patriarchal power structures that have led to women’s subordination to and dependence on men in society.54 Confronting child marriage requires governments to take meaningful steps to dismantle discriminatory patriarchal norms and stereotypes within South Asia, including as embodied in the law, that promote child marriage.

PATRIARCHAL NORMS UNDERLYING CHILD MARRIAGE

Child marriage in South Asia reflects the dominance of patriarchal norms surrounding marriage, which view girls as objects to be “protected” and exchanged as commodities, rather than as bearers of rights.55 These norms lead to the treatment of daughters as economic burdens whose primary value is their virginity and reproductive capacity.56 In rural and poor areas, girls are particularly vulnerable to child marriage57 due to the predominance of these patriarchal views and widespread poverty.58 The risk of child marriage is also exacerbated for girls in conflict and disaster-affected areas, where there are increased risks of poverty from financial instability and sexual violence that pose a threat to girls’ bodily integrity and virginity.59

CONTROL OVER SEXUALITY AND REPRODUCTIVE CAPACITY

In South Asia, parents often consider ensuring their daughter’s marriage as their final duty in raising her.60 Marriage is seen as an institution that protects women and girls and ensures their financial and physical security.61 Generally, a girl’s virginity is a prerequisite to marriage and determines her worth as well as her (continued on p. 20)
SECTION I: CHILD MARRIAGE IN SOUTH ASIA

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

- **Powerlessness of girls in decision-making:** Laws in South Asia often place the onus on girls themselves to seek to avoid or dissolve child marriages, but fail to establish a simple process for leaving a marriage. (See Section I, p. 13, for further discussion.) Current legal frameworks fail to recognize the unequal power dynamics experienced by girls, who are denied autonomy as result of their status both as females and as children. Girls who are vulnerable to child marriage are particularly likely to grow up in patriarchal societies where they may not be aware of laws prohibiting child marriage, are not granted decision-making authority or do not possess the economic resources necessary for seeking legal representation and remedies. The failure to address girls’ powerlessness within patriarchal societies acts as an impediment to girls’ ability to utilize the law.

- **Inconsistent general and personal laws on child marriage:** Child marriage is regulated by inconsistent general and personal laws in much of South Asia, resulting in significant ambiguity concerning which law is applicable. For a girl, these inconsistencies can make it difficult to know whether her marriage is illegal and what rights she has. (See Section I, p. 13, for more information.) For example, although a general law on child marriage may penalize marriage below 18, the personal law applicable to a girl’s religious community may permit marriage at a much younger age. Further, general and personal laws may also accord child marriages different legal status and provide girls conflicting rights to dissolve child marriages—without clarification, girls may not know if their marriages are legally void and can be treated as if they did not happen, or if they need to seek judicial authorization for annulment or divorce. General legislation, including that which concerns child marriage, often fails to clarify which law prevails, compounding the problem. The weak implementation of prevention laws and penalties by local government officials entrusted with enforcement further contributes to the uncertainty about the scope of legal protection.

- **Unreasonable criteria for dissolution of marriage:** Several laws in South Asia permit the dissolution of marriages where one party is a child, but only in limited circumstances, such as before the marriage has been consummated, before there are offspring, or only within the first few years of attaining majority. These restrictions fail to consider the circumstances of married girls, who often lack control over consummation of marriage or pregnancy; indeed, girls who are being abused within marriage are the ones who are left without protection under such laws. The likelihood of pregnancy within the first few years of marriage also means that girls may be unable to leave a marriage within the limited time frame permitted under many laws for dissolution of child marriage. Those years may also be when married girls are the most dependent on their husbands, as they may be pregnant or have small children, and lack the education or income generating skills to provide for their family.

- **Weak laws on sexual violence and limited recognition of sexual crimes within marriage:** Many South Asian countries either fail to recognize rape within marriage as a crime or only recognize it as a crime through puberty or through 12 or 15 years of age. If a married girl tries to run away to escape the violence she is experiencing, in some South Asian countries, such as Afghanistan, she may be convicted of intent to have sex outside of marriage. Further, although sex with a girl below a statutorily established age is criminalized in most of South Asia, laws that permit child marriage undermine this protection by legitimizing coerced sexual intercourse with children. Together, these contradictory standards mean that the sexual violence married girls experience will not be considered violence under national law.

- **Lack of evidence of age at the time of marriage:** As a result of poor birth and marriage registration systems throughout most of the region, girls face significant barriers to establishing their age at the time of marriage. Without this information, girls may experience barriers in substantiating that their marriage was a child marriage in violation of the law.

IN FOCUS: LEGAL BARRIERS AND DETERRENTS FOR GIRLS SEEKING TO CHALLENGE CHILD MARRIAGES
SECTION I: CHILD MARRIAGE IN SOUTH ASIA

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

–Special Rapporteur on Violence Against Women

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

VIEW OF WOMEN AS COMMODITIES

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

Together, these patriarchal norms and practices underlying child marriage also serve to trap girls within child marriage. First, due to their lack of education and isolation in society, girls are often unaware of the legal age of marriage, who can be convicted, what the punishment would be, and how to avoid a child marriage. Second, since married girls often lack education and income generating skills, they have limited options to support themselves outside of marriage. The moment a girl seeks to leave a child marriage, she will need to consider where to seek shelter and how to survive financially. Laws may involve prosecution of a girl’s parents as well as her in-laws or even her husband. Even where she can avoid prosecution of her parents, in the region the return of a married girl to her parents is highly stigmatized and discouraged. Remarriage is typically not an option, as often once a girl is married, she is presumed to have had sex and will be considered unmarriageable.

LACK OF EFFECTIVE GOVERNMENT ACTION

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

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

Further, legal prohibitions on child marriage are only as strong as their enforcement at the local level. Prosecution for child marriage remains low in the region, even where the practice is illegal, indicating impunity for the practice. The failure to appoint designated officials mandated to investigate and intervene in child marriage cases and ensure their awareness that child marriage is illegal and harmful to girls also constitutes a barrier to enforcement of child marriage laws. In the region, child marriage is often considered a personal or family issue, leading law enforcement officers to refrain from intervening as mandated under the law. Ensuring accountability for child marriage requires that officers tasked with enforcing legal prohibitions on the practice must have adequate training about the harms of child marriage and support to respond to community opposition and protection against retaliation. For example, in Nepal and Sri Lanka, although registration of marriages involving children is prohibited, registrars report facing immense social pressure to falsely register such marriages in violation of the law. Similarly, in India, activists seeking to enforce child marriage laws have faced violent retaliation. The failure of governments to ensure that frontline defenders of girls’ rights to be free from child marriage are adequately prepared and supported contributes significantly to the practice of child marriage.
Court cases have played an important role in shifting the discourse on child marriage in India by illustrating the brutal impact of child marriage on girls' well-being and survival. Two 19th-century cases in India are widely credited with bolstering advocacy against child marriage. While the courts themselves were not an immediate source of remedy, public controversy surrounding the cases contributed to national legal reform.

Rukhmabai had been married at the age of 11, but was allowed to remain at home until she was in her 20s. In 1884, after several years of marriage, her husband filed a case for restitution of conjugal rights. Rukhmabai argued that since she could not have given legal consent to the marriage at 11 years of age, her marriage was invalid. This argument was novel in India, and sparked debates on consent of minors to marriage. The Bombay High Court initially dismissed the case, stating that “it would be a barbarous, a cruel, a revolting thing to do to compel a young lady under those circumstances to go to a man whom she dislikes, in order that he may cohabit with her against her will.”

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

In 1890, Phulmonee, a girl of approximately 11 living in India, died from a rupture of her vagina after her 35-year-old husband forcibly had sex with her. Phulmonee died after 13 hours of hemorrhaging and acute pain. Unanimous medical opinion found that Phulmonee's injuries were caused by violent sexual penetration, which her immature body could not sustain. The colonial law in India in place in 1890 only criminalized rape within marriage where the girl was under the age of 10. Since Phulmonee was older, her husband was not accused of rape, but instead was sentenced to one year in prison for “causing great hurt by an act so rashly and negligently done as to endanger life.” The court failed to promote a more expansive reading of the law to recognize marital rape beyond 10 years of age. However, the case fueled debates in India surrounding raising the age of sexual consent as a means of avoiding such deaths and inspired activists seeking to raise the age of consent to publicize dozens of similar stories. In 1891, the government adopted the Age of Sexual Consent Act, which raised the minimum age of sexual consent to 12.

Phulmonee's case continues to be invoked in debates surrounding marital rape and child marriage in India more than a century later.

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

Radha, 15, views herself in a cracked mirror the day before her wedding in Rajasthan, India on April 26, 2009. Photography: Stephanie Sinclair/ VII/Toyoungtowed.org
SECTION II: INTERNATIONAL LEGAL ACCOUNTABILITY FOR CHILD MARRIAGE

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

Rights of the Child

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

The CRC Committee has repeatedly called for states parties to ensure legislation prohibiting child marriage, appropriate sanctions where child marriage occurs, and prosecution of those involved in the performance or promotion of marriage. Further, reflecting the important role registration of birth plays in facilitating verification of a girl’s age at the time of marriage, U.N. treaties and CEDAW have recognized child marriage as a violation of children’s rights that endangers girls’ lives and exposes girls to violence, and directlyonnen the "best interests of the child" standard.

