# Description of Module

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<td>Pre-requisites&lt;Expected to know before learning this module&gt;</td>
<td>Basic understanding of</td>
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<td>• The phenomenon of child marriage</td>
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<td>• To understand the socio-legal measures available for addressing the issues of child marriage</td>
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<td>Child Marriage, Prohibition of Child Marriage Act, 2006, Child Rights</td>
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## Acronyms

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<td>Prohibition of Child Marriage Act, 2006</td>
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<td>United Nations Children’s Fund</td>
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<td>United Nations Convention on the Rights of the Child</td>
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<td>United Nations</td>
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<td>NFHS</td>
<td>National Family Health Survey</td>
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I. Child Marriage: A brief Introduction

Marrying daughters in their early ages is a cultural practice in many societies in Asia, Africa and Latin America. It is often believed that marriage adds on to the social status of a family and if the daughter remains unmarried, there is some sort of oddity involved. There is, therefore, silent complicity to child marriage in a country like India and many rural and backward communities treat the age-old practice as normal and an integral part of their culture. It is often seen that women are usually trained in the household tasks with the anticipation that they would take up household responsibilities in a larger capacity than men. Also there is deep rooted gender inequality engrained in our culture wherein women are usually considered as inferior to men.

Child marriage is one of the worse forms of violation of child rights. Child marriage is still a prevailing and widespread phenomenon in India. India is home to a third of the world’s child brides and around half of Indian women are married before they turn 18 years. Worldwide, more than 700 million women alive today were married as children. More than 1 in 3 — or some 250 million — were married before 15 years of age. It is estimated that there are 23 million child brides in India — approximately 40% all child brides globally (UNICEF). The DLHS-3 (2007–2008) shows that 43% of women aged 20 to 24 in India were married before 18 years of age.

Child marriage is a direct violation of child rights. It leads to an intergenerational socio-economic impact on education, health, and empowerment and is both a symptom and contributor to gender inequality. It has an inverse impact on physical growth, health, mental and emotional development, and education opportunities. It also has a larger impact on the society as a whole since child marriage often leads to the vicious circle of poverty and perpetuates gender discrimination, illiteracy, malnutrition, high infant and maternal mortality rates, vulnerability to gender based violence and sexual abuse and trafficking; increased number of miscarriages; and low birth weight babies etc. Complications related to pregnancy and child birth are among the leading causes of death worldwide for adolescent girls between the ages of 15 and 19 years. Although, the phenomenon of child marriage affects girls with a greater intensity than boys but it has an inverse effect on boys too. They are often faced with sudden economic responsibilities and experience fatherhood at an early age.

According to Census 2011, around 2.9% of total girls in India, between the age group of 10-14, got married before they attained 15 years of age. In comparison to this, a total of 1.6% of boys was married in this age group. Going further to the next age group, a total of 10% girls and 10.5% boys between the age group of 15- 17 years were married. Comparing the rural

1 http://unicef.in/Whatwedo/30/Child-Marriage#sthash.xGL0TB9G.dpuf
2 http://www.unicef.org/protection/57929_58008.html
3 http://rchiips.org/pdf/DLHS-3_KI.pdf
and urban population under the category of child marriage, census 2011 brought out that a total of 10.5% rural girls and 8.2% boys were married in comparison to their urban counterparts at 8.7% and 5.5% respectively.

Although, the Census 2011 also shows a declining trend, but the incidence of child marriage in terms of numbers is still high. States across India have also shown diverse trends in terms of child marriage. India is a vast country of diverse culture and hence, the status of child marriage also varies according to the region and State.

The states of Rajasthan, Madhya Pradesh, Andhra Pradesh, Chhattisgarh, West Bengal, Haryana, Karnataka, Bihar, and Uttar Pradesh have particularly alarming child marriage rates. According to the National Family Health Survey-3 (NFHS-3, 2005–2006), 47.4% (i.e. nearly half) of all young women (currently between the ages of 20–24) were married before the age of 18 years. And 16 per cent of men aged 20–49 years were married by age 18 and 28 per cent by the age of 20 years (NFHS-3). NFHS-3 further reports that 58 per cent of all married women aged 15–19 years have already experienced motherhood or a current pregnancy.

