



Politicians and Bureaucrats fail to put an end to Child Marriage: Both intent and action are lacking!

- Article by Bharti Ali, Co-Director, HAQ: Centre for Child Rights | 12.11.2013

The Indian civil society delegation returned to the country after reporting to the UN CRC Committee in Geneva only to read stories of India not being in the list of co-sponsors for the UN Resolution on Child, Early and Forced Marriage.

51 countries co-sponsored the resolution before it got tabled and another 56 did so after it was tabled. But India does not figure in either!

Cosponsors before tabling

Argentina, Australia, Austria, Armenia, Belgium, Benin, Bolivia, Canada, Chile, Costa Rica, Croatia, Cyprus, Denmark, Ecuador, Ethiopia, Equatorial Guinea, Finland, Georgia, Germany, Greece, Guatemala, Honduras, Iceland, Italy, Ireland, Kyrgyzstan, Latvia, Liechtenstein, Luxembourg, Maldives, Montenegro, Netherlands, Norway, Paraguay, Peru, Poland, Portugal, Romania, Sierra Leone, Slovakia, Slovenia, Somalia, Spain, Sweden, Switzerland, Tajikistan, Thailand, Turkey, United Kingdom, Uruguay, Yemen (51)

Cosponsors after tabling

Albania, Algeria, Andorra, Angola, Bosnia, Botswana, Brazil, Bulgaria, Burkina Faso, Cambodia, Chad, Congo, Cuba, Czech Republic, Djibouti, DRC, Egypt, El Salvador, Eritrea, Estonia, France, Ghana, Guinea, Haiti, Hungary, Ivory Coast, Jamaica, Japan, Jordan, Kenya, Korea, Lebanon, Lithuania, Madagascar, Malta, Moldova, Monaco, Morocco, Mozambique, Namibia, New Zealand, Nicaragua, Palestine, Panama, Rwanda, Senegal, Serbia, Singapore, South Sudan, Timor Leste, Togo, Tunisia, Uganda, United States of America, Venezuela, Zambia (56)

Although the Resolution was adopted unanimously, and India too is party to it since it did not raise any objections, the officials did discuss concerns regarding poverty and its causal relationship with child marriage. To the contrary, while the Planning Commission records a dip of 15.2 percentage points in poverty levels between 2004-05 and 2011-12¹, trends in marriage below the legal age fail to reflect a proportionate decline. In fact, District Level Household Surveys of 2002-04 and 2007-08 (DLHS 2

According to UNFPA, India has the largest number of child brides in the world, with 47% girls married under the legal age of 18, projecting that 140 million child marriages may take place between 2011 and 2020, cutting across most developing nations.

On an average, that means 39,000 child marriages every day!

¹ Kirthi Rao, *India's poverty level falls to record 22%: Planning Commission*. Available at - <http://www.livemint.com/Politics/1QvbdGnGySHo7WRq1NBFNL/Poverty-rate-down-to-22-Plan-panel.html>.

and DLHS 3 respectively) show a 2.7 percentage point increase in the percentage of boys married before the legal age of 21 years and only a 5.9 percentage point decrease in percentage of girls married before the age of 18 years.

India has for long been evading and avoiding any international commitment on the issue of child marriage. **The Convention on Consent to Marriage, Minimum Age for Marriage and Registration for Marriages** came into force in December 1964. It obligates States Parties to specify a minimum age for marriage and prohibits legal acceptance of any marriage without the full and free consent of both parties. However, India is not a signatory to this Convention.

Nationally too, India's track record on the issue has not been very promising. We have failed to meet our own goals and commitments, while new goals are yet to be set out. The most recent National Policy for Children of 2013 does not address child marriage as a concern. While it provides for ensuring the right to education for married children, which is crucial and important, in doing so it also inadvertently accepts that children will continue to be married.

Commitments/ Goals	Indicators	District Level and House Facility Survey II 2002-04	District Level and House Facility Survey III 2007-08	Achievement Record
<p>National Policy for Empowerment of Women, 2001:</p> <p>Interventions...and special programmes... should impact on delaying the age of marriage so that by 2010 child marriage is eliminated</p> <p>National Plan of Action for Children, 2005:</p> <p>100% registration of births, deaths, marriages and pregnancies by 2010</p> <p>Eliminate child marriages by 2010</p>	<p>Percentage of girls and boys married below the legal age of 18 and 21 years respectively</p> <p>Mean age at marriage</p>	<p>20.7 boys 28.0 girls</p> <p>24.5 for boys 19.5 for girls</p>	<p>23.4 boys 22.1 girls</p> <p>24 for boys 19.8 for girls</p>	<p>Not achieved</p> <p>In fact more boys are getting married at a lower age than girls.</p>

In the last over 80 years since the evolution of a law against child marriage in 1929, we haven't really moved far from what we inherited from our social reformers.

Inability to treat child marriage as a crime is evident in the existing crime records. The number of cases of child marriage registered in the last ten years is far less than what the outdated DLHS and NFHS – 3 data suggests. The National Family Health Survey of 2005-2006 (NFHS-3) confirmed that 45% of women aged 20-24 years were married before the age of eighteen years. Of these 58.5% were in rural areas and 27.9% in urban areas.

On the other hand, even the inadequate and questionable reporting on child marriage as a crime shows a 98.8% increase in the cases registered between 1999 and 2012. Kidnapping of children for marriage has witnessed a 672.2% increase between 2003 and 2012. A significant number of these cases are indeed cases of elopement and not necessarily a crime, but the fact remains that early marriage has assumed enormous proportions, be it in the form of forced marriage or self-choice marriage. As a nation we have failed in educating the masses as well as implementing the law. Neither have we achieved much in terms of prevention or prosecution of offenders.