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

Adolescent girls face significant risks to their reproductive health within child marriage, particularly in contexts where children already encounter barriers to reproductive health decision-making arising from lack of reproductive health information and adolescent-friendly services. (See Section I, p. 17, for more information on child marriage and women’s and girls’ autonomy.) The CRC Committee has urged states parties to establish clear policies and legislation addressing adolescent health-related issues, including on early marriage and pregnancies. The CRC Committee has affirmed that the best interests of the child standard must be observed in all health-related actions affecting children and requires ensuring children have access to appropriate information on health issues. The CRC General Comment 15 affirms that states parties must ensure girls can make "autonomous and informed decisions on their reproductive health." The Committee has reiterated that "the opportunity to participate in decisions affecting their health, to build life-skills, to acquire appropriate information, to receive counselling and to negotiate the health-behaviour choices they make, is crucial."
An essential component of empowering girls to make decisions concerning early pregnancy is providing information about the harms of childbearing before their bodies are fully mature and counseling on how to time and space pregnancies. The CRC Committee has affirmed that states parties must ensure adolescents’ right to information about their health even if they are out of school and has recognized that adolescents must be provided sexual and reproductive health information, including about the dangers of early marriage and early pregnancy, contraception, and the prevention of STIs including HIV/AIDS. The CRC Committee also has affirmed that fulfillment of adolescents’ right to information is essential for the prevention of child marriage and for family planning.

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

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

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

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

Right to Equality and Nondiscrimination

International human rights treaties guarantee women’s rights to equality and nondiscrimination. The CEDAW Committee has explained that “[i]nherent to the principle of equality between men and women, or gender equality, is the concept that all human beings, regardless of sex, are free to develop their personal abilities, pursue their professional careers and make choices without the limitations set by stereotypes, rigid gender roles and prejudices.” States parties must ensure both formal and substantive equality, meaning that women and girls must be treated equally under the law as well as enjoy equality of results and opportunities; uphold ing this right requires states parties to ensure women’s distinct biological capacity to reproduce does not lead to violations of their rights. The CEDAW Committee has urged states parties to make use of “temporary special measures” to accelerate substantive equality, and ongoing special measures to protect women during pregnancy.

Under international law, child marriage is recognized as a violation of women’s rights to nondiscrimination and equal enjoyment of the rights to life, suffrage, equality before law, and protection from discrimination. The CRC Committee has emphasized that child marriage results from discriminatory social attitudes, and causes suffering and marginalization of women. U.N. TBMs have repeatedly expressed concern where child marriage persists despite legal prohibitions and affirmed that states parties must ensure there is no impunity where child marriage occurs. Under CEDAW, states parties must not grant child marriages any legal effect. Further, marriage registration must be made compulsory, even if performed under religious law, as a means to ensure equality in marriage, prevent child marriage, and protect children’s rights.

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

States parties have a particular obligation to protect those girls most at risk of child marriage and the harms resulting from the practice. Rural, poor, and adolescent girls, who are recognized as being most likely to be married as children, are recognized under human rights law as vulnerable subgroups of women. Further, the intersection of their gender, age, and socio-economic or geographic status increases their vulnerability to violence and reproductive health harm and exacerbates the impact of the human rights violations resulting from child marriage experienced by these subgroups. Where girls face multiple and intersecting forms of discrimination, states parties have an obligation to take special measures to ensure their enjoyment of their human rights without discrimination, including their rights to reproductive health services and freedom from violence.

Human rights law also recognizes the increased risk of discrimination experienced by girls in times of armed conﬂict and states of emergency, and has afﬁrmed that the “obligations of States parties do not cease in periods of armed conﬂict or in states of emergency due to political events or natural disasters.”

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

Child marriage violates women’s and girls’ right to equality and nondiscrimination by perpetuating patriarchal traditions, cultural attitudes, and stereotypes that place them
CHILD MARRIAGE VIOLATES WOMEN’S RIGHT TO DETERMINE THE NUMBER, SPACING, AND TIMING OF THEIR CHILDREN

Child marriage operates as a means to control women’s and girls’ sexuality and reproductive capacity, and results in significant risks of unwanted and forced pregnancies. (See Section I, pp. 16–17 and p. 20, for more information.) The preamble to CEDAW affirms that “the role of women in procreation should not be a basis for discrimination.”144 Under CEDAW Article 16, women must have the same right as men “to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.”145 The CEDAW Committee has affirmed that women’s right to determine the number, spacing, and timing of their children is violated where women are denied autonomy in making decisions about their reproductive health by their husbands or family members or are exposed to forced pregnancies.146 Article 16 guarantees women the right to make informed decisions about contraception, measures which require access to contraceptive information and services as well as sexuality education.147

CHILD MARRIAGE CONSTITUTES GENDER-BASED VIOLENCE

Child marriage is recognized under human rights law as form of gender-based violence.148 Freedom from gender-based violence is a human right.149 The CEDAW Committee defines gender-based violence as violence “directed against a woman because she is a woman or that affects women disproportionately” and “includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”150 Child marriage has been recognized by the CEDAW Committee as a practice involving violence or coercion and as a form of forced marriage.151 Child marriage exposes women to reproductive rights violations152 and marital rape,153 both of which are recognized as forms of gender-based violence. (For more information on child marriage, sexual violence, and barriers to reproductive health services, see Section I, pp. 16–17.) The United Nations Special Rapporteur on Violence against Women (SRVAW) has recognized child marriage as a “cultural practice” that is harmful to women and their reproductive health, and is rooted in the desire to control women’s and girls’ reproductive capacity.154 Under the obligation to eliminate violence against women, states parties must ensure women do not experience human rights violations as a result of lack of control over their sexual and reproductive lives or poor quality of reproductive health care.155 U.N. TMBs also have criticized states parties where marital rape is not recognized as a crime.156 (See Section I, p. 14, for more information on laws on marital rape in South Asia.)

Under human rights law, states parties must exercise due diligence in addressing violence against women committed by both state and non-state actors.157 The due diligence obligation requires states parties to prevent, investigate, punish, and provide remedy for all acts of violence against women.158

States parties must address “gender-based stereotypes, power imbalances, inequalities and discrimination which support and perpetuate the use of violence and coercion in the home…and in society more broadly.”159

The SRVAW has emphasized that although historically governments have denied the legal obligation to intervene in “cultural practices” that cause violence because they occur in “private” or “domestic” spheres, international human rights standards clearly reject this “public/private differentiation” and obligate governments to eradicate all forms of violence, including within the family.160

Right to Health

The ICESCR recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”161 States parties have “immediate obligations” to guarantee the right to health without discrimination,162 including for women and adolescent girls.163 Ensuring the right to health without discrimination requires states parties to take effective measures to abolish traditional practices that are prejudicial to women’s and children’s health.164 Child marriage is recognized as a harmful traditional practice that is the root cause of significant violations of the right to health.165 The CEDAW Committee has affirmed that the right to health requires the proscription of betrothal and marriage of children as a means to “prevent[] the physical and emotional harm which arise from early childhood.”166 The CEDAW Committee also has recognized the long-term negative effect of child marriage on women’s enjoyment of their right to health167 and has affirmed that “states parties should ensure the right to sexual health information, education and services for all women and girls.”168

U.N. TMBs have recognized that prevention of child marriage is needed to ensure protection of the right to health.169 The ESCR Committee has affirmed that states parties must take “preventive, promotive and remedial action to shield women from harmful practices and norms that deny them their full reproductive rights.”170 Further, the
SECTION II: INTERNATIONAL LEGAL ACCOUNTABILITY FOR CHILD MARRIAGE

obligation to respect, protect, and fulfill the right to health requires states parties to abstain from imposing and enforcing discriminatory practices that affect women’s health242 and to ensure the enactment and effective enforcement of laws prohibiting child marriage.243 States parties also must prevent third parties from coercing women to undergo traditional practices, guarantee “that harmful social or traditional practices do not interfere with access to pre- and post-natal care and family-planning initiatives” and launch information campaigns concerning harmful traditional practices and sexual and reproductive health.244

EARLY PREGNANCY RESULTING FROM CHILD MARRIAGE VIOLATES THE RIGHT TO HEALTH

U.N. TBMs have specifically stated that early pregnancy violates a girl’s right to health by putting her at risk of maternal mortality and morbidity255 and unsafe abortion.256 Governments have an obligation to take steps to allow girls to prevent early pregnancy257 and to prioritize the reduction of adolescent maternal mortality and morbidity258 by prohibiting child marriage259 and by developing programs that provide access to contraception, safe abortion services, and comprehensive obstetric care and counseling.260

Governments doubly jeopardize married girls’ health by failing to ensure that girls can prevent early pregnancy and that pregnant girls have access to safe and appropriate reproductive health services. The CEDAW Committee has affirmed that “it is the duty of States parties to ensure women’s right to safe motherhood and emergency obstetric services and they should allocate to these services the maximum extent of available resources.”261 The duty to ensure maternal health is recognized as comparable to a “core obligation,” meaning that states parties must take “deliberate, concrete and targeted” steps toward meeting this goal.262 The failure to ensure women’s and girls’ access to reproductive health services, including maternal health services, is recognized as violating women’s right to enjoy the right to health on an equal basis with men.263 The CEDAW Committee has affirmed that “[m]easures to eliminate discrimination against women are considered to be inappropriate if a health-care system lacks services to prevent, detect and treat illnesses specific to women.”264

