SITUATIONAL ANALYSIS OF
CHILD MARRIAGES IN ASSAM

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Reproductive Rights Initiative
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I. Introduction

The issue of child marriage is one of the emerging concerns among the developing countries. According to the 2001 census there are 1.5 million girls, in India, under the age of 15 already married. Of these, 20% or approximately 300,000 are mothers to at least one child. The 2001 census also estimated the average age of marriage has risen to 18.3 for females. The male average is 22.6 years.1 There are many factors which contribute to the high prevalence of child marriage in India. Economic and social backwardness, social practices and traditions, religion is one of the main reasons for occurrence of child marriage in the country. Child marriage had both sociological and psychological affect on boys and girls. “But the affect on girls is far larger and more intensity because when a girl lives with a man and takes on the role of caregiver for him, the assumption is often that she has become an adult woman, even if she has not yet reached the age of 18 years. She is required to perform heavy amounts of domestic work, under pressure to demonstrate fertility, and responsible for raising children, constrained in decision making and reduced life choices.”2

The prevalence of child marriage depicts the human right crisis in the country. Government and State Government are making an effort to curb the evil practices of child marriage in the county. But the question is “Is government successful in curbing the age old practices of child marriage in India? In this paper we will answer the above question by analyzing the child marriage situation in Assam and it status of implementation of child marriage laws. Like other state of India, Assam also has the practices of marrying their girls at early ages. According to the Annual Health Survey report of 2010-11, 10 districts in Assam have underage marriage rates higher than the state and national averages, which stand at 21 and 22 per cent respectively. Besides, among the married women in the age group of 20-24, the state average of those who were married before they were 18 is as high as 39.4 per cent.

Methodology

2 Proposal to amend the Prohibition of Child Marriage Act, 2006 and other allied laws :Report No. 205, Feb 2006: Law Commission of India
Activist from HRLN and Barak Human Rights Protection Committee did a fact finding in Cachar District in Assam from 1st Nov- 4th Nov, 2015 to investigate the incidence, causes and effects of child marriage in the area. The team visited Bhuvan Valley, Kalain FRU, Jalalpur PHC, Rajpur Tea Estate, Lakhipur Block PHC, Sonai PHC. The fact finding team sought to investigate, first, whether or not these figures were accurate or if they reflected inaccurate reporting of ages at marriage, and, second, if the figures masked higher rates of child marriage in tea gardens as opposed to other area. This report outlines the facts and fundamental rights violations women and girls face in rural Cachar. The research is based on interviews with the young girls and young pregnant women, local NGOs, police, ASHA, secondary data and literature review. The team interviewed 20 girls.

**Definition of Child according to different law:**

- **The Child Marriage Restraint Act, 1929:**
  “child means a person who, if a male, has not completed twenty one years of age, and if a female, has not completed eighteen years of age.”

- **The Special Marriage Act, 1954**
  “a child, means a person who, if a male has completed the age of twenty-one years and the female the age of eighteen years.”

- **The Hindu Marriage Act , 1955**
  “the bridegroom has completed the age of twenty one years and the bride the age of eighteen years at the time of marriage.”

- **Muslim Law**
  “one of the important elements of Muslim marriage is Puberty. Puberty is a biological phenomenon.”

- **The Indian Christian Marriage Act, 1872**
“The age of the man intending to be married shall not be under twenty one years, and the age of the woman intending to be married shall not be under eighteen years”.

- **Prohibition of Child Marriage Act, 2006**
  "child" means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age.”

Thus, the legal age of marriage among girls is 18 years and 21 years for boys. But here we can see the gender disparity in deciding the median age for marriage. In a male dominating society like India, the median marriageable age is 21 years for men and 18 years for women. The “marriageable age” deprived from age old tradition of where women are married off to men who are five years elder to her.

