A TRAINING MODULE

“Enhancing Understanding and Knowledge Sharing On Child Marriage Laws and Policies in India”

For NGOs / CSOs in Rajasthan and Jharkhand working against Child Marriages
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Introduction and Objectives of the Training Workshop

Women Power Connect (WPC) in collaboration with Girls Not Brides (GNB) and Oxfam India organized a national consultation on ending child marriages in Delhi in April 2018. The consultation focused on advocacy initiatives that could be taken up on (i) Social Norms; (ii) Law and Governance; and (iii) Essential Services. As a follow up of the national conference, a discussion with legal experts on the key points that were made regarding legal advocacy was held on September 8th 2018. The September consultation, organized by WPC and GNB, brought out certain lacunae both in the texts of the law(s) dealing with child marriages in India and their implementation.

Specifically, lack of implementation of the Prohibition of Child Marriage Act, 2006 (PCMA), inadequate knowledge about the law, inadequate budget allocated for the implementation of the Act, minimal to no use of the Protection of Women from Domestic Violence Act (PWDVA), 2005, in tackling cases of child marriage and the mandatory reporting clause in the Protection of Children from Sexual Offences Act, 2012 has led to a situation where NGOs find it very difficult to work on teenage sexuality or cases where consensual sexual activity has taken place involving a minor. While the Independent Thought vs. Union of India (2017) judgment was a step forward in addressing marital rape (where the wife is under 18 years of age), it has also led to denial of agency to young people to enter into consensual sexual relations.
As it was agreed by all legal experts at the consultation that capacity building workshops for networks are required on a regular basis, WPC in collaboration with GNB will conduct two legal training on ending child marriages in Rajasthan and Jharkhand with local level NGOs / CSOs.

According to the National Family Health Survey 4 (2015-2016), in Rajasthan, 35.4% of marriages involved girls before they turned 18 years of age, while in Jharkhand, 37.9% of marriages of girls took place. In both states, the rate of child marriage is higher in rural areas than in urban areas, and girls (more than boys) are disproportionately affected. While the percentage of child marriage rates has come down all over India (including in Rajasthan and Jharkhand), the numbers remain high. Further, there is a likelihood of incorrect information being shared with data collectors as knowledge that promoting a child marriage is an offence, and the fear of loss of benefits with reporting the same is likely to be prevalent.

Aside from the central laws that are in place, both State governments have enacted schemes and policies in order to prevent child marriages from taking place. The training workshop does not envisage providing participants with lectures on state level initiatives, but to draw from their experience of having worked at the State level on ending child marriages. Sharing of information about work done by NGOs and CSOs at the State level on ending child marriages, and identification of ways and means whereby NGOs and CSOs can work together at the State level is an integral part of this training workshop.

This training workshop has two objectives:

1. To develop an understanding of national laws and state level policies on ending child marriages in the States of Rajasthan and Jharkhand,
2. To deliberate upon legal advocacy issues on child marriage and related laws, schemes, and policies.

As this training module is designed to draw from the experiences of the participants, it is based on an interactive lecture methodology.

Lawyers and experts in the field of child marriage, specifically, Ms. Jaya Sagadhe (Professor of Law, ILS College, Pune), Dr. Swagata Raha (Professor of Law, National Law School of India University, Bangalore), Dr. Shatha Sinha (Former Chairperson of the National Commission for
Protection of Child Rights), Ms. Rama Vedula (AJWS), Ms. Reshma Kumari (Lawyer, Association for Advocacy and Legal Initiatives), Mr. Vikram Srivastav (Advocate and Founder of Independent Thought), and Ms. Indira Pancholi (HAQ Centre for Child Rights and Mahila Jan Adhikar Samiti) contributed in the development of the Training Module. Ms. Shipra Jha and Ms. Divya Mukand from *Girls Not Brides* and Ms. Gayatri Sharma from Women Power Connect contributed to the development of this training module.
# Agenda for the Training Workshop