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

The obligation to ensure women’s right to health without discrimination requires states parties to protect women from violence,265 including sexual violence and violence resulting from denial of reproductive rights. Girls and women who were married as children face significant coercion and violence within the family and from society relating to reproductive decision-making, including whether to have sex, use contraceptives, become pregnant, and continue a pregnancy. (See Section I, p. 16, for more information concerning reproductive health risks and violence faced by girls and women married as children.) U.N. TBMs have established that unequal power dynamics between men and women can jeopardize women’s and girls’ right to health266 by denying them the ability to refuse sex or to insist on safe sex practices.267 The CEDAW Committee has particularly expressed concern where girls are vulnerable to sexual abuse by older men, noting the risk of physical and psychological harm and unwanted and early pregnancy.268

Right to Freedom from TCIDT

The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) and ICCPR call on states parties to eliminate torture and other forms of cruel, inhuman, or degrading treatment (TCIDT).269 The right to be free from TCIDT cannot be diminished under any circumstance.270 States parties must exercise due diligence to “prevent, investigate, prosecute and punish”271 TCIDT committed by state agents and others acting in an official capacity.272 States parties also must exercise due diligence where TCIDT is committed by non-state or private actors when state authorities or others acting in an official capacity know or have reasonable grounds to believe that these acts are taking place.273

U.N. TBMs have recognized that child marriage may constitute TCIDT,274 particularly where governments fail to “set a minimum age of marriage that complies with international standards,”275 do not eradicate forms of marriage that permit sexual exploitation of children,276 or allow child marriage to occur despite laws setting the minimum age of marriage at 18.277 The failure of governments to introduce and enforce uniform laws prohibiting child marriage and to eliminate discriminatory patriarchal norms about girls’ value perpetuates girls’ powerlessness to challenge the practice of child marriage. The U.N. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SR TCIDT) has stated that

TCIDT may be found where “a society’s indifference to or even support for the subordinate status of women, together with the existence of discriminatory laws and a pattern of State failure to punish perpetrators and protect victims, create the conditions under which women may be subjected to systematic physical and mental suffering, despite their apparent freedom to resist.”278

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

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

U.N. TBMs have recognized that harmful traditional practices, including child marriage,279 violate the right to be free from TCIDT.280 Under CAT, states parties must “create adequate conditions allowing victims to report incidents of harmful traditional practices and domestic and sexual violence without fear of reprisal or stigmatization.”281 This involves training government officials, including prosecutors and the police, about the obligation to strictly apply penal code provisions concerning the criminal nature of harmful traditional practices and other forms of violence against women.282 Further, under CAT, states parties must ensure that domestic protections against discrimination against women trump customary laws that condone discriminatory practices.283 The Committee against Torture (CAT Committee) has affirmed that under the right to be free from TCIDT, states parties must enact and implement laws that mandate registration of marriage,284 criminalize child marriage,285 prosecute any offenders,286 and ensure such marriages have no legal effect.287 The CAT Committee has called for urgent legislative measures where governments allow child marriage on the basis of personal laws.288 (Continued on p. 34.)
SECTION II: INTERNATIONAL LEGAL ACCOUNTABILITY FOR CHILD MARRIAGE

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

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

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

While no SAARC convention currently specifically condemns child marriage, there have been some noteworthy developments on child marriage in SAARC statements and in advocacy work by regional organizations engaging with SAARC. For example, the SAARC Colombo Statement on Children of South Asia has recognized child marriage as a “harmful traditional practice” and resolved to “enhance and make effective child protection efforts, including eliminating child marriage.” Although SAARC has yet to define and condemn child marriage in a convention, two regional bodies have begun to engage with SAARC member states to support the development of regional actions plans that include steps to eliminate child marriage.

The first is the South Asia Initiative to End Violence Against Children, a network of U.N. agencies, non-governmental organizations, and other actors working together at the regional level in South Asia to coordinate activities aimed at addressing violence against women and children.

Regional instruments and formal legal and political bodies in Africa and Europe provide examples of further steps that can be taken by SAARC to create legal accountability for child marriage as a violation of women’s and girls’ rights. For example, the African Union’s Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa recognizes that all marriages require free and full consent, establishes that the minimum legal age of marriage is 18, and mandates compulsory marriage registration. The African Charter on the Rights and Welfare of the Child further recognizes child marriage as a “harmful social and cultural practice” and states that child marriage should be prohibited by all member states. The African Committee of Experts on the Rights and Welfare of the Child, which periodically reviews states parties’ compliance with this charter, has called for legal reform where governments permit child marriage. Similarly, the Council of Europe’s Convention on Preventing and Combating Violence against Women and Domestic Violence establishes that governments must take all necessary measures to ensure that child marriage is criminalized. Further, European Parliament Resolution 1468 recognizes child marriage as a violation of fundamental human rights, and it commits national parliaments to criminalize acts of forced marriage and to set the minimum statutory age for marriage at 18 years.

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

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

- SAARC Secretary General, Inaugural Address to the Regional Consultative Meeting to Celebrate the International Day of the Girl Child, December 2012
CHILD MARRIAGE VIOLATES THE RIGHT TO FREEDOM FROM TCIDT BY DENYING GIRLS THEIR REPRODUCTIVE RIGHTS

States parties are obligated under the right to freedom from TCIDT to ensure that women and girls are not exposed to grave risks to their reproductive health due to early and unintended pregnancy, preventable maternal mortality, or gender-based violence. The CAT Committee has expressed concern about child marriage as a cause of maternal mortality and child mortality.143 It has stated that state party failure to take steps to prevent acts that endanger women’s physical and mental health constitutes “cruel and inhuman treatment,”144 and it has recommended that governments “take whatever legal and other measures...necessary to effectively prevent acts that put women’s health at grave risk”—including providing medical treatment, strengthened contraceptive programs, and better access to information and reproductive health services.145

More specifically, the SR TCIDT has stated that the right to freedom from TCIDT is implicated where states are complicit in violations of reproductive rights or violence against pregnant women as a result of failing to protect their legal right to access reproductive health services.146 In recent jurisprudence, the HRC has recognized that state omission to ensure access to safe abortion services where legal can result in forced pregnancy and foreseeable physical and psychological harm, in violation of the right to freedom from TCIDT.147

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

Child marriage exposes girls to forced sexual initiation and increases the risk that they will experience a lifetime of physical and sexual abuse. (See Section I, p. 16, for more information on rape and child marriage.) The SR TCIDT and U.N. TMBs have also recognized that governments’ failure to eliminate violence against women and girls, including child marriage, is a violation of their right to freedom from TCIDT.148 The SR TCIDT has affirmed that sexual violence, including rape, constitutes torture where carried out with the consent or acquiescence of government officials.149 States must criminalize all forms of violence against women, including marital rape and domestic violence; the failure to do so condones these acts of violence and discriminatorily interferes with women’s right to be free from TCIDT.150 Under this right, states parties have an obligation to punish perpetrators and to provide victims with protection; access to medical, social, and legal services; temporary accommodation; compensation; and rehabilitation.151 The SR TCIDT has stated that “[s]tates should be held accountable for complicity in violence against women, whenever they create and implement discriminatory laws that may trap women in abusive circumstances.”152 In the context of child marriage, TCIDT is clearly implicated where states parties fail to ensure that laws prohibiting child marriage are enacted and enforced, that married girls have clear and realistic legal options to leave child marriages, and that marital rape is criminalized. (See Section I, p. 18, for information on legal barriers to leaving child marriages and the limited recognition of marital rape, including involving minors, in South Asia).

Rights to Life, Privacy, and Freedom from Slavery

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

RIGHT TO LIFE

Child marriage violates the right to life by exposing women and girls to reproductive health risks, including early pregnancy, and violence. (See Section I, p. 16, for more information.) Every human being has an inherent right to life.153 States parties are specifically obligated to protect individuals from arbitrary and preventable losses of life, and take steps to increase life expectancy.154 States parties are specifically obligated to ensure children’s right to life,155 to “ensure to the maximum extent possible the survival and development of the child.”156 The CRC Committee has stated that states parties must take effective measures to eliminate all acts and activities that threaten the right to life of adolescents, including traditional practices such as early marriage.157

U.N. TMBs also have recognized that the right to life is violated where women and adolescent girls experience preventable maternal mortality and morbidity, including from early pregnancy and from illegal and unsafe abortions.158 The HRC has recognized that child marriage, early pregnancy, and maternal mortality and morbidity are linked,159 and has repeatedly expressed concern under the right to life where there are high levels of adolescent pregnancy.160 States parties are obligated to help adolescent girls avoid unwanted pregnancies as well as HIV/AIDS, including by strengthening access to contraceptive information and services and sexuality education programs.161 States parties also must ensure that adolescent girls are not exposed to the life-threatening risks of illegal and unsafe abortions.162

Violence against women may also constitute a violation of the right to life. The SRVAW has recognized that the right to life may be implicated where states parties condone patterns of abuse and violence against women through pervasive nonaction.163 The HRC has also recognized that the right to life may be violated where victims of rape are denied reproductive health services, including safe abortion.164

RIGHT TO PRIVACY

Child marriage violates women’s right to privacy under ICCPR Article 17, which protects the right to freedom from arbitrary and unlawful interference with privacy, family, home and to protection of law from such interference or attacks.165 The right to privacy specifically protects women’s rights to make decisions about their private lives free from arbitrary interference by the state. Interference with individual privacy may be considered “unlawful” if it is undertaken on the basis of a national law that is in violation of ICCPR,166 and may be considered “arbitrary” if it is based on a lawful interference that is not reasonable and not in conformance with ICCPR.167