II. International Instruments to combat child marriage:

The United Nations bodies hold the State parties accountable to their international obligations to uphold human rights of all its citizens. Child marriage is also one of the important international agendas that have drawn attention of the UN. ‘Elimination of all harmful practices, such as child, early and forced marriage and female genital mutilation’ is marked as the third point (target 5.3) under the Goal 5 of the Sustainable Development Goal (SDG) - Achieve Gender Equality and Empower all Women and Girls. Committee on the Elimination of Discrimination against Women (CEDAW) and the United Nations Committee on the Rights of the Child (UNCRC) are the major international instruments in place. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) states that, “[t]he betrothal and the marriage of a child have no legal effect …,” and requires governments “to specify a minimum age of marriage and to make the registration of marriages in an official registry compulsory (Art. 17)”\(^6\). The Convention on the Rights of the Child (CRC) requires governments to abolish “traditional practices prejudicial to the health of children” (Art. 24) as well as to protect children from “all forms of sexual exploitation and sexual abuse” (Art. 34). The CRC Committee has consistently dealt with child marriage in its Concluding Observations to governments that have ratified the CRC even though the Convention itself does not have a specific article that mentions marriage. Some of the frequent recommendations from the CEDAW and CRC Committees to State Parties include that governments should:

\(^6\) [http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf](http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf) pg. 7
- **Raise the minimum age of marriage to 18** for both women and men
- Conform **regional, customary and religious law** with federal/civil law
- **Define crime of rape** as sexual intercourse without consent (not as an attack on “honor”)
- Provide for **sanctions** against perpetrators of early marriage and ensure the investigation of cases as well as the prosecution and punishment of perpetrators
- **Eliminate all disparities** between men and women regarding minimum-age requirements
- **Implement compulsory registration** of all marriages
- Prioritize the **best interests** of girls, including the right to education
- Not **invoke freedom of religion** to justify discrimination against girls and practices such as forced and early marriages
- Not allow exceptions to minimum age of marriage even with consent.

### III. Legal Measures to combat Child Marriage in India:

Child marriage is an age old tradition that runs into our society for centuries now. There have been social movements and legislations that stood against this practice. However, despite of the existence of laws that runs back into 1929, The **Child Marriage Restraint Act (CMRA)**, popularly known as the **Sharda Act**, the phenomenon of child marriage has continued even today. Sharda Act prohibited marriage of girls and boys before the age of 15 and 18 years respectively. In 1978, this law was amended and the minimum age for marriage was pulled up to 18 and 21 years for girls and boys respectively. However, there were many shortcomings in the Sharda Act, like:
- It only aimed at restraining solemnisation of child marriages in the country and not its prevention or prohibition
- The procedures laid down under this law to act against solemnisation of child marriages were very cumbersome and time consuming
- The Act did not identify authorities responsible for preventing child marriages

In the year 2006, the Indian State passed the **Prohibition of Child Marriage Act- 2006 (PCMA)** and it was enacted by the Parliament on 10 January 2007. The Act came into force on 1st November, 2007. This Act laid prohibition on marriage of girls below the age of 18 and boys below the age of 21 years (Section 2a of PCMA, 2006). The basic premise of the law is to ensure that making any child go through marriage is an offence (Section 10, 11 and 15 of PCMA, 2006). The law aims not only at ending the practice of child marriage but to move beyond and impose complete prohibition on it. It provides provisions for protection and relief to the victims, enhanced punishment for those found guilty or those who promote it. The overall provisions of this law can be broadly divided into: **Prevention, Protection and Prosecution of Offenders**.