There is wide range of debate on the marriageable age. Government has made 18 years as age of attaining majority and given voting rights but we cannot see equality in the marriage age of girls (which is 18 years) and boys (21 years). There was also a debate regarding the marriageable age of girl among Muslim community because according to Muslim law, the marriageable age of girl child depends on her puberty. But in recent judgment of Gujarat Hugh Court, in Sept, 2015 the Gujarat High Court has ruled that in cases of minor Muslim girls, the Prohibition of Child Marriage Act, 2006, will prevail over the provisions of Muslim personal laws. The court, while quashing an FIR of rape and abduction of a minor girl by the petitioner who married her, ordered the police to probe the case under the provisions of Child Marriage Act. The single-bench of justice J B Pardiwala held that Child Marriage Act was a “Special Act” and it will override the provisions of Muslim Personal Law, Hindu Marriage Act or any personal law.

**Causes of Child Marriage**

A multiple of factors contribute to the prevalence of child marriage in Assam, ranging from socio-cultural to economic issues. In Assam, the practice of elopement, early marriage where both parties consent freely, is common and an accepted practice in tea garden and tribal communities, especially among the Adivais, Bodo, and Santhals. Child marriage is a prescribed
religious practice among some of the Muslim population in Dhubri and Nagaon. In those areas, it is common for a girl to marry at the age of 14 or 15.³

Poverty and a lack of access to quality education are major causes of child marriage. For girls working in tea gardens, employment at the tea garden is more accessible than a quality education. Education and the accompanying fees for supplies can be costly for poor families. Therefore, families may pressure girls to drop out and work at the tea garden so that they can contribute to household earnings. Girls that drop out of school often elope once they begin working. Girls from minority-dominated districts, in which families traditionally arrange their marriage, may face additional social pressure to marry early. In fact, only 18.2% of women between ages of 15-19 have money that they decide how to use.⁴ The remaining girls are dependent on their families’ preferences about their age of marriage.

Dowry concerns may also contribute to child marriage. Although dowry is not traditionally practiced in Assam, it has become more common for a groom’s family to demand dowry after marriage. Often, men from states that practice dowry, like Punjab and Haryana (where the sex ratio of women to men is significantly lower) propose to girls in Assam (where the sex ratio of women is more favorable). In some cases, the groom’s family will approach the girl’s family with a marriage proposal sans dowry or may even agree to pay the girl’s family Rs 5,000-10,000.⁵ After the marriage the groom’s family may then demand dowry. If the girl’s family does not pay, the girl may be subject to poor treatment by the groom’s family (with whom she traditionally resides). Dowry has also become more common in minority and migrant-populated areas in Assam.⁶

Poorer families from tea gardens report regarding dowry and child marriage, that the dowry price of an older girl is higher than that of a younger girl because a younger girl has more strength and life left to work for the husband’s family after she is married. Thus, some families fear that they will not be able to afford the dowry price for their daughters if she is too old. Furthermore, families note that it is expensive to continue to feed their daughters and cheaper to marry them

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⁴ Id. at 107.
⁵ Id. at 108.
⁶ Id. at 108.
off younger. Other residents of the tea gardens state that it is the general cultural practice to marry girls off around 14 to 15 years old and if a family waits too long to marry a girl off, no one may want to marry her.

“There is also a belief that child marriage is a protection for the girls against unwanted masculine attention or promiscuity. In a society which puts a high premium on the patriarchal values of virginity and chastity of girls, girls are married off as soon as possible.”

III. Legal context

The first law to prevent child marriage was introduced in 1929. Since then there are any many amendments to the law. There are many international and national laws to curb child marriage in India, these laws are brief mentioned below:

I. Child Marriage Restrain Act, 1929:

The Child Marriage Restraint Act (CMRA), popularly known as the Sharda Act, was introduced with the objective to prohibit child marriages of girls below the age of 15 years and of boys below the age 18. In 1978, the law was amended and raised the minimum age of marriage by three years i.e. from 15 to 18 years for girls and from 18 to 21 years for boys.

II. Prohibition of Child Marriage Act 2006

The Prohibition of Child Marriage Act 2006 (PCMA) defines a ‘child’ as either a male below the age of 21 or a female below the age of 18, and a ‘child marriage’ as a marriage to which either of the contracting parties is a child.