The persistence of child marriage reflects the failure of states parties to ensure that discriminatory patriarchal norms do not result in women being deprived of their human rights either by modifying laws that permit child marriage or by enforcing laws.
prohibiting child marriage. (See Section I, p. 17, for more information on the persistence of child marriage.) The HRC has stated that states parties are obligated under Article 17 to ensure that the legal age of marriage meets internationally recognized standards.315 To eradicate forms of marriage that allow for the sexual exploitation of children,316 and to abolish discriminatory provisions of criminal codes and personal laws relating to marriage, including those on consent.317 The HRC has specifically stated that Article 17 is implicated where laws permit a lower age of marriage for girls than boys.318

The HRC has recognized that women’s equal right to enjoy the right to privacy may be violated where there is state interference with women’s reproductive decisions or where a state fails to protect women from interference in such decisions by private actors.319 States parties are required to ensure women’s right to autonomy and privacy in the provision of health care services.320

**RIGHT TO FREEDOM FROM SLAVERY**

Child marriage reflects the commodification of women and girls, without regard to their rights as individuals, best interests, and legal capacity to provide consent to marriage. (See Section I, p. 20, for more information on child marriage and commodification.) Under the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (Supplementary Convention on Slavery), all forms of forced marriage are defined as practices similar to slavery.321 Article 1 of the Supplementary Convention on Slavery prohibits any institution where a woman, without the right to refuse, is given in marriage in consideration for money or in kind.322 In her 2012 Thematic Report on Servile Marriage, the Special Rapporteur on Contemporary Forms of Slavery (SR on Slavery) has affirmed that children cannot provide informed consent to marriage, and as such, all child marriages are considered to be forced and to fall within the slavery-like practices condemned in the Supplementary Convention on Slavery.323 The SR on Slavery has recognized child marriage as a form of “servile marriage” that gives rise to domestic servitude and marital rape324 and has stated that child marriage perpetuates the view of women and girls as commodities to be used to solidify family links and to preserve honor, as well as a “financial asset” to improve a family’s economic status.325 This view of women and girls as property is reflected in laws and practices that permit them to be married without their consent.326 Under international law, all forms of slavery, including servile marriages, are considered crimes against humanity and must be eliminated without exception.327 States parties also must ensure married girls’ right to education.328 U.N. TMBs have expressed concern where states parties permit child marriage due to its negative impact on children’s enjoyment of the right to education.329 The CRC Committee has recognized that girls who are married as children are “often obliged to leave school and are marginalized from social activities.”330 The CEDAW Committee has emphasized that child marriage’s impact on women’s health and ability to pursue education leads to restrictions of women’s economic autonomy.331 The CEDAW Committee has recognized economic dependence as a critical factor that prevents women from leaving violent relationships.332 U.N. TMBs have urged states parties to effectively enforce legal bans on child marriage to prevent girls from leaving school under the right to education333 and commended the adoption of laws prohibiting the withdrawal of girls from school because of marriage.334

**Rights to Education, Work, and Economic Autonomy**

The interrelated rights to education, employment, and economic freedom are each enshrined in international human rights treaties.335 Under CEDAW, states parties are obligated to ensure that women are able to enjoy these rights on an equal basis with men.336 U.N. TMBs have expressed concern where states parties permit child marriage due to its negative impact on children’s enjoyment of the right to education.337 The CRC Committee has recognized that girls who are married as children are “often obliged to leave school and are marginalized from social activities.”338 The CEDAW Committee has emphasized that child marriage’s impact on women’s health and ability to pursue education leads to restrictions of women’s economic autonomy.339 The CEDAW Committee has recognized economic dependence as a critical factor that prevents women from leaving violent relationships.340 U.N. TMBs have urged states parties to effectively enforce legal bans on child marriage to prevent girls from leaving school under the right to education341 and commended the adoption of laws prohibiting the withdrawal of girls from school because of marriage.342

States parties also must ensure married girls’ right to education.343 U.N. TMBs have emphasized that states parties should take steps to retain girls in school, and must ensure that early pregnancy does not interfere with girls’ ability to exercise their right to education.344 They have specifically called on states parties to strengthen and adopt re-entry policies enabling girls and young women, including specifically pregnant girls and young mothers, to return to school.345

**Obligation to Provide Legal Remedies for Child Marriage**

The failure of a state to establish accountability mechanisms and procedures for seeking legal redress for child marriage and to remove barriers to their accessibility violates the obligation to guarantee legal remedies for violations of human rights.346 The HRC has emphasized the obligation to ensure “accessible and effective remedies” for human rights violations and to take into account “the special vulnerability of certain categories of person.”347 Importantly, it has also noted that “a failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant” and that “cessation of an ongoing violation is an essential element of the right to an effective remedy.”348 In discussing the obligation to provide remedies where the right to nondiscrimination is violated, the CEDAW Committee has stated that remedies established under human rights law include “different forms of reparation, such as monetary compensation, restitution, rehabilitation and reinstatement; measures of satisfaction, such as public apologies, public memorials and guarantees of non-repetition; changes in relevant laws and practices; and bringing to justice the perpetrators of violations of human rights of women.”349

Similarly, the CRC Committee has recognized that, “[c]hildren’s special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights,” and emphasized that states parties must ensure effective, child-sensitive procedures; accessibility to complaints procedures and courts; and appropriate reparation and measures to promote their physical and psychological recovery where rights are found to be breached.350
Rahar Maya Biswokarma, now 50, was married at 10—well before she realized what marriage really means to a girl. By the age of just 15, she had already had her first baby. A few months later, probably as a result of having to deliver the baby at a very early age, she suffered from uterine prolapse, which subjected her to a combination of pain, humiliation, and frustration for more than three decades.

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

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

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

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

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

Rahar Maya shared her problem with her mother, who asked her not to worry about it. But the problem, instead of dying down, became more intense, causing pain and embarrassment to her. “My husband was, of course, fully aware of the problem,” says she. “But he was indifferent to my suffering. I lived on with this problem until recently.” Three years ago, Bhagawato Chaudhary, an Auxiliary Nurse Midwife (ANM), took Rahar Maya to a health camp. She underwent a surgery and finally got rid of the problem. “It felt like being born again,” says she. “I no longer feel pain and embarrassment.” Two years after her first child (was born), Rahar Maya gave birth to yet another baby who could not survive a measles outbreak. “I was unable to look after two children at the same time,” says she. “In retrospect, I think I could’ve saved my second child, too, if I was mature by then.”

Examples of Human Rights Rights of Children to Special Protection and to Have their Best Interests Protected

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

- Rights of Children to Special Protection and to Have their Best Interests Protected:

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

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

RIGHT TO HEALTH:

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

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

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

Kalpana, 36, breastfeeds one of her twin children while her mother-in-law breastfeeds the other in their home in Kagati Village, Kathmandu Valley, Nepal on Feb. 3, 2007. Kalpana had her babies when she was just seven months pregnant, and was working in the fields until she went into labor. After three days of labor the children were born severely underweight and their survival was doubtful.

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

Children’s Rights in South Asian Constitutional Law

The persistence of child marriage in South Asia violates constitutional guarantees protecting children’s rights throughout the region. Reflecting the vulnerable status of children, the constitutions of Bangladesh, India, Nepal, Pakistan, and Sri Lanka allow the government to make “special provisions” to protect children.347 Notably, Nepal’s interim Constitution establishes the right of the child as a fundamental right in Article 22, stating that every child has the right to be nurtured, to receive basic health care, and to have social security.348 Nepal’s interim Constitution further guarantees children the right to be free from physical, mental, or other forms of exploitation.349 The Afghan Constitution establishes that the government must take necessary measures to ensure the health and upbringing of children within the fundamental rights provisions relating to families,350 and it prohibits forced labor of children.348 Together, these constitutional guarantees unequivocally recognize children as rights-holders in South Asia and underscore the special obligation of South Asian governments to ensure children’s fundamental rights. Further, in India, the Directive Principles of State Policy also call on the government to direct its policy toward securing that the “tender age of children are not abused[,] that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.”351 Courts have played an essential role in articulating the scope of protection afforded to children in South Asia. For example, in a case concerning the traditional practice of kumari, where girls are dedicated to temples for a period of time to serve as “living goddesses,” the Nepalese Supreme Court has recognized the government’s constitutional obligation to protect children from physical and mental violence, as well as from any other type of violence.352 The Nepalese Supreme Court has stated that the government is legally obligated to take “economic, social, administrative, legal and other appropriate measures for the effective enforcement of the rights granted to children by the CRC and other international treaties without any discrimination.”353 Further, the Nepalese Supreme Court has stated that children have been granted certain rights to further the development of their personalities, including the right to free education, to medical treatment, to residence, to stay with and not be separated from one’s family, to opinion and expression, to freedom of movement, and to recreation.354 Finally, the Nepalese Supreme Court has affirmed the best interests of the child standard set forth in the CRC, stating that it is universally recognized that the best interests of the child be given primary consideration in all actions undertaken by anyone concerning children.355