## DAY 1

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<tr>
<th>Session</th>
<th>Time</th>
<th>Methodology / Session Break Up</th>
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<tr>
<td>Introductions and Expectations from the Workshop</td>
<td>9.00 am – 9.30 am</td>
<td>Round of Introductions + Ice breaking session. Ground Rules to be explained</td>
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<td>9.30 am – 9.45 am</td>
<td>Expectations from the Training: Participants write down their expectations on a piece of paper</td>
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<td>9.45 am – 10.30 am</td>
<td>Pre training quiz on existing awareness on laws on child marriage in India</td>
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<td><strong>Tea Break</strong></td>
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<tr>
<td>Sharing of Experiences</td>
<td>10.50 – 12.30 pm</td>
<td>Interactive session with participants on the work they do</td>
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<td>Session 1: International and Constitutional provisions safeguarding children in India</td>
<td>12.30 pm – 1.30 pm</td>
<td>To place the work NGOs do on ending child marriage within the framework of international human rights and the Constitution of India.</td>
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<td><strong>Lunch Break</strong></td>
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<tr>
<td>Session 2: The Prohibition of Child Marriage Act, 2006</td>
<td>2.30 pm – 4.00 pm</td>
<td>History of age of consent laws in India. Salient features of the Prohibition of Child Marriage Act, 2006 Changing views in society on age of consent and marriage – speakers from the participants</td>
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<td></td>
<td><strong>Tea Break</strong></td>
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<tr>
<td>Group Work Discussion of Schemes in place in Jharkhand / Rajasthan and how they are working</td>
<td>4.15 pm – 5.30 pm</td>
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## Day 2

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<th>Time</th>
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<td>9.30 am – 9.45 am</td>
<td>Recap of the previous day (one volunteer will be asked to present)</td>
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| 9.45 am – 11 am | **Session 3**  
The Protection of Children from Sexual Offences Act, 2012 (POCSO)                                          |
| 11 am – 12 noon | **Session 4:**  
The Juvenile Justice (Care and Protection) of Children Act, 2015                                           |
| 12 noon – 1.30 pm | **Session 5**  
The Protection of Women from Domestic Violence Act, 2005 (PWDVA)                                                 |
| 2.30 pm – 3.00 pm | **Screening of a movie / documentary film, for example, “Period: End of Sentence” followed by a discussion**         |
| 3.00 pm – 4.00 pm | **Highlights of the Independent Thought judgment**                                                                    |
| 9.30 am – 9.45 am | **Day 3 Recap**  
One volunteer to be asked to present                                                                                 |
| 9.45 – 10.30   | **Answering the questions in the quiz**                                                                             |
| 10.30 am – 11.30 am | **Group Exercise: Identifying an Advocacy Agenda** – Identifying Issues for change in the next 2 years, 5 years and 10 years |
| 11.30 am – 12.30 pm | **Presentations from the Three Groups**                                                                           |
| 12.30 pm – 1.00 pm | **Feedback Form and Evaluation**                                                                                   |
|               | **Lunch and Wrapping Up**                                                                                           |
Introductions and Expectations from the Workshop

Ice Breaking Session

**Method 2:** As each individual to share her/his name and share a happy childhood memory or one thing they are really passionate about.

**Method 2:** Ask participants to sit in a circle, and give a ball to one of the participants. The participant has to tell her/his name, slowly and loudly to the others, and then throw the ball to a participant sitting opposite to them. The second participant tells his/her name and throws the ball again. They go on with this until every participant has shared their name with the group.

**Method 3:** Ask each individual to introduce her/his name by adding an adjective before their name. The adjective should begin with the same letter as their name. For instance, “I AM JOYFUL JIGYASA”.

**Facilitators tip:** Do not forget to introduce yourself in the same way.

Round of Introductions

After this, each participant will very briefly introduce their organization and the nature of work they do. Participants will inform each other about (i) where they work (organization and place), and (ii) whether they work on advocacy, prevention, litigation, awareness generation in relation to child marriages.

Ground Rules

- Please keep cell phones switched off;
- Please be respectful of each other – do not interrupt when one person is speaking, one person will speak at a time.
- As everyone has different levels of knowledge about the law, do not get impatient if you feel basic information is being shared. Please share your case studies if you feel you already know what is being imparted.

Expectations from the Workshop

All participants will be asked to write down their expectations on a piece of paper / post-it. This
post-it will be placed on a board that will remain visible during the course of the training. At the closing of the training, participants can be asked if their expectations were met or not, and what gaps remain to be addressed.

Pre-Training Quiz

a. What is the legal age of marriage for girls in India?

b. What is the legal age of marriage for boys in India?

c. Seher is a Muslim girl of 16 years of age. Her marriage is arranged with a 22 year old Muslim man and all formalities as per Shariat law are undertaken. Is this a valid marriage under Indian law?

d. You are approached by a girl aged around 15 years whose parents have arranged her marriage to a 21 year old man from a rich family. She does not want to get married and needs your help. What will you do?

e. Noor, a 10 year old girl, is being forced by her father to get married to a man in Haryana who is searching for a bride. Noor’s mother had approached you earlier for help, however, no one was able to stop her father. Noor has gone missing and her father says he does not know where she is. The police are not cooperating. Is it possible to take legal action? If yes, what action?

f. You are approached by a girl aged around 15 years of age whose parents are opposing her relationship with a lower caste boy (aged around 19 years). She wishes to run away with her boyfriend. How will you advise her?

g. Can a husband be prosecuted for having sex with his wife when she is under 18 years of age?

h. Can a boy be a victim of sexual violence under the Protection of Children from Sexual Offences Act, 2012 (POCSO)?

i. Can a woman be a respondent (perpetrator of violence) in a case of domestic violence under the Protection of Women from Domestic Violence Act, 2005 (PWDVA)?

j. Sarita is 15 years old. Her marriage is arranged as per Hindu customs to Sunil who is 17 years old. Sarita does not want to marry Sunil. After the marriage she decides to part ways.