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3.1. Prevention under the PCMA, 2006: The Law aims at preventing child marriage, punishing certain actions and appointing competent authorities that would be responsible for prevention and prohibition of child marriage. The society is also liable to follow the law and make sure that child marriages are prevented at prohibited at all times. Under the law:

- The solemnisation of child marriages is a cognisable and non-bailable offence (Section 15)
- Child Marriage Prohibition Officers (CMPOs) are to be appointed in every state to prevent child marriages, ensure protection of the victims as well as prosecution of the offenders (Section 16)
- The Courts have the power to issue injunction for prohibiting child marriages from taking place (Section 13)
- Child marriages will be declared null and void if the injunction prohibiting a child marriage from taking place is violated/ contravened or, if the child is taken away from their lawful guardian by enticement, force or use of deceitful means or, is sold or trafficked for the purpose of marriage (Section 12 and 14)
- The law lays down penal provisions for those who solemnise child marriages (Section 10)
- The CMPO and District Collector are responsible for sensitisation and awareness creation in the community (Section 13 (4) and 16 (3) (d))

3.2. Protection: Law aims not only towards prevention and prohibition but gives equal importance to protection of victims of child marriage. It states:

- The law makes child marriages voidable by giving choice to the children in the marriage to seek annulment of marriage (Section 3 (2) and 3 (3))
- It provides for maintenance and residence of the female contracting party (Section 4)
- It gives a legal status to all children born from child marriages and makes provisions for their custody and maintenance (Section 5 and 6)
- The law provides for all support and aid including medical aid, legal aid, counselling and rehabilitation support to children once they are rescued (Section 16 (3) (g))
- The Child Marriage Prohibition Officer has been empowered: to provide necessary aid to victims of child marriage, to provide legal aid and to produce children in need of care and protection before the Child Welfare Committee or a First Class Judicial Magistrate, where there is no Child Welfare Committee (Section 32 of Juvenile Justice (Care and Protection of Children) Act 2000, as amended in 2006)

3.3. Prosecution of Offenders: The law further lays down the mandate for prosecution of offenders in cases of child marriage. It:

- The law provides for punishment for an adult male above 18 years of age marrying a child (Section 9)
- It also lays down punishment for those performing/conducting/ abetting a child marriage (Section 10)
- It prescribes punishment for promoting or permitting solemnisation of child marriage, including for parents, guardians or any other person/association/organisation (Section 11)
The law clearly states that women offenders in any of the above categories cannot be punished with imprisonment. However, they can be penalised by way of imposition of a fine (Section 11 (1))

3.4. The different authorities present under the law to prohibit child marriages are:

1. Child Marriage Prohibition Officer
2. District Magistrate
3. First Class Judicial Magistrate or Metropolitan Magistrate
4. Police
5. Family Courts
6. Any person(s) called upon by the State Government to assist the Child Marriage Prohibition Officer. These could include - a respectable member of the locality with a record of social service, officer of the Gram Panchayat or Municipality, officer of the government or public sector undertaking, office bearer of any non-governmental organisation

3.5. Reporting Child Marriage: The cases of child marriage can directly be reported to

1. The Police
2. The Child Marriage Prohibition Officer or such persons as may be appointed to assist him/her
3. First Class Judicial Magistrate or Metropolitan Magistrate
5. Child Line
6. District Magistrate