The High Court Division (HCD) of the Supreme Court of Bangladesh also has affirmed the best interests of the child standard in a 2009 case appealing an order mandating that the state custody of a 7-year-old girl who was born to a minor. In this case, the court expressed concern where a child is separated from her mother against her will, stating that such an occurrence “can be nothing other than cruel and inhuman treatment” in violation of the CRC and the Bangladesh Constitution.356 The HCD of the Supreme Court of Bangladesh established that a child’s view must be considered by courts in accordance with CRC Article 12.357 Further, the decision specifically established that the government must “ensure that the definition of ‘child’ is uniformly fixed in all statutes as anyone below the age of 18 years (Art.L CRC).”358 The decision also ordered the government to implement several measures to ensure legal remedies for child victims of violence, including legal aid for children to ensure representation, designated “places of safety” for children to go at the district level, and capacity-building of local health clinics to conduct medical examinations of children.359

Select Decisions by South Asian Courts on Child Marriage

Despite the profound violation of constitutional protections caused by child marriage and its extremely high incidence in the region, there is limited recognition of child marriage as a constitutional rights issue by courts in the region. (See “Fundamental Rights and Principles of State Policy Underlying the Right to Be Free from Child Marriage in South Asia,” p. 44, for more information.) It is difficult to determine whether this is due to too few cases being filed or if it reflects judicial attitudes in the region. While public interest litigation (PIL) has been recognized as a useful tool in seeking accountability for gender-based discrimination,360 including reproductive rights violations,361 the South Asia, there have yet to be many public interest cases on child marriage decided by supreme and high courts. (See “Fundamental Rights and Principles of State Policy Underlying the Right to Be Free from Child Marriage in South Asia,” p. 44, for more information.) Even with regard to individual writ petitions, the courts are rarely utilized as a means for girls to prevent or escape child marriages.362 Further, even when cases are brought, decisions are issued without discussion of the fundamental rights implications for women and girls. However, in the past ten years, a few cases in South Asia have discussed child marriage as a violation of women’s and girls’ fundamental and human rights. (See “Judicial Recognition of Women’s Right to Freedom from Forced Marriage,” p. 42, for an example of jurisprudence recognizing women’s right to consent to marriage.) This section will present four such cases from courts in India and Nepal, which reveal the judicial mindset concerning child marriage and discuss various measures including systemic remedies needed to eliminate the practice.

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

In the 2006 case of Sapana Pradhan Malla for FwLD and Others v. Nepal Government, the Office of the Prime Minister and the Council of Ministers (continued on p. 46)
**SECTION III: CONSTITUTIONAL NORMS AND JURISPRUDENCE IN SOUTH ASIA**

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

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

- **Right to equality and nondiscrimination:** The right to equality and nondiscrimination on the basis of sex are recognized in the constitutions of Afghanistan, Bangladesh, India, Nepal, Pakistan, and Sri Lanka. The constitutions of Bangladesh, India, Nepal, Pakistan, and Sri Lanka further allow the government to make "special provision[s]" to protect women and children. Nepal’s Interim Constitution recognizes additional fundamental rights for women in an article that specifically guarantees women’s rights to nondiscrimination, "to reproductive health and other reproductive rights," and to be free from "physical, mental or any other kind of violence." Bangladesh’s and Pakistan’s constitutions also both commit to ensuring women’s equal participation in "all spheres of national life" in their respective sections outlining Directive Principles of State Policy. Jurisprudence in South Asia has recognized that fundamental rights, particularly the right to equality, cannot be undermined as a result of religion, custom, or tradition. (See Section II, p. 27, for more information on this principle in international law.) Where personal laws or customary practices violate women’s or children’s rights, courts in India, Nepal, and Pakistan have issued judgments interpreting or requiring modification of such laws or practices to be consistent with women’s fundamental rights. (See Section I, p. 17, and p. 20-21, for more information on child marriage and gender inequality and p. 13 for more information on personal laws that condone child marriage.)

- **Right to dignity:** The constitutions of Afghanistan and Pakistan specifically recognize the right to dignity. Nepal’s Interim Constitution recognizes the right to live with dignity, while the Sri Lankan Constitution guarantees the dignity of its people in its preamble. The Supreme Court of India has ruled that it is the primary duty of the state to ensure the protection of human dignity through suitable legislation and by the creation of adequate mechanisms. (See Section II, p. 15 for more information.)

- **Rights to life and health:** The constitutions of Afghanistan, Bangladesh, India, Nepal, and Pakistan each recognize the fundamental right to life. Although Sri Lanka’s Constitution does not enumerate a right to life, the Supreme Court of India has ruled that it is the primary duty of the state to ensure the protection of human dignity through suitable legislation and by the creation of adequate mechanisms. (See Section II, p. 15 for more information.)

- **Right to education:** Education is recognized as a fundamental right in Afghanistan, India, Nepal, and Pakistan, and established as an objective under the Directive Principles of State Policy in Bangladesh and Sri Lanka. The Afghanistan Constitution specifically obligates the government to "devise and implement effective programs to create and foster balanced education for women." The Bangladesh Supreme Court has specifically linked denial of education in violation of the right to education to child marriage, stating that “lack of education of the children creates a vicious cycle of poverty. The girls who are deprived of education become targets of early marriage, and as illiterate mothers, beget illiterate children which again stokes the poverty cycle.”

- **Right to freedom from slavery and exploitation:** Constitutions throughout South Asia prohibit slavery, forced labor, and exploitation. The Afghanistan Constitution prohibits forced labor, including that involving children. The Nepalese Interim Constitution further recognizes the right to be free from exploitation in the name of custom, tradition, and practice. (See Section II, p. 36, for more information on child marriage and the right to freedom from slavery.)

In Nepal, the Interim Constitution explicitly recognizes citizens’ right to receive basic health care free of cost as a fundamental right. Health is also protected in the declarations of principles of state policy in certain constitutions in the region, including in provisions concerning protection of citizens’ right to health and the equitable distribution of economic resources to ensure health, and the right to medical relief. Both Nepal’s Interim Constitution as well as high court cases in India have recognized the fundamental right to reproductive health. (See Section III, p. 49, for more information on regional reproductive rights jurisprudence.)
Ministers and Others, petitioners brought a case challenging discriminatory legal standards established in Nepal’s Marriage Registration Act as well as poor implementation of legislation prohibiting child marriage in Nepal.405 Prior to the decision in this case, the 1971 Marriage Registration Act permitted marriages to be solemnized for men who were 22 years old and for women who were 18 years old.406 Petitioners alleged that these provisions were discriminatory on the basis of sex, and violated the right to equality guaranteed by the 1990 Nepal Constitution, which was then in force, and international human rights instruments.407 Petitioners also argued that although the Muluki Ain establishes the minimum age of marriage as 18 years with parental consent and 21 years of age without parental consent, child marriage is rampant practiced without reproofs.408 The petition stated that the permissiveness of the practice reflects the government’s view of child marriage as “a personal issue”409 and violates the rights of the child.410 Citing the Universal Declaration of Human Rights, ICPR, ICECSR, CRC, and CEDAW, petitioners argued that the government is legally bound to urgently address child marriage in Nepal.411
The government’s response defended the discriminatory age provisions of the Marriage Registration Act, claiming these were based on the assumption that women mature into adults earlier in comparison to men.412 Further, the government alleged that setting an age of marriage does not compel individuals to enter into marriage or produce children, but is a discretionary provision, and thereby cannot be considered to create discrimination or neglect of women’s health.413
The Supreme Court of Nepal expressed concern at the continuing prevalence of child marriage and noted that it was critically important for the government to pay attention to this issue.414 The Court ruled in favor of the petitioners and interpreted the provisions of legislation prohibiting child marriage in Nepal.415 The Court dismissed the government’s initial argument, stating that in the absence of solid evidence, one cannot consider the assumption that women mature earlier than men to be a scientific fact.416 The ruling rejected the government’s argument that such provisions were not discriminatory because they did not compel marriage, stating that “it is difficult to accept this argument in view of the fact that ours is a less developed country where the female literacy rate is lower than the male literacy rate and there is widespread gender discrimination in society.”417 The Court stated that child marriage is a serious social problem that has a serious effect on women’s and children’s health due to early child bearing which is detrimental to the health of women and children.418
The Supreme Court of Nepal held that the right to personal liberty as enshrined in the Bangladesh Constitution1 is violated by the law that permits marriage at the age of 18 years without parental consent.419 The Court stated that child marriage is impermissible under the right to personal liberty as enshrined in the Bangladesh Constitution1. The Court held that the right to personal liberty guarantees a woman the right to choose whom she marries free of coercion, violence, and discrimination.420 The Court stated that the right to personal liberty guarantees a woman the right to choose whom she marries free of coercion, violence, and discrimination.