- Does Sarita have to wait until she is 18 years of age before she can file an application for annulment under the Prohibition of Child Marriage Act, 2006?
- Sarita was unable to locate a CMPO to help her file the petition. She is now 21 years of age. She wants to separate and marry another man. What can she do?

Note: Participants will answer the questions and hand over to the facilitator. The questions will be discussed later on during the course of the training.
Session 1: International and Constitutional Provisions safeguarding children in India

International Law

This session can begin with an exercise where all participants are asked to write on a piece of paper, “what rights are violated by child marriage?”

Most likely, participants will refer to the right to education or the right to health. In the discussion that follows, the facilitator can highlight that the right to choose a partner for oneself, the right to decide whether to marry or not, and the right to independence are equally important rights. These rights are given less recognition, but they are as important as health or education.

The violation of human rights became a concern in the early - mid 20th Century due to the horrors perpetrated during the world wars. As a result, the United Nations was formed and it promulgated The Universal Declaration on Human Rights (UDHR) in 1948. The UDHR enumerated a variety of civil, political, economic, social and cultural rights that were subsequently separated and incorporated into two binding treaties – the International Covenant on Civil and Political Rights, 1966 (“ICCPR”) and the International Covenant on Economic, Social and Cultural Rights, 1966 (“ICESCR”). The UDHR and the two covenants together form the minimum standard of international human rights protection.

Article 1 of the UDHR states:

“All human are born equal in dignity and rights”

Article 3 states:

“Everyone has the right to life, liberty and security of person”

These Articles cover children as well. Human rights are rights that all people, including children have, by virtue of being human. Human rights invoke State responsibility. Human rights are universal, inalienable and indivisible. The delivery of services related to human rights, for example, school education, cannot be considered as charity, but a universal right for all children to access. Human rights are of three kinds – (1) to respect, (2) to protect and (3) to fulfill.

Facilitator can draw on the example of right to education
To respect means not to interfere, to protect means to protect from interference by any third party (ensure there is no violence perpetrated on girls going to school), and to fulfill means to take proactive steps to ensure all girls receive primary education in India (for example, sanitary napkins to be provided or bicycles for children to travel, mid-day meals).

Child Rights Convention (CRC), 1989 and the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), 1979

India ratified the UN Child Rights Convention in 1992 agreeing in principle with all Articles except with reservations on child labour. The CRC does not directly deal with child marriage, but the following provisions are salient:

Article 6 recognizes that children have an inherent right to life.

Article 19:

States Parties shall 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, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

The negative implications of child marriage on education and health violates their right to life, it increases chances of domestic violence (particularly for girls) and leads to reproductive health failures. Child marriage violates the fundamental right to life by exposing girls to reproductive health risks, including early pregnancy. Child marriage violates the right to life and personal liberty by interfering with the ability of children to make autonomous decisions regarding their private lives.

Article 3 of the CRC states:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

What is the “best interest” of the child varied on a case by case basis. As per international law, the human rights of the child have priority over traditional practices that are harmful. In 2014, two UN human rights expert committees (CEDAW and CRC) issued a comprehensive interpretation of the obligations of States to prevent and eliminate harmful practices inflicted on women and girls, including child marriage. The Joint General Recommendation Number 31 suggests that communities, including traditional and religious authorities, should be involved in challenging and changing attitudes that underlie and justify harmful practices.
Article 14

States Parties shall respect the right of the child to freedom of thought, conscience and religion. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

The phrase “evolving capacities” is used to provide agency to children to make decisions concerning their lives.

The CEDAW Convention has clear provisions against child marriage. India ratified CEDAW in 1993. Article 16 (2) of the CEDAW Convention states:

“The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.”

However India has entered a reservation on Article 5 (cultural and traditional practices that discriminate against women) and Article 16 of CEDAW (on betrothal of a child and compulsory registration of marriages). India’s reservations emerged from a policy of non interference in the personal affairs of any community without its initiative and consent.

It is important to note that the conflict between personal laws and the PCMA, 2006 is reducing. In Independent Thought vs. Union of India (2017), the Supreme Court of India recommended that PCMA have overriding effect over personal laws and amendments be made to the personal laws.

Registration of marriages was made compulsory as per Seema vs Ashwini Kumar (Supreme Court, 2006).