If a court is satisfied that a child marriage has been arranged or is about to solemnised, it can issue an injunction against any person prohibiting the marriage. However, once a child

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7 Proposal to amend the Prohibition of Child Marriage Act, 2006 and other allied laws :Report No. 205, Feb 2006: Law Commission of India
8 PCMA, s 2(a).
9 PCMA, s 2(b).
10 PCMA, s13(1).
marriage has been solemnised, in most cases it is legally binding, and to void it the contracting
party who was a child at the time of the marriage must file a petition in the district court before
reaching the age of 20.\textsuperscript{11}

However, there are certain circumstances in which a child marriage is automatically void,
namely where the marriage was solemnised in contravention of an injunction order,\textsuperscript{12} or where
the child was married after he or she was ‘taken or enticed out of the keeping of the lawful
 guardian’, or ‘by force compelled, or by any deceitful means induced to go from any place’, or
‘sold for the purpose of marriage’.\textsuperscript{13}

Under the PCMA, a male over the age of 18 who contracts a child marriage is punishable with
imprisonment for up to two years and/or a fine of up to one lakh rupees.\textsuperscript{14} The same punishment
applies to anyone who solemnises a child marriage,\textsuperscript{15} and to anyone who permits a child
marriage to be solemnised or negligently fails to prevent it from being solemnised.\textsuperscript{16} Where a
minor child contracts a marriage, there is a rebuttable presumption that the person having charge
of the child has negligently failed to prevent the marriage from being solemnised.\textsuperscript{17}

Under the PCMA, each state must appoint at least one Child Marriage Prevention Officer
(CMPO),\textsuperscript{18} and it is the duty of the CMPO:

\begin{itemize}
  \item[a.] to prevent solemnisation of child marriages by taking such action as he may deem fit;
  \item[b.] to collect evidence for the effective prosecution of persons contravening the provisions of
          the PCMA;
  \item[c.] to advise either individual cases or counsel the residents of the locality generally not to
          indulge in promoting, helping, aiding or allowing the solemnisation of child marriages;
  \item[d.] to create awareness of the evil which results from child marriages;
  \item[e.] to sensitize the community on the issue of child marriages;
\end{itemize}

\begin{footnotes}
\item[\textsuperscript{11}] PCMA, s 3.
\item[\textsuperscript{12}] PCMA, s 14.
\item[\textsuperscript{13}] PCMA, s 12.
\item[\textsuperscript{14}] PCMA, s 9.
\item[\textsuperscript{15}] PCMA, s 10.
\item[\textsuperscript{16}] PCMA, s 11(1).
\item[\textsuperscript{17}] PCMA, s 11(2).
\item[\textsuperscript{18}] PCMA, s 16(1).
\end{footnotes}
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 by the State
  Government.19

On 24 August 2007, the Supreme Court of India issued an order stating that, ‘it is expected that
the States within six weeks [of the PCMA being brought into force] … shall frame appropriate
Rules.’20

Moreover, in 2006 the Supreme Court of India issued an order making registration of all
marriages mandatory.21 However, national legislation to this effect has yet to be introduced.

Finally, both the Madras High Court and the Delhi High Court have confirmed that the PCMA
overrides all personal laws and governs each and every citizen of India.22

#### III. Constitution of India

- **Protection of life (Article 21)**

Child marriage violates the fundamental right to life under Article 21 by exposing girls to
reproductive health risks, including early pregnancy. Citing decisions establishing that the right
to life includes the duty to preserve life23 and to protect dignity,24 the Supreme Court of India has
recognised that ‘the right to health and medical care is a fundamental right under the right to
life.’25 Besides, high courts in India have specifically recognised reproductive rights as protected
under the right to life. In 2011, the Delhi High Court found that reproductive rights are part of