ASSOCIATION FOR SOCIAL JUSTICE AND RESEARCH V. UNION OF INDIA (DELHI HIGH COURT, 2010)
In May 2010, the Delhi High Court heard the case of Association for Social Justice and Research (ASJR) v. Union of India and Others, which involved a habeas corpus petition421 by a non-governmental organization (NGO) to trace an underage girl who was reported to have been married to a 40-year-old man.422 Although it did not decide the case on fundamental rights issues, the Delhi High Court division bench decision in the ASJR case clearly recognizes child marriage as a violation of girls’ rights and discusses in depth the continuum of harms experienced as a result of this practice. The Court stated that “child marriage is a violation of human rights, compromising the development of girls and often resulting in early pregnancy and social isolation, with little education and poor vocational training reinforcing the gendered nature of poverty.”423 The Court emphasized that child marriage disproportionately affects girls, and recognized that girls who are married and have children undergo “face constrained decision making and reduced life choices”424 as a result of pressure to perform heavy amounts of domestic work as well as demonstrate fertility and raise children while they are still children themselves.425 The ASJR decision found that “child marriage perpetuates an unrelenting cycle of gender inequality, sickness and poverty.”426 The Court affirmed that child marriage leaves girls more vulnerable to health risks resulting from early sexual initiation and child-bearing, including HIV, and leads to high maternal mortality rates and pregnancy-related complications such as heavy bleeding, infection, anemia, eclampsia, obstructed labor, and obstructed fistula.427 The Court also emphasized that early marriage “always deprives girls of their education or meaningful work, which contributes to persistent poverty.”428
Citing an NGO study, the Court stated that the low education, poor health, and lack of agency and personal autonomy experienced by girls married under age “are linked with gender inequities and biases for the majority of young girls—their socialization, which grooms them to be mothers and submissive wives, limits their development to only reproductive roles.”429 The Court particularly noted that lack of education is linked to limited knowledge concerning sexual relations and reproduction, and stated that this lack of education along with cultural silence concerning reproductive and sexual health denies girls the ability to make informed decisions about sexual relations, planning a family, and their own health.430 The Court expressed concern that women who marry early have a higher risk of suffering abuse and violence, and to believe that such violence—including physical abuse, psychological attacks, and sexual abuse—is acceptable.431 Further, the Court recognized that girls who enter families as child brides often are treated as “domestic slaves” by their in-laws.432 Finally, the Court emphasized that child marriage is linked to wife abandonment, divorce, separation, and increased risk of widowhood—all of which leave women vulnerable to additional discrimination in India, where divorced, “abandoned,” or widowed women are often ostracized or denied property rights.433

COURT ON ITS OWN MOTION (LAJJA DEVI) V. STATE (GNCT OF DELHI) AND OTHERS (DELHI HIGH COURT, 2012)
The Delhi High Court affirmed the ASJR decision in a full bench decision in the 2012 case Court on its own motion (Lajja Devi) v. State (GNCT of Delhi) and Others, which concerned the case of a 14-year-old Hindu girl who left home and got married without her parents’ consent. Quoting the portions of the ASJR case detailing the severe risks of maternal mortality and morbidity as well as physical and sexual violence resulting from child marriage, the Delhi High Court again emphasized that child marriage is a
violation of human rights.\textsuperscript{418} including the “right to lead a life of freedom and dignity.”\textsuperscript{419} The Court particularly expressed concern as the practice involves young girls who lack status, power, and maturity, and leads to exposure to domestic violence, sexual abuse, and social isolation.\textsuperscript{420}

The Delhi High Court emphasized that the Indian Penal Code, which at that time criminalized sex with a girl under 16 outside of marriage and under 15 within marriage, legitimized child marriage by “keeping a lesser age of consent for marital intercourse.”\textsuperscript{421} The Court stated that “consent of a girl or boy below the age of 16 years in respect of cases (a) of marriage and (b) of separation of marriage is an anomaly and...will act as a cover up by those who are economically and/or socially powerful to pulverize the muted meek into submission.”\textsuperscript{422} The Court also noted that while it had not been requested to address the validity of India’s Prohibition of Child Marriage Act (PCMA) and thus could not rule on weaknesses in the law, in its view three significant gaps permitted the practice to continue: (1) child marriages are voidable, not void, under the act; (2) the act does not mention whether it supersedes personal laws; and (3) the act itself does not require registration of marriages.\textsuperscript{423}

In 2007, Nepal became the first country in the region to formally recognize reproductive rights and violence to be free from gender-based violence. The constitutional norms and cases discussed in this section affirm that governments must take measures to protect women and girls from violations of these rights, including by addressing the root causes of these violations. Where government failure to eliminate child marriage gives rise to denial of women’s and girls’ reproductive rights or gender-based violence, courts may hold governments accountable, by critically examining the systemic causes of child marriage and they may order remedies aimed at providing redress to those who have already suffered harm and preventing such violations in the future.

**Constitutional Norms and Jurisprudence on Reproductive Rights and Violence against Women**

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

**REPRODUCTIVE RIGHTS**

Nepal has led South Asia in recognition of reproductive rights as fundamental rights. In 2007, Nepal became the first country in the region to formally recognize reproductive rights in its national constitution as a fundamental right.\textsuperscript{424} This right has been interpreted by the Supreme Court of Nepal as “an integral part of woman’s human rights,” which include “the right to health, the right to reproductive health and family planning, the right to marriage freely or found a family,…the right to decide to give birth and to space births, within that the right to abortion in accordance with the law, the right to privacy, the right to nondiscrimination, the right against torture, cruel, inhuman or degrading treatment or punishment, the right to freedom from sexual violence.”\textsuperscript{425} While the Indian Constitution does not have a similar legal provision specifically guaranteeing reproductive rights as fundamental rights, high courts in India have recognized reproductive rights as protected under the right to life,\textsuperscript{426} stating...
that the "inability of women to survive pregnancy and child birth violates her [sic] fundamental right to live."427 Recent jurisprudence from these courts specifically has recognized women’s rights to be free from maternal mortality and morbidity, unsafe abortion, and unwanted pregnancies, as well as to exercise reproductive self-determination.

Maternal Mortality and Morbidity: In the 2008 case of Prakashmani Sharma and Others v. Government of Nepal and Others, the Supreme Court of Nepal ruled that the constitutionally recognized fundamental right to reproductive health and other reproductive rights includes the obligation to take steps to prevent uterine prolapse,428 which is a form of maternal morbidity. Uterine prolapse is a debilitating pregnancy-related injury that is typically suffered by older women as a result of age, but is experienced by a disproportionate number of younger women in Nepal due to poor reproductive health care as well as early and frequent pregnancies.429 The Supreme Court of Nepal found that the government’s failure to adequately protect women’s reproductive rights guaranteed as fundamental rights by the Interim Constitution had contributed to the high incidence of uterine prolapse.430 In 2011, the Delhi High Court found that reproductive rights are part of the "inalienable survival rights" implicitly protected under the fundamental right to life.431 The decision found that "no woman, more so a pregnant woman, should be denied the facility of treatment at any stage irrespective of her social and economic background."432 In the case of Sandesh Bansal v. Union of India, decided in 2012, the Madhya Pradesh High Court ruled that women’s right to survive pregnancy and childbirth arises under the right to life and is violated where maternal deaths occur, including when they occur due to inadequate health facilities and staffing.433

Abortion and Reproductive Self-Determination: In 2009, the Supreme Court of Nepal recognized in the case of Lakshmi v. the Government of Nepal that reproductive rights as guaranteed in Article 20(2) include the right to reproductive self-determination, and specifically access to abortion.434 The case challenged the government’s failure to ensure affordable and accessible safe abortion services for women in Nepal.435 The Lakshmi decision recognized that, "a society which recognizes the right to abortion enables a woman to enjoy a life free from unwanted pregnancy, to live her life according to her own free will, to ensure her livelihood, to free her from having to take on an inappropriate burden and to enable her to exercise her right to self-determination."436 Further, the Supreme Court of Nepal recognized that "a forced pregnancy is a grave conspiracy against a woman’s freedom."437 In the Lakshmi case, the Supreme Court of Nepal ruled that the right to create one’s family vests in women as the owners of their own bodies, and includes the right to decide whether and when to bear children without interference.438 Similarly, the Punjab and Haryana High Court in India stated in a 2011 case where a husband filed suit against a doctor who performed an abortion at the request of his wife without his consent, "[i]t is a personal right of a woman to give birth to a child... No body (sic) can interfere in the personal decision of the wife to carry on or abort her pregnancy... woman is not a machine in which raw material is put and a finished product comes out. She should be mentally prepared to conceive, continue the same and give birth to a child. The unwanted pregnancy would naturally affect the mental health of the pregnant women [sic]."439

access to abortion without requirements of judicial authorization.440 The decision stated, “We cannot force a victim of violent rape/forced sex to give birth to a child of a rapist. The anguish and the humiliation which the petitioner is suffering daily, will certainly cause a grave injury to her mental health.”441

VIOLENCE AGAINST WOMEN

Supreme courts in South Asia have recognized that violence against women, including domestic violence and rape both within and outside of marriage, results in violations of women’s rights, including the right to equality.442 In the 2012 case of Medha Kotwal Lele v. Union of India, the Supreme Court of India affirmed the following:

As (the) largest democracy in the world, we have to combat violence against women. We are of the considered view that the existing laws, if necessary, be revised and appropriate new laws be enacted by Parliament and the State Legislatures to protect women from any form of indecency, indignity and disrespect at all places (in their homes as well as outside), prevent all forms of violence—domestic violence, sexual assault, sexual harassment at the workplace, etc.443

Similarly, the Supreme Court of Bangladesh has stated that respect for gender equality as guaranteed in the constitution requires the government to prevent sexual abuse and harassment of women.444

Rape: The Supreme Court of India has specifically recognized that rape is a violation of women’s fundamental rights. In Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty, the Supreme Court of India recognized that “[r]ape is thus not only a crime not only against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis...Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim’s most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21.445