Constitutional Law

As per Article 51 of the Constitution of India, the Indian State is bound to: “(c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another.” Many treaties have virtually been read into the rights and liberties of the Fundamental Rights
chapter of the Constitution to become constitutionally enforceable. One of the most famous cases where international law was cited is *Vishaka v. State of Rajasthan* (1997) 6 SCC 241.

In India, human rights are covered in the fundamental rights of the Constitution, that is, Chapter 3. Chapter 3 covers the right to equality, right to liberty, right against exploitation, right to life, due process of law and constitutional remedies). The State can make special laws for children as per Article 15 (3).

This image can be used to explain the difference between Article 14 and Article 15 of the Constitution

The Constitution provides children with the right to be protected from any hazardous employment till the age of 14 years (Article 24). Fundamental rights are enforceable in a court of law.

The Directive Principles (Chapter IV) are guidelines to be kept while framing laws and policies. Article 39 (e) protects children from abuse against entering avocations out of economic necessity, and Article 39 (f) states that “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.”
Directive Principles are not legally enforceable but it is the duty of the State to apply these principles. For example, Article 45 provides for free and compulsory education for children in India. The right to free and compulsory elementary education for all children in the 6-14 year age group is now a Fundamental right as per Article 21 A, brought about via the Eighty Sixth Amendment to the Constitution in 2010.

**Group Exercise:**

Divide the participants into three groups. Each group will deal with one of the following schemes and discuss in their group if the scheme is constitutional or not. How can the scheme be improved, and is the scheme working well in their district? Will these schemes help end child marriage in Rajasthan or Jharkhand?

**National Level Schemes**

- **Janani Suraksha Yojana, 2015**

This is a health care scheme under the National Rural Health Mission with the objective of reducing mortality by promoting institutional delivery among poor pregnant women. It applies to all pregnant women (including minors under 18 years of age). All women from BPL category, SC and ST women in all States and UTs are eligible if they have given birth in a government of private accredited health facility. In the low performing States, more financial assistance is given that in the high performing states (Rajasthan is a low performing State as per NRHM, while Jharkhand is a High Performing State). Cash assistance is provided to the pregnant women who deliver in a government health centre or accredited private institution.

Earlier (before an amendment) in High Performing States, the scheme was applicable only to pregnant women who are BPL aged 19 or above, or all pregnant women of any age who are SC / ST.

- **Beti Bachao, Beti Padhao, 2015**

This initiative of Government aims to address the issue of declining Child Sex Ratio (CSR) through a mass campaign across the country and focussed intervention and multi-sectoral action in 100 selected districts low on Child Sex Ratio. The overall goal of the Beti Bachao Beti Padhao (BBBP) programme is to celebrate the birth of girl child and enable her education. The specific objectives of the scheme are: i. Prevention of gender based sex selection ii. Ensure survival of girl child iii. Protection of the girl child and iv. Ensure education of the girl child. Under the scheme, supply of condoms to consumers free of cost and condom social marketing
can be taken up.

State Level Schemes

- **Aap ki Beti Yojana, 2019 (Rajasthan)**

This scheme provides cash incentives to girls enrolled in class 1 to Class 12 who are BPL, or who are orphans, or have one surviving parent. The amount given is Rs 1100/- per year for girls in Class 1 to Class 8, and 1500/- per year for girls in Class 9 to Class 12.

- **Mukhyamanti Sukanya Yojana, 2019 (Jharkhand)**

Under this scheme, grants of Rs 40 thousand will be given in seven installments from birth to 20 years of age. If the child wants to get married (after turning 18 years of age), she will get 30 thousand rupees separately under the Chief Minister Kanyadan scheme. As per the plans, 27 lakh families of Jharkhand will be covered with this scheme.

Hierarchy of Courts in India

The hierarchy of courts in India is as follows:

1. The Supreme Court of India is the highest or apex judicial forum and final court of appeal as established by Part V, Chapter IV of the Constitution of India. The Supreme Court has writ, appellate, original and advisory jurisdiction.

2. The High Courts are the highest courts at the State and Union Territory level. These courts have jurisdiction over a State, a Union territory or a group of States and Union Territories.

3. Special Courts have been constituted to try certain cases, for example, CBI cases or cases under the Protection of Children from Sexual Offences Act 2012, which function at the level of Sessions Courts. Family Courts are constituted under the Family Courts Act, 1984. They have jurisdiction over matrimonial causes, proceedings for maintenance.
4. District and Sessions Courts: District judges preside over civil cases while Sessions judges would preside over criminal cases.

5. Magistrates Courts try cases of domestic violence under PWDVA, 2005. A Child Welfare Committee has the same powers as that of a Magistrate’s Court [section 27 (9) of the JJ Act].