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19PCMA, s 16(3).
20Supreme Court Order of 24 August 2007, Forum for Fact Finding Documentation and Advocacy v. Union of India,
Supreme Court W.P. (C) 212/2003.
22T. Sivakumar v. The Inspector of Police, para. 17 (Madras High Court, 2011); Court On Its Own Motion (Lajja
Devi) v. State (GNCT of Delhi) and Others, paras.20, 30 (Delhi High Court, 2012).
Briefing Paper at 44.
25Consumer Education and Research Center v. Union of India, 1 S.C.R. 626, para.26 (1995).Quoted in Briefing
Paper at 44-45.
the ‘inalienable survival rights’ implicitly protected under the fundamental right to life.\textsuperscript{26} And in 2012, the Madhya Pradesh High Court found that the ‘inability of women to survive pregnancy and child birth violates her fundamental right to live’.\textsuperscript{27}

Child marriage also violates the fundamental right to life under Article 21 by exposing girls to domestic violence and marital rape which is criminalised under Indian law only until a girl reaches the age of 15.\textsuperscript{28} The Supreme Court of India has held that Article 21 includes the right ‘to protection against torture, or cruel, inhuman or degrading treatment’.\textsuperscript{29}

\textit{Protection of personal liberty (Article 21)}

Child marriage violates the right to personal liberty under Article 21 by interfering with the ability of girls to make decisions about their private lives. The Supreme Court of India has long recognised that the right to personal liberty includes the right to privacy.\textsuperscript{30} Moreover, in \textit{Gobind v. State of Madhya Pradesh} the Supreme Court recognised the right to privacy in relation to family life and reproduction, stating that ‘any right to privacy must encompass and protect the personal intimacies of the home, the family, marriage, motherhood, procreation and child rearing’.\textsuperscript{31} More recently, in \textit{Rajgopal v. Tamil Nadu}, the Supreme Court reaffirmed that ‘the right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21’, and that every citizen ‘has a right to safeguard…[the] privacy of his own, his family, marriage, procreation, motherhood, child bearing and education’.\textsuperscript{32}


\textsuperscript{28} Under the Protection of Children from Sexual Offences Act 2012 (PCSO), sex with a child below the age of 18 is rape (PCSO, arts. 2(d), 3). however, the Indian Penal Code, which was amended in 2013, states that marital rape is only criminalised until a girl is 15 years of age (The Criminal Law (Amendment) Act, No. 13 of 2013, art. 8).

\textsuperscript{29} Francis Coralie Mullin v. Administrator, Union Territory of Delhi & Others, 1981 SCR (2) 516 (1981).Quoted in Claiming Dignity, at 35.

\textsuperscript{30} In Gobind v. Madhya Pradesh 2 SCC 148 (1975), the Supreme Court held that ‘individual autonomy, perhaps the central concern of any system of limited government, is protected in part by our Constitution by explicit constitutional guarantees….Many of the fundamental right of citizens can be described as contributing to the right of privacy.’ Quoted in Claiming Dignity, at 30.

\textsuperscript{31} Gobind v. State of Madhya Pradesh & Another, 3 S.C.R. 946, para.24 (1975); Child Marriage in South Asia at 45.

\textsuperscript{32} Rajigopal v. State of Tamil Nadu, Supp. 4 S.C.R. 353, para 28(1); Child Marriage in South Asia at 45.
Prohibition of traffic in human beings and forced labour (Article 23)

‘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.’ 33 Indeed, the Supplementary Convention on the Abolition of Slavery - which India signed on 7 September 1956 and ratified on 23 June 1960 - defines as ‘similar to slavery . . . any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.’ 34 Thus, child marriages violates the fundamental rights of girls under Article 23 of the Constitution of India.

Equality before law (Article 14) and prohibition of discrimination on grounds of sex (Article 15)

Although child marriage affects both sexes, girls are disproportionately affected. One reason for this is that child brides are invariably younger than their husbands, and in some cases this age gap extends to many years. Another reason is that many of the harms that girls suffer as a result of child marriage - such as early pregnancy, domestic and/or sexual violence, and restricted educational opportunities - do not apply to their boys. Thus, child marriage violates the fundamental right to equality before the law under Article 14, as well as the constitutional prohibition of discrimination on grounds of sex under Article 15. Indeed, Article 15(3) of the Constitution allows the State to make ‘special provision for women and children’. Moreover, the Supreme Court has held that ‘gender equality is one of the most previous Fundamental Rights guaranteed by the Constitution of India.’ 35

Right to education (Article 21A)

Child brides are almost always forced to leave school, either at the direct insistence of their in-laws or as a result of early pregnancy. Thus, child marriage violates girls’ fundamental right to education under Article 21A.