Marital Rape: The Supreme Court of Nepal recognized marital rape as a crime in the case of Meera Dhungana v. FWLD v. Government of Nepal. The Court stated that the law cannot deny women rights on the basis of their marital status and held that it would be discriminatory to interpret that an act committed against a woman is an offence, but that no offence occurs if the woman is one’s own wife.446 The Court stated that regardless of marital status, “[s]exual intercourse with use of force and without consent is regarded as the offence of rape”447 and that “a marriage does not mean women turn into slaves.”448 The Court affirmed that “to forcibly compel a woman to use a part of her body against her will is a serious violation of her right to live with dignity (and) right to self-determination and it is a grave attack on her human rights.”449
THE ROLE OF NHRIS IN PROMOTING ACCOUNTABILITY FOR CHILD MARRIAGE

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

- Intervene in cases of child marriage: The Afghanistan Independent Human Rights Commission (AIHRC), along with local police, a district governor, and district judge were able to successfully stop the marriage of two girls, aged 14 and 16, when their mother reached out to the AIHRC about a wedding ceremony their uncle arranged against their wishes.7

- Order investigations to identify the scope of child marriage and gaps in enforcement: In 2013, in response to evidence showing “tremendous” rates of child marriage in a district in the state of Uttar Pradesh, the National Human Rights Commission (NHRC) of India directed district authorities to investigate the incidence of child marriage and present information concerning efforts to prevent child marriage.8

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Judicial Perspectives on Child Marriage and the Continuum of Violations

The above cases provide significant insight into judicial perspectives on child marriage in South Asia, and reveal the potential for advocates to utilize the courts to seek recognition of elimination of child marriage as a fundamental rights obligation of governments in the region. The child marriage-related decisions featured above indicate that courts in the region have begun to recognize child marriage as an issue of women’s and girls’ equality and a form of gender discrimination.109 While only the FWLD case specifically invoked the right to equality, each of the child marriage decisions reflects an understanding that elimination of this practice is crucial to realization of women’s and girls’ equality.110 Further, the decisions on reproductive rights and violence against women reflect judicial recognition that upholding women’s fundamental rights includes introducing and strengthening laws, policies, and programs concerning maternal health, safe abortion, marital rape, and sexual violence generally. Human rights obligations recognized in international law have informed the premise of many of these decisions, including in underscoring the severity of the harm suffered by girls and the nature of the obligations of governments.111

Specifically, the child marriage cases reveal that inconsistencies in national laws significantly undermine the enforcement of legislation prohibiting child marriage by creating ambiguity concerning the parameters of girls’ rights. Although there has yet to be a comprehensive ruling by any court in the region recognizing that girls’ rights relating to marriage cannot be violated by religiously based personal laws, decisions such as T. Sivakumar and Laja Devi show the role courts can play in clarifying girls’ rights in plural legal regimes.112 The T. Sivakumar case, which is only decided in the context of Hindu law, also illustrates where courts have the potential to go further to protect girls from child marriage, particularly in plural legal regimes. T. Sivakumar and Smt. Seema also specifically demonstrate the role of national human rights institutions (NHRIs) in informing judicial efforts to resolve ambiguities concerning the interplay between child marriage legislation and personal laws.113 (See “The Role of NHRIs in Promoting Accountability for Child Marriage,” p. 52, for more information on nonjudicial human rights bodies.)

Further, these child marriage cases reflect the willingness of courts in the region to address the broader legal issues that are undermining the elimination of child marriage. Even where child marriage cases arise as individual writ petitions, rather than as PILs, courts have taken the opportunity to speak on the underlying legal issues that are impeding implementation of legislation prohibiting child marriage. For example, in the Laja Devi case, although the Delhi High Court had not specifically been asked to review the PCMA, the judges took the opportunity to identify legal loopholes in legislation prohibiting child marriage.114 In T. Sivakumar, the court went further and articulated nonlegal remedies to ensure awareness and implementation of the law.115 Similarly, in the Smt. Seema case, which raised issues relating to registration of marriage in India, the Supreme Court of India also went beyond the individual case to order larger-scale reform required to ensure women’s equality.116 Such statements appear to reflect the openness of courts to hearing cases seeking clarification and modification of existing legislation.

Finally, these decisions highlight that a court’s understanding of the continuum of violations experienced by women and girls as a result of child marriage is integral to judicial recognition of child marriage as a fundamental and human rights issue. In each of these rulings, the court has placed significant weight on the negative reproductive health outcomes and increased risk of violence experienced by girls and women who were married as children.117 These decisions link child marriage to coerced sex and reproduction, and recognize that these aspects of child marriage result in the perpetuation of submissive and stereotyped roles of women.118 The reproductive rights and violence against women-related cases discussed demonstrate judicial recognition that governments are constitutionally obligated to protect women from these harms. Further, these cases indicate that courts may be open to petitions seeking recognition of the obligation to protect women and girls who have already been married as children from the continuum of violations that result from the practice.

(Cont’d)

- Strengthen laws by proposing human rights-based legislation and intervening in judicial cases concerning child marriage: India’s National Commission for Women (NCW) has drawn on human rights standards to identify and promote law reform related to eliminating child marriage, including through policy papers calling for child marriages to be considered legally void. The NCW has also proposed legislation aimed at eliminating child marriage, including a bill to make registration of marriages compulsory. Further, the NCW has also played a key role in shaping jurisprudence on child marriage, both as a result of the court considering recommendations made by the NCW in policy papers on child marriage and by formally intervening in marriage-related cases. As a result of these interventions, the NCW has been able to raise issues concerning the lack of clarity in India’s child marriage laws to the Supreme Court119 and has also urged the Supreme Court to order the government to implement compulsory marriage registration throughout the country.120

- Convene meetings to identify and promote solutions for the elimination of child marriage: The NHRC of Bangladesh is actively developing strategies and organizing awareness-raising campaigns to stop child marriage by highlighting its harsh consequences on the physical and emotional development of children,121 while also making plans to review the Special Marriage Act in order to legally prohibit child marriage.122
SECTION IV: CONCLUSION

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

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

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

Photography: Stephanie Sinclair/VII/Tomorrownow.org
SECTION V: RECOMMENDATIONS FOR ACTION

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

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

National legislative bodies:

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

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

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

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

National executive bodies, including governmental ministries and law commissions:

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

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

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

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

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

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

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

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

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

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

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

48 Gordon Brown, U.N. Special Envoy for Global Education, supra note 1, at 1, 11.


50 See, e.g., the Christian Marriage Act, 1872, at 13 (Pak.), the Hindu Marriage Act (India), supra note 13, art. 11(2) (a); the Special Marriage Act (Bangl.), supra note 13, part 4, ch. 17, no. 2 (9) (either a husband or wife who was married before 18 can have the marriage declared void after he or she reach 18 if there are no offspring).

51 Hindu Marriage Act (India), supra note 13, at 13, 13(3) (a) (prohibits marriage before the age of 18).


Maulana Anwar (Mal.), supra note 13, at 1, 4, 16; Pri. Pra. Cox. Coex, at 375-376, as modified by the Protection of Women from Sexual Harassment Act, No. 26 of 2006, art. 11 (Bangl.).

Wis. Laws 2008, B.S. S.C. (Nea), supra note 51, para. 7 (Afg.).

Shiite Personal Status Law (Afg.), supra note 28, para. 27; Marriage and Divorce Act (Sri Lanka), supra note 23, at 126 (Sri Lanka).

See, e.g., Muslim Marriage and Divorce (Sri Lanka), supra note 25, at 126 (Sri Lanka). See also, Marriage Registration Ordinance (Sri Lanka), supra note 23, at 126 (Sri Lanka).

District Court, Muzaffargarh, PLD 2013 Lahore (Mahmood Kot District, Muzaffargarh, PLD 2013 Lahore)

 dispensaries are optional under general law in Sri Lanka. Any dispensary that is otherwise compulsory, affects marriage law.


Maulana Anwar (Mal.), supra note 13, part 14, ch. 12, to 126 (Bangl.).

IDPM (India), supra note 13, at ch. 14, no. 126 (India).

The Births and Deaths Registration Act, No. 29 of 2004, (Sri Lanka), supra note 25, art. 23, at 126 (Sri Lanka). See also, Marriage Registration Ordinance (Sri Lanka), supra note 23, at 126 (Sri Lanka).

Special Marriage Act (Bangl.), supra note 18, at 126 (Bangl.).

Special Marriage Act (Bangl.), supra note 18, at 126 (Bangl.).

Maulana Anwar (Mal.), supra note 13, part 4, ch. 7, to 126 (Bangl.).

Special Marriage Act (Bangl.), supra note 18, at 126 (Bangl.).

Special Marriage Act (Bangl.), supra note 18, at 126 (Bangl.).

Maulana Anwar (Mal.), supra note 13, part 4, ch. 7, to 126 (Bangl.).

Maulana Anwar (Mal.), supra note 13, part 4, ch. 7, to 126 (Bangl.).

Special Marriage Act (Bangl.), supra note 18, at 126 (Bangl.).

Special Marriage Act (Bangl.), supra note 18, at 126 (Bangl.).

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Special Marriage Act (Bangl.), supra note 18, at 126 (Bangl.).

Special Marriage Act (Bangl.), supra note 18, at 126 (Bangl.).

Special Marriage Act (Bangl.), supra note 18, at 126 (Bangl.).

Muslim Family Laws Ordinance (Pak.), supra note 28, art. 16; 11 (Pak.).

Special Marriage Act (Bangl.), supra note 18, at 126 (Bangl.).

Special Marriage Act (Bangl.), supra note 18, at 126 (Bangl.).