Finally, Indian law allows for alternative dispute resolution in certain cases. For example, under the PWDVA, the court may order that both parties go for counseling (section 14 of the PWDVA). Panchayats also play an important role in adjudication of disputes and resolution of cases.

*How to use the Constitutional Provisions in cases of child marriage?*

**Writ Petition**

A “writ petition” is a petition that can be filed directly in the Supreme Court or the High Courts when a fundamental right is violated. The Supreme Court or High Courts have the power to issue a “writ” or command to the state authority directing them to do or refrain from doing something.

A writ petition before the Supreme Court is filed under Article 32 of the Constitution, while a petition to the High Courts can be filed under Article 226 of the Constitution. While an application under Article 32 in the Supreme Court can only be for violation of a fundamental right, the scope of Article 226 (High Courts) is broader.

The party can approach either the Supreme Court of India or the High Courts. However, if relief is available through the High Court, the party should first approach the High Court.

*For example, in a case where a child goes missing and police are not responsive, a writ of habeas corpus (produce the body) can be filed directing the police to produce the child before the court.*

**Public Interest Litigation**

A “Public Interest Litigation” (PIL) can be filed for enforcement of fundamental rights and is usually filed for the general well being of the public. The rule of *locus standi* (only the person aggrieved can approach the court) has been relaxed in cases of PILs. The Court may also take cognizance of a matter of grave importance by itself (*suo moto*) or its attention drawn to the issue by a third party.
Session 2: The Prohibition of Child Marriage Act, 2006

History of age of consent laws

The codification of an age of consent in India began with the British. While the British largely followed a policy of non interference in personal matters, two landmark cases led to an enactment on age of consent.

The Age of Consent Act 1891 raised the age for sexual intercourse for all girls (whether married or unmarried) from 10 to 12 years. The above Act amended Section 375 of the Indian Penal Code and thereby, declared an act of sexual intercourse with a girl under 12 years as offence of rape. The death of Phulmani Dasi, a Bengali girl, in 1889, due to forceful intercourse by her 35 year old husband, led a demand for legal reform. In another case in 1884, a child bride, Rukmabhai, whose marriage was never consummated and who sought to live separately from her husband, lost her case and was ordered to live with him or face imprisonment.

These 2 landmark cases let to the enactment of a law on age of consent and age of marriage. The age of consent under Indian Penal Code was subsequently raised to 13 years in 1925 and later on to 15 years in 1949 for legal consummation of marriage.

A brief history of the PCMA

The Child Marriage Restraint Act, 1929 (“Sharda Act”) made 14 the age of marriage for girls and 18 the age of marriage for boys. The age at marriage for girls was raised from 14 years to 15 years in 1949 and thereafter in 1978 from 15 years to 18 years for girls and was raised for boys from 18 years to 21 years. In 2006, the Prohibition of Child Marriage Act retained 18 the age of marriage for girls, and 21 the age of marriage for boys [section 2 (a)]. 18 was made the age of consent as per Protection of Children from Sexual Offences Act in 2012. Prior to the decision of the Supreme Court in Independent Thought in 2017, sex with a minor wife above 15 years of age was not rape (section 375 IPC).

Salient features of the Prohibition of Child Marriage Act, 2006

Key Provisions of the PCMA, 2006

- Child marriages are voidable at the option of either contracting party, but before the child filing the petition completes two years of attaining majority (section 3).
• The PCMA protects the interests of female child brides by authorizing the district court to pass orders for maintenance or residence for the female to be paid by the male (if he is a major) or his parents / guardians while granting a decree of nullity for annulling the child marriage. Provision for maintenance / residence for female party is provided in section 4, while legitimacy of children born is assured under section 6 of the PCMA.

• Section 12 makes certain kinds of child marriages void (if the child is taken or enticed out of the keeping of the lawful guardian, if the child is by force or deceit compelled to go to any place, or if the child is trafficked / sold for marriage or used for immoral purposes after marriage).

• The solemnization of child marriage is a penal offence (unless there was reason to believe the marriage was not a child marriage and this is proved) as is promoting / permitting solemnization (s.10, and s.11). But no woman can be punished with imprisonment.

• Punishment for male adult (18 +) marrying a child – 2 years + fine unless he proves he had reasons to believe it was not a child marriage.

• Offences under the PCMA are cognizable and non bailable (section 15).
• Magistrate has power to issue injunction for preventing the child marriage without giving notice to the other party in case of any urgency [Section 13 (6)].