Crime Head / Year	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	% increase over 2001
Child Marriage Restraint Act / Prohibition of Child Marriage Act	58	92	85	113	63	93	122	99	96	104	3	60	113	169	98.8
Crime Head / Year					2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	% Increase over 2003
Kidnapping and abduction of children for marriage					1369	1593	1693	2621	3224	4003	4177	5193	8409	10572	672.2
Source: Crime in India, National Crime Records Bureau															

Confusions in law – by oversight or by design?

The age of marriage in India was set at 18 years for girls and 21 years for boys under the erstwhile Child Marriage Restraint Act, 1929 and continued to be so in the more recent Prohibition of Child Marriage Act, 2006 [PCMA]. Yet, when it comes to child marriage, discrimination in the realisation of children's rights persists as personal laws continue to apply. As a result, some children get a better deal while some others continue to suffer. Conflicting judgements from various High Courts, some upholding the provisions of PCMA

irrespective of the religious background of the child and others giving precedence to personal laws, have only added to the confusion.

Of late drafting of laws has been a serious concern and most new laws are replete with unnecessary confusions. The Prohibition of Child Marriage Act, 2006 (PCMA) replaced the Child Marriage Restraint Act, 1929 in order to move beyond mere restraint. However, what the law actually does is that it merely prohibits solemnization of marriage of a child i.e. a girl under the age of 18 years and a boy under the age of 21 years. Child marriages per se continue to be legally valid marriages unless either of the parties to the marriage wishes to nullify it; and this seldom happens. As minors, children do not have the agency to move the court, they cannot enter into a legal contract with a lawyer to file their case. On attaining majority they get two years to nullify their marriage, which is unlikely to happen. The only exception where the law declares marriage of a 'minor' null and void is if such marriage is solemnized by use of force, kidnapping and trafficking or is a result of violation of an injunction order preventing the marriage. Even this benefit is not available to a Muslim child because a minor under the PCMA is a person who has not attained majority as per the Indian Majority Act, 1875, and while defining the age of majority as 18 years, the Indian Majority Act lays down that its provisions will not affect 'religion or religious rites and usages of any class of citizens of India'. It thus allows a varied definition of the age of majority based on religion. Clearly, the law does not result in deterrence despite enhancement of punishment and is open to varied judicial interpretations. Neither is it being implemented by the concerned authorities who continue to treat child marriage as a social evil than a crime and a violation children's right to protection.

While discussing child marriage, laws relating to sexual offences cannot be overlooked. Under the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) sexual activity with children below the age of 18 years has come to be treated as a crime, the question of consent has no meaning in the case of children, and even in a case of a 'valid child marriage', the boy can be penalized under the provisions of the POCSO Act. However, the Criminal Law Amendment Act of 2013 drafted in much haste after the 16 December gang rape case in Delhi causes confusion on the question of consent and sexual activity between minors in a valid marriage. On one hand it makes consent immaterial in the case of victims of rape below the age of 18 years, on the other hand it declares sexual intercourse by a husband with his wife who is below the age of 15 years as statutory rape, thus leaving out married girls in the 15-18 year age category.

The question then to be asked is whether these contradictions in law are a result of sheer oversight or a deliberate design? It is the same Ministry which deals with child marriage and child sexual abuse. Even though the departments or divisions concerned are different, the law making process involves consultation within the Ministry as much as with other stakeholders, and at least the Secretary and the Minister in charge are aware of what is proposed in the laws.

The political will is lacking

A close look at India's policy and action on child marriage reflects on the politics surrounding it. The child marriage law is weak and promotes patriarchy and discrimination. It finds its

basis in the assumption that girls will remain vulnerable and declaring a child marriage invalid will increase their vulnerability. It also allows religious forces to continue to violate children's human rights.

Our national thinking has come to terms with child marriage as an issue of women's right to health and reproductive rights, linking it to illiteracy and lack of education and awareness. Needless to say the Draft National Plan of Action to Prevent Child Marriages in India too reflects this thinking. Women's reproductive health is indeed an important and significant concern, especially in case of young girls who get married at an early age. However, women's health has never been a concern in a patriarchal family set up. Women are the last ones to receive any health care or treatment when needed. Hence campaigns and other actions focusing on the issue of child marriage from a reproductive health perspective are bound to fail in their emotional appeal to the society at large.

Including child marriage in the school curricula and promoting education of girls to curb such practices too has not brought the desired change. To the contrary, lack of adequate protection to girls who move out of their homes for education or employment is being used as an excuse to get them married early. Kalpana Chawla who made it into space or Bachendri Pal who is the first Indian woman to climb the Everest, or Kiran Bedi, the first woman IPS officer in the country are no longer the role models of the masses.

Conditional cash transfer schemes to delay the age at marriage, such as the Ladli Yojana in Delhi, cannot be accessed by people who have no proof of residence or girls without a birth certificate. This is not to say that only the poor get their daughters married early. But since that is the stand taken by the government, at least it needs to show what is being done to reach out to such families.

Incentives and disincentives do not work unless the law also has a deterrent effect. A shift in the approach to child marriage is the need of the hour. Unless child marriage is addressed as a child rights' and a child protection issue, both girls and boys will continue to be sacrificed in the name of custom, religion, honour and the like. The soft approach will not work and it is time to declare child marriage a crime against humanity.

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