Special Marriage Act (Bangl.), supra note 18, at 126 (Bangl.).

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Special Marriage Act (Bangl.), supra note 18, at 126 (Bangl.).

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Special Marriage Act (Bangl.), supra note 18, at 126 (Bangl.).

113 CEDAW Committee, Gen. Recommendation No. 21, supra note 10, at 3; 4. See also Henni Pohji, Marriage in Indonesia, supra note 35, para. 4; 15.

114 See, e.g., Henni Pohji, Marriage in Indonesia, supra note 35, para. 4; 15. See also FWLD note 55, CEDAW Law on Marriage, supra note 80, at 15-11.

115 CEDAW Committee, Gen. Recommendation No. 21, supra note 10, at 3; 4. See also Henni Pohji, Marriage in Indonesia, supra note 35, para. 4; 15. See also FWLD note 55, CEDAW Law on Marriage, supra note 80, at 15-11.

116 See, e.g., Henni Pohji, Marriage in Indonesia, supra note 35, para. 4; 15. See also FWLD note 55, CEDAW Law on Marriage, supra note 80, at 15-11.

117 See, e.g., Henni Pohji, Marriage in Indonesia, supra note 35, para. 4; 15. See also FWLD note 55, CEDAW Law on Marriage, supra note 80, at 15-11.

118 See, e.g., Henni Pohji, Marriage in Indonesia, supra note 35, para. 4; 15. See also FWLD note 55, CEDAW Law on Marriage, supra note 80, at 15-11.

119 See, e.g., Henni Pohji, Marriage in Indonesia, supra note 35, para. 4; 15. See also FWLD note 55, CEDAW Law on Marriage, supra note 80, at 15-11.

120 See, e.g., Henni Pohji, Marriage in Indonesia, supra note 35, para. 4; 15. See also FWLD note 55, CEDAW Law on Marriage, supra note 80, at 15-11.

121 See, e.g., Henni Pohji, Marriage in Indonesia, supra note 35, para. 4; 15. See also FWLD note 55, CEDAW Law on Marriage, supra note 80, at 15-11.

122 See, e.g., Henni Pohji, Marriage in Indonesia, supra note 35, para. 4; 15. See also FWLD note 55, CEDAW Law on Marriage, supra note 80, at 15-11.

123 See, e.g., Henni Pohji, Marriage in Indonesia, supra note 35, para. 4; 15. See also FWLD note 55, CEDAW Law on Marriage, supra note 80, at 15-11.

124 See, e.g., Henni Pohji, Marriage in Indonesia, supra note 35, para. 4; 15. See also FWLD note 55, CEDAW Law on Marriage, supra note 80, at 15-11.

125 See, e.g., Henni Pohji, Marriage in Indonesia, supra note 35, para. 4; 15. See also FWLD note 55, CEDAW Law on Marriage, supra note 80, at 15-11.

126 See, e.g., Henni Pohji, Marriage in Indonesia, supra note 35, para. 4; 15. See also FWLD note 55, CEDAW Law on Marriage, supra note 80, at 15-11.

127 See, e.g., Henni Pohji, Marriage in Indonesia, supra note 35, para. 4; 15. See also FWLD note 55, CEDAW Law on Marriage, supra note 80, at 15-11.

128 See, e.g., Henni Pohji, Marriage in Indonesia, supra note 35, para. 4; 15. See also FWLD note 55, CEDAW Law on Marriage, supra note 80, at 15-11.

129 See, e.g., Henni Pohji, Marriage in Indonesia, supra note 35, para. 4; 15. See also FWLD note 55, CEDAW Law on Marriage, supra note 80, at 15-11.

130 See, e.g., Henni Pohji, Marriage in Indonesia, supra note 35, para. 4; 15. See also FWLD note 55, CEDAW Law on Marriage, supra note 80, at 15-11.

131 See, e.g., Henni Pohji, Marriage in Indonesia, supra note 35, para. 4; 15. See also FWLD note 55, CEDAW Law on Marriage, supra note 80, at 15-11.

132 See, e.g., Henni Pohji, Marriage in Indonesia, supra note 35, para. 4; 15. See also FWLD note 55, CEDAW Law on Marriage, supra note 80, at 15-11.

133 See, e.g., Henni Pohji, Marriage in Indonesia, supra note 35, para. 4; 15. See also FWLD note 55, CEDAW Law on Marriage, supra note 80, at 15-11.

134 See, e.g., Henni Pohji, Marriage in Indonesia, supra note 35, para. 4; 15. See also FWLD note 55, CEDAW Law on Marriage, supra note 80, at 15-11.

135 See, e.g., Henni Pohji, Marriage in Indonesia, supra note 35, para. 4; 15. See also FWLD note 55, CEDAW Law on Marriage, supra note 80, at 15-11.

136 See, e.g., Henni Pohji, Marriage in Indonesia, supra note 35, para. 4; 15. See also FWLD note 55, CEDAW Law on Marriage, supra note 80, at 15-11.

137 See, e.g., Henni Pohji, Marriage in Indonesia, supra note 35, para. 4; 15. See also FWLD note 55, CEDAW Law on Marriage, supra note 80, at 15-11.

138 See, e.g., Henni Pohji, Marriage in Indonesia, supra note 35, para. 4; 15. See also FWLD note 55, CEDAW Law on Marriage, supra note 80, at 15-11.

139 See, e.g., Henni Pohji, Marriage in Indonesia, supra note 35, para. 4; 15. See also FWLD note 55, CEDAW Law on Marriage, supra note 80, at 15-11.

140 See, e.g., Henni Pohji, Marriage in Indonesia, supra note 35, para. 4; 15. See also FWLD note 55, CEDAW Law on Marriage, supra note 80, at 15-11.
159 CRC Committee,

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161 ESCR Committee,

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CEDAW, supra note 152, paras. 30–31, U.N. Doc. CCPR/C/IND/CO/3-4 (2009);


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See also Gen. Rec. No. 19 (2000) (human rights and the right of the child to the enjoyment of the highest attainable standard of health), para. 22.

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See gen. rec. no. 19 (2000) (human rights and the right of the child to the enjoyment of the highest attainable standard of health), para. 22.

See also Gen. Rec. No. 19 (2000) (human rights and the right of the child to the enjoyment of the highest attainable standard of health), para. 22.

Id. para. 35.

CRC Committee, Concluding Observations: Bangladesh, para. 30.


This provision was established in the 1963 Muluki Ain. It Parties to the Covenant*

See, e.g. Id. at 11. Id. at 12. 

Note 13, part 4, ch. 17, no. 2. NepAl (interim) const. 

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Adopted by Human Rights Treaty Bodies, at 246, para. 15, (unofficial translation done by the Center for Reproductive

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At para. 82.

At para. 83.

At para. 84.

At para. 85.

At para. 86.
DETERRENCE FOR GIRLS SEEKING TO MARRY

1. See, e.g., supra note 15. The Inspector of Police (India), supra note 3; Court On Its Own Motion (Lajja Devi) v. State, supra note 6. Among Adolescents in Developing Countries, supra note 27, at 529, para. 2 (Bom.) at 529, para. 2 (Bom.).

2. See, e.g., supra note 15. The Inspector of Police (India), supra note 3; Court On Its Own Motion (Lajja Devi) v. State, supra note 6. Among Adolescents in Developing Countries, supra note 27, at 529, para. 2 (Bom.).

3. Dadaji Bhikaji v. Rukhmail, 1 L.R. 9 (Bom.) at 529, vpara. 2 (Bom.). See, e.g., supra note 15. The Inspector of Police (India), supra note 3; Court On Its Own Motion (Lajja Devi) v. State, supra note 6. Among Adolescents in Developing Countries, supra note 27, at 529, para. 2 (Bom.).

4. See, e.g., supra note 15. The Inspector of Police (India), supra note 3; Court On Its Own Motion (Lajja Devi) v. State, supra note 6. Among Adolescents in Developing Countries, supra note 27, at 529, para. 2 (Bom.).

5. Human Rights Committee, General Comment No. 12, Art. 16(1) (5th Sess., 1983). The so-called Sofia Principle is most often expressed in the form of an interpretation of the right to marry, in which the state is said to have an obligation to facilitate and promote marriage. See supra note 15. The Inspector of Police (India), supra note 3; Court On Its Own Motion (Lajja Devi) v. State, supra note 6. Among Adolescents in Developing Countries, supra note 27, at 529, para. 2 (Bom.).

6. See, e.g., supra note 15. The Inspector of Police (India), supra note 3; Court On Its Own Motion (Lajja Devi) v. State, supra note 6. Among Adolescents in Developing Countries, supra note 27, at 529, para. 2 (Bom.).
ENDNOTES


3. Id.


6. Id.


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


14. For the Child Rights Committee (CRC Committee), General Comment No. 15: The child to the age of the completion of the highest attainable standard of education (Art. 24), 62nd Session, para. 103, U.N. Doc. CRC/GC/21/03 (2003).


19. The THE ROLE OF NHRIS IN PROMOTING ACCOUNTABILITY FOR CHILD MARRIAGE


23. Id. Email from HRRN.


25. Id.

26. Id.


28. Id.

29. Id.

30. Id.

31. Id.

32. Id.

33. Id.

34. Id.


36. Id.

37. Id.

38. Id.

39. Id.

40. Id.

41. Id.

42. Id.

43. Id.

44. Id.

45. Id.

46. Id.

47. Id.

48. Id.

49. Id.