There is no conflict between personal laws and the PCMA, 2006. In Independent Thought vs. Union of India (2017), it was made clear that:

“After the PCMA was enacted both the Hindu Marriage Act, 1955 and the Dissolution of Muslim Marriages and Divorce Act, 1939 also should have been suitably amended, but this has not been done. In my opinion, the PCMA is a secular Act applicable to all. It being a special Act dealing with children, the provisions of this Act will prevail over the provisions of both the Hindu Marriage Act and the Muslim Marriages and Divorce Act, in so far as children are concerned.” (Paragraph 19 of Independent Thought; Justice Madan Lokur).

Group work: Participants can list out (i) Role of CMPO; (ii) Role of Judges; (iii) Role of NGOs in ending child marriage and share examples from their work.

Notes for the facilitator:
The PCMA created the office of the Child Marriage Prohibition Officers (CMPO) under section 16 of the Act. The CMPOs have the following duties:\(^1\)

a) to prevent solemnization of child marriages by taking such action as s/he may deem fit;

b) to collect evidence for the effective prosecution of persons contravening the provisions of this Act;

c) to advise either individual cases or counsel the residents of the locality generally not to indulge in promoting, helping, aiding or allowing the solemnization of child marriages;

d) to create awareness of the evil which results from child marriages;

e) to sensitize the community on the issue of child marriages;

f) to furnish such periodical returns and statistics as the State Government may direct; and

g) to discharge such other functions and duties as may be assigned to him/her by the State Government.

The State Government may also request a respectable member of the locality with a record of social service or an officer of the Gram Panchayat or Municipality or an officer of the Government or any public sector undertaking or an office bearer of any non-governmental organisation to assist the Child Marriage Prohibition Officer.\(^2\)

Under section 13 of the PCMA, the Magistrates court has the power to issue an injunction order against a child marriage taking place. An application for an injunction order may be made by the CMPO, the complainant or any person. The court may also take suo moto cognisance. In case of urgency, the court may issue an interim order without giving any notice to the party against whom the injunction order is issued. Non compliance with the injunction order shall lead to imprisonment or fine – however, no woman shall be punished with imprisonment.

Sample Case Studies:

A girl married before 18, wants to file a petition for nullity for annulment of marriage. From whom and how can she obtain help?

*She can approach (1) The CMPO; (2) The District Magistrate; or (3) an NGO / Gram Panchayat / Government Officer or a respectable member of the locality*

A girl married before the age of 18 is seeking maintenance for herself and her child. What can she do?

*She can seek maintenance under section 4 of the PCMA from her husband or in-laws if an application for annulment is filed.*

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\(^1\) Section 16(3) of the PCMA

\(^2\) Section 16 (2) of the PCMA
Alternatively, she can also seek maintenance under section 20 of the Protection of Women from Domestic Violence Act, 2005 irrespective of the status of the marriage from her husband / in-laws or even from her natal family members.

*She can also seek maintenance under section 125 Cr.P.C*

A Hindu girl married before the age of 18 wants her share in her family’s property as she has a baby now and her husband filed for annulment of the marriage. Can she ask for partition of the property?

Yes, as per section 6 of the Hindu Succession (Amendment) Act, 2005 and section 6 of the PCMA by which a child is deemed legitimate for all purposes.
Session 3:

The Protection of Children from Sexual Offences (POCSO) Act, 2012

The POCSO Act, 2012 has the following essential features:

- The Act defines a child as any person below the age of 18 years and provides protection to all children under the age of 18 years from the offences of sexual assault, sexual harassment and pornography.
- The Act describes offences like Penetrative Sexual Assault, Aggravated Penetrative Sexual Assault, Sexual Assault, Aggravated Sexual Assault, Sexual harassment. It further states that even using child for pornographic purposes is an offence. Also whoever abets an offence or attempt to commit an offence will also be tried under the Act.
- The law is gender neutral as it provides protection to children of both sexes from sexual offences.
- The Act is only applicable to child survivors and adult offenders. In case a child perpetrates a sexual offence on an adult or a child, then the child will be tried under the Juvenile Justice (Care and Protection of Children) Act, 2000.
- Both men and women can be offenders under the Act. However there are two such offences, which involve penetration by the penis and which can be perpetrated only by men, specifically:
  - Section 3: A person is said to commit “penetrative sexual assault” if (a) “he penetrates his penis, to any extent, into the vagina, mouth, makes urethra, or anus of a child or the child to do so with him or any other person”;
  - Section 5(j): “Whoever commits penetrative sexual assault on a child, which...(ii) in the case of female child, makes the child pregnant as a consequence of sexual assault.”

However, in these two offences, women can be joined as abettors under Section 16 of POCSO Act.

- Reporting of Offences: Whoever has apprehension that an offence under POCSO Act is likely to be committed or has knowledge that such an offence has been committed, he/she shall provide such information to-
  - the Special Juvenile Police Unit; or
  - the local police.