IV. Other Initiatives by Government of India to combat child marriage:

The government of India has been making efforts to address the issue of child marriage in India. The direct measures have been bringing out the PCMA in 2006. However, there have also been indirect attempts to address the issue. However, it is often argued that strong national policies that limit child marriage as well as strong laws to prevent it, are undermined by lack of awareness, weak implementation and lax enforcement…In addition, gaps and loopholes in policies, administrative challenges, and lack of awareness of these policies and programs among both implementers and intended beneficiaries are limiting their effectiveness”6 (Das Gupta et al. 2008 as quoted in HAQ 2011). Government launched some conditional cash transfer schemes like Laadli, Balika Samridhhi Yojana that intend to delay marriages by keeping girls in school. However, in the recent past, there have been initiatives rolled out to bring about a larger change in the society with a special focus on girl child. Schemes and policies/programmes like Integrated Child Development Scheme (ICPS) launched in 2009-10, Ujjawala and Swadhaar were launched with this agenda. One of the major objectives behind all these schemes is to address the issue of girl child that will indirectly address issue of child marriage in India. The other goals and commitment of Government of India to eliminate child marriage can be seen in National Policy for Empowerment of Women 2001, National Youth Policy 2002, National Plan of Action 1992, 2005, Tenth and Eleventh Five Year Plans from 2002-07 and 2007-12 respectively.
V. Child Marriage: Exploring causes of prevalence

1. **Education:** Most of the girls who are forced to get married at a very young age have limited or no access and availability to education. The infrastructure available to girls in schools often acts as a hindrance in continuing education. Lack of transport facilities to reach out to distant schools, no toilet facilities for girls etc. are some of the reasons that significantly contribute to keeping girls out of school and therefore tend to favour child marriage.

2. **Socio-Cultural Practices:** There exists a widespread awareness of the illegality of child marriage and Prohibition of Child Marriage Act 2006 (PCMA), however, the incidence of child marriage has continued ever since. One argues that child marriage is deep rooted in socio-cultural practices of our society. People continue to give more weightage to these age old traditional and cultural practices over law and constitutional institutions. In some communities, the time when a girl starts her menstruation, she is considered eligible for marriage.

3. **Girls lower in preference:** In the societal set up, boys are usually given preference over girls. This bias usually starts from the birth of the child and continues till the end. The phenomenon of boy child preference, boys being given preference in terms of education, girls being confined to household chores and taking care of younger siblings, dowry etc. are all social realities that exist even today. Girls are often looked at as an economic liability. Women’s engagement and involvement in the household work is not assigned any economic value. Incidence of dowry related exploitation and death is still heard of despite of the prohibition coming into place for over five decades now (Dowry Prohibition Act, 1961). In many societies, the dowry amount increases with the increasing age of the girl. Therefore, many families prefer marrying off their girls at an early age. Hence, it can be argued that the ‘incentive’ involved in the concept of dowry often perpetuates child marriage.

4. **Weak enforcement of Law:** It has been established that despite of the legal measures in place to combat child marriage, the incidence of it have continued. This can be attributed to weak enforcement of law and other legal measures. Limited detailed knowledge on how to apply laws and little understanding of the consequences of the laws, as well as limited trust in institutions enforcing them, undermines the implementation of the PCMA.

5. **Limited knowledge about social protection programmes:** Government has some social protection programmes in place to empower women and girls. But it has got limited to conditional cash transferring only like Laadli Balika samriddhi Yojana that intended to delay child marriage by keeping girls in school. However, the families have not been able to completely comprehend the objective behind these schemes and programmes. The fallout of this is that cash transfers tend to perpetuate dowry, since parents use the grant for that purpose as soon as the girl turns 18 years old.

6. **Lack of protective environment for a young girl.** Marriage is defended as a security strategy in a situation where there are very few options open for the development of women and children

7. **Lack of will and action** in the administration an judiciary. There is also delay in the matters pertaining to child marriage.
VI. Way Forward:

As has been stated so far that despite of legal measures in place, the issue of child marriage still continues to prevail. Although, as per the statistics available, one sees a decline in child marriage but the rate of decline is slow. We need to develop broad, multi-faceted strategies to target different aspects of this problem, including deep-rooted social norms and behaviours, the perceived low value of girls, limited access to education, exposure to violence, restricted freedom of movement and economic vulnerability. We need to recognise child marriage as a social evil and tool for exploitation of children, especially girls. It is also argued that delaying marriage for girls can contribute to reduction of maternal mortality, prevailing HIV infection, improving women’s educational and economic status and ensuring women’s rights and gender inequality (ICRW 2011).