33 Child Marriage in South Asia at 36.
34 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and the Institutions and Practices Similar to Slavery, adopted 7 September 1956, art. 1(d) 266 U.N.T.S 3 (entered into force 30 April 1957).
**Directive Principles of State Policy (Article 39)**

Finally, Article 39 of the Constitution mandates that ‘the State shall, in particular, direct its policy towards securing, inter alia, ‘that the health and strength of workers, men and women, and the tender age of children are not abused’, and ‘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’. These Directive Principles of State Policy clearly require the State to direct its policy towards eradicating child marriage, which leads to the abuse - physical, sexual and psychological - as well as the exploitation of young girls.

**IV. International law**

Article 51(c) of the Constitution of India mandates the State to ‘foster respect for international law and treaty obligations in the dealings of organized peoples with one another’. Moreover, the Supreme Court regularly confirms India’s international human rights obligations. In *Apparel Export Promotion Council v. Chopra* (1999), the Supreme Court found that the judiciary ‘is under an obligation to give due regard to international Conventions and Norms for construing domestic laws, more so when there is no inconsistency between them and there is a void in domestic law.’

**Rights of the Child:**

Under international human rights law, children are recognised as requiring special care and enjoying 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). India has acceded to, all three of these Conventions. Under Articles 19 of

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36 Article 39(e).
37 Article 39(f).
38 *Child Marriage in South Asia* at 24-37.
40 CRC, preamble; ICCPR, art.24; ICESCR, art.10(3).
the CRC, states parties must ‘protect the child from all forms of physical or mental violence, injury, or abuse’,\textsuperscript{42} and under Article 34 they must ‘protect the child from all forms of sexual exploitation and sexual abuse’.\textsuperscript{43} The Committee on the Rights of the Child (CRC Committee) has specifically recognised child marriage as a violation of children’s rights that endangers girls’ lives and health and exposes them to violence.\textsuperscript{44}

**Rights to Equality and Nondiscrimination**

International human rights law guarantees women’s rights to equality and non-discrimination. Such guarantees are enshrined in the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) - which India signed on 30 July 1980 and ratified on 9 July 1993 - as well as the in the ICCPR and the ICESCR.\textsuperscript{45} Because child marriage impacts girls far more than boys, it violates women’s rights to equality and nondiscrimination. Indeed, Article 16 of CEDAW, concerning protection of women’s equal rights in marriage, specifically prohibits child marriage.\textsuperscript{46}

**Right to Health**

The ICESCR recognizes ‘the right of everyone to the enjoyment of the highest attainable standard of physical and mental health’.\textsuperscript{47} The CEDAW Committee has recognised the long-term negative effect of child marriage on women’s enjoyment of their right to health.\textsuperscript{48}

**Right to Freedom from Torture and other Cruel Inhuman Degrading Treatment:**

Under the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) – which India signed on 14 October 1997 - states have a duty to eliminate

\begin{itemize}
\item \textsuperscript{41} India acceded to the CRC on 11 December 1992; it acceded to the ICCPR on 10 April 1979; and it acceded to the ICESCR on 10 April 1979.
\item \textsuperscript{42}CRC, art. 19.
\item \textsuperscript{43}CRC, art. 34.
\item \textsuperscript{45}CEDAW, art.1; ICCPR, art.3, 26; ICESCR, art. 3.
\item \textsuperscript{46}CEDAW, art.16(2).
\item \textsuperscript{47}ICESCR, art. 12.
\item \textsuperscript{48}CEDAW Committee, *Concluding Observations: Chad*, para. 43(c), U.N. Doc. CEDAW/C/TCD/CO/1-4 (2011).
\end{itemize}
torture and other forms of cruel, inhuman, or degrading treatment (TCIDT). The CAT Committee has recognised that child marriage violates the right to be free from TCIDT.49