Where the report is given by a child, the same shall be recorded in a simple language so that the child understands the contents.

- Obligation of third parties: If any person working in the media sector or hotel or lodge or hospital or club or studio or photographic facilities comes across material containing sexually exploitative content of children, then he/she shall provide such information to
the SJPU or the local police.

- Mandatory reporting: Section 19 imposes an important obligation on any person who has any apprehension that an offence under the Act is likely or has knowledge that such offence under the Act has been committed to report the same to the local police or SJPU. It must be specifically noted:
  - Information u/s 19 can be given to the police official attached to the hospital, and a medico legal certificate made to the police is sufficient compliance with section 19 (NCPCR guidelines, 2013)
  - In case the child and his parents/guardians do not wish to report the offence, their informed refusal must be documented and the same communicated to the police by the health profession (NCPCR guidelines, 2013)

- The Act imposes punishment for failure to report or record a case under section 21 with imprisonment upto 6 month or fine or both – This is a non-cognisable offence.
- Any false complaints made in good faith are not liable under the Act, however, those made to humiliate, threaten or defame someone are punishable (Section 22) – This offence does not apply to a child.

Note – In this session it will be important to refer to the Independent Thought decision. As provisions of POCSO have now been reconciled with the provisions of the IPC, 18 is the age of consent irrespective of marital status. How are groups dealing with cases of consensual relations? Have any such cases come up?
Session 4: The Juvenile Justice (Care and Protection of Children) Act 2015

The JJ Act broadly deals with children who are either “in conflict with law” (Chapter IV) or “in need of care and protection” (Chapter VI).

Child in Need of Care and Protection

The Act lists a “child who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardians or any other person are likely to be responsible for the solemnization of the marriage” as a “child in need of care and protection” under section 2 (14).

A child in need of care and protection may be produced before a Child Welfare Committee (CWC). Police, SJPU, Public Servant, social worker, public spirited citizen, medical professional (s.31) may produce the child before the CWC.

The CWC has the authority to, amongst others, conduct an enquiry, place the child in foster care, give directions to the parents / guardians, conduct inspection visits, take suo moto cognizance of cases of children in need of care and protection not produced before the Committee (this decision has to be made by three CWC members), inspect surrender deeds and declare orphaned, abandoned or surrendered children as fit for adoption, take action for rehabilitation of sexually abused children, access legal services for the child (section 30 of the JJ Act)

Importantly, section 75 of the Act deals with punishment for cruelty to a child. Cruelty is defined as follows:

“Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to three years or with fine of one lakh rupees or with both”

Rule 55 of the Model JJ Act Rules, 2016 state:

“For the purposes of section 75 of the Act and this rule, giving a child in marriage shall be considered as cruelty to the child. On receipt of information of risk of a child being given in marriage, the police or any officer authorized under the Act or under the Prohibition of Child Marriage Act,2006 (6 of 2007), shall produce the child before the Committee for appropriate directions and rehabilitative measures.”

Child in Conflict with Law
It is important to note that as per section 15 of the amended JJ Act, in case of heinous offence by child above 16 years, the trial may be as per Cr.P.C. The JJB needs to conduct a preliminary assessment under Section 15(1) based on which it has to decide whether the child should be retained within the JJ system or transferred to the Children’s Court for trial as an adult. The Children’s Court needs to decide further whether it will proceed to try the child as an adult or deal with the child as a JJB [section 2 (14)] of the JJ Act.

For discussion:

How can we secure the rights of boys who have consensual relations with minor girls and their parents file rape cases against them?
Session 5

Protection of Women from Domestic Violence Act, 2005:

The Protection of Women from Domestic Violence Act (PWDVA) was enacted in 2005. The law, for the first time, provided a clear definition of ‘domestic violence’.

As per the definition provided under section 3 of the PWDVA, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it harms or injures or endangers the health, safety, life, limb or wellbeing, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse. Dowry demands are covered in the definition as acts of domestic violence.

- **Physical violence** can range from slapping and beating to more extreme forms of violence such as burning the woman, breaking her limbs, or endangering her life.
- **Sexual violence** includes any sexual conduct that is humiliating or degrades the woman. Please note, although marital rape is exempt as an offence from criminal law (provided that the woman is above 18 years of age after Independent Thought judgment in 2017), the PWDVA covers cases of sexual violence, including rape or other forms of unwelcome sexual conduct.
- **Rape by husband of his wife during a period of separation is a criminal offence** and can also be a case of domestic violence.
- **Mental violence** would include threats or repeated harassment. Pressurizing a daughter to get married by using mental violence is covered by the law.
- **Economic violence** would include denial of basic necessities such as food or medicines. Throwing a daughter out of the house is an example of economic violence.

The Act is for women only. Men cannot use the Act to file cases of domestic violence. However, an aggrieved woman can file a case of domestic violence along with her minor child. The respondent means any adult male person who is / has been in a domestic relationship with the aggrieved woman. Women can also be respondents under the Act. The PWDVA is a civil law and not a criminal law. Offences under the Act do not attract criminal prosecution and imprisonment. However, criminal prosecution would lie in case of breach of a court order.

The Act provides for civil remedies, specifically, injunction orders (Protection order or “stop violence” orders), maintenance, residence orders, temporary custody orders and/or

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3 Section 376B IPC
4 *Harsora vs Harsora*(2016)
compensation. Violation of a protection order can lead to imprisonment of up to one year.

The PWDVA covers all women who are in a “domestic relationship” with the respondent. A “domestic relationship” requires all of the following three ingredients to be satisfied:

- The two parties should live, or have lived, at any point of time, in a shared household;
- The two parties should be related by consanguinity, marriage, relationship in the nature of marriage, adoption or be family members living together;
- Domestic violence should have taken place.

The intention of the Act is to protect all women in an intimate relationship or domestic relationship, i.e., who are living with the perpetrator(s) of violence or have lived with the perpetrator(s) in the past. It covers mothers, sisters, live-in girlfriends, wives or adopted daughters.

**Reasons for enactment of the PWDVA**

The PWDVA was enacted following the introduction of section 498A in the Indian Penal Code. Section 498A protects wives from acts of cruelty from her husband and his relatives. However, this section does not protect women (other than wives) from domestic violence. Further, section 498A does not provide for any civil reliefs for the woman. The PWDVA covers all women who are in a “domestic relationship”. The PWDVA can be used against members of the natal family as well. It is a civil law that provides right to maintenance, residence, protection orders, temporary custody orders and compensation to the woman. It allows for counseling and mediation in order to resolve the dispute.

**How to use the Act (role of POs, SPs, lawyers, police)**

The PWDVA provides for support services for the aggrieved woman:

1. Protection officers – State governments are required to appoint Protection Officers who essentially form a link between the aggrieved woman and the Magistrate. They essentially assist the aggrieved woman in filing a DIR (Domestic Incident Report). This includes having her medically examined and forwarding the DIR to the Magistrate. The Protection Officer has a duty to assist the aggrieved person and any child in obtaining medical aid at a medical facility including providing transportation to get the medical facility.⁵
2. Service Providers registered under the Act are also authorized to get the aggrieved

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⁵ Rule 8 (vi) of the PWDV Rules, 2006
woman medically examined and ensure she receives shelter.

3. Counselors / Welfare Experts – Counseling of the parties may be directed by the Magistrate at any time with a member of a Service Provider. The courts may also take the assistance of welfare expert.

4. The police have the duty to inform the aggrieved woman about her rights and refer her to a Protection Officer. In case of an emergency, the police should be informed of the occurrence of domestic violence, and it is their duty to accompany the PO or the SP to the place of occurrence.

A DIR is a report that can be filled up by (i) the Protection Officer (PO); (ii) the Service Provider (SP); or (iii) the notified medical facility. It contains information regarding the particulars of the aggrieved woman and the respondent, the incidents of domestic violence, the orders that she needs from the court, and any assistance that she needs.

Exercise for the Participants

Ask 2 participants to volunteer – one will pretend to be a child forced into marriage, one her parents pressurizing her to agree. The rest of the participants will point out what options the girl has:

- In scene 1 the girl’s parents suggest she gets married as they cannot afford her school fees. How can she respond to them?
  
  Possible suggestions – she can go to a Protection Officer and record a Domestic Incident Report (DIR) and ask the PO to help draft a Safety Plan for herself. She can seek counseling from a Service Provider (if there is one appointed in her district / State). This case may be resolved by the PO / SP counseling the parents, providing them information about government schools and RTE Act.
  
  She can also complain to the CMPO and the CMPO can submit an application to the Magistrate for issuing an injunction against such a marriage (s.13 of the PCMA)

- In scene 2, the girl has already been married. Her husband does not want the marriage and has filed an application for annulment under PCMA. Her parents are not happy with her returning home. What can she do?
  
  Possible suggestions – the girls can seek various reliefs for herself both under the PCMA and the PWDVA. She can seek maintenance and residence under the PCMA (s.4) as well as under the PWDVA in the same case.
Feedback Form

1. Did the training on Laws on Child Marriage enhance your knowledge about:
   - Existing legal provisions relating to child marriages
   - Gaps in the law and how they can be overcome
   - How NGOs can work together to end child marriages?

2. Please provide feedback on:
   - Agenda:
   - Reading Materials:
   - Any other feedback on the arrangements made:

3. Please provide feedback on the quality of resource persons.