**Rights to Life, Privacy, and Freedom from Slavery**

Under the CRC, states parties must ensure children’s right to life,50 and ‘ensure to the maximum extent possible the survival and development of the child.’51 Moreover, the CRC Committee has specifically stated that states parties must take effective measures to eliminate all acts and activities that threaten the right to life of adolescents, including child marriage.52

Child marriage also violates women’s right to privacy under Article 17 of the ICCPR.53 The Human Rights Committee has specifically stated that states parties are obligated under Article 17 to eradicate forms of marriage that allow for the sexual exploitation of children.54

Finally, the Special Rapporteur on Contemporary Forms of Slavery has affirmed that since children cannot provide informed consent to marriage, all child marriages are considered to be forced and to fall within the slavery-like practices condemned in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.55

India signed this convention on 7 September 1956 and ratified it on 23 June 1960.

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

India is bound by international conventions - namely the CRC and the ICESCR - that guarantee the interrelated rights to education, employment, and economic freedom.56 Moreover, India is required under CEDAW to ensure that women are able to enjoy these rights on an equal basis.

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50 CRC, art.6(1).
51 CRC, art.6(2).
53 ICCPR, art. 17.
55 Special rapporteur on contemporary forms of slavery, including its causes and consequences, Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, GulnaraShahinian, Thematic report on servile marriage, para. 14, U.N. Doc.A/HRC/21/41 (10 July 2012).
56 CRC, art.28; ICESCR, art.6, 13.
with men. The CEDAW Committee has emphasized that the impact of child marriage on women’s health and ability to pursue education restricts their economic autonomy.

**Assam State Laws to prevent child marriages:**

At a local level, increasing attention has been directed at stopping child marriage. In August of 2015, the Chief Minister of Assam, Tarun Gogoi, promised to introduce stricter legislation that would end child marriage in Assam within the next couple of years. Although preliminary work is being done to combat child marriage, as of November 2015, no new laws have been passed. In addition, Assam has still not passed any laws to implement the Act and has not appointed a child marriage protection officer. Aside from the below mentioned initiatives, little is being done by the government and civil society organizations to combat child marriage.

In terms of the preliminary work being done, key government stakeholders conducting interventions to address child marriage include: the Department of Social Welfare (the nodal agency for implementing the 2006 PCMA), the Assam Social Welfare Board, the Assam MahilaSamata Society, the Department of Education & SSA, the Department of Health & Family Welfare, and the Department of Rural Development. The Directorate of Social Welfare recently created the Child Development Council to take institutional measures to address the needs of children and women. The Department of Social Welfare is also developing a District and State-level cross-sector Action Plan for the Prevention of Child Marriage. In addition, the Department is planning to launch a conditional cash transfer scheme. Under this scheme, 10,000 rupees will be awarded to girls below the poverty line if she marries after 20 years of age. The Mukhya Mantrir Jibon JyotiBima Achoni, a scheme to create self-help groups at the village-level to empower women, is also being developed.

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57CEDAW, art.10, 11.
59Desk Review of Child Marriage at 112.
60Id. at 114.
61Desk Review of Child Marriage at 115.
62Id. at 116.
Currently, a draft of the *Assam Prohibition of Child Marriage Rules*, implementing Section 19 of the 2006 PCMA is pending for review by the Government of Assam.\(^6^3\) To coordinate and monitor implementation, the draft rules appoint a State Level Coordination Committee, a District Child Marriage Prohibition & Monitoring Committee, a GramPanchayat Level Core Committee, a Chief Child Marriage Prohibition Officer, a Child Marriage Prohibition Officer and Sub Divisional Officers. The draft rules also delineate the roles and responsibilities of each station.

![Exhibit E.3: Institutional Administrative Structure as per Assam PCMA Draft Rules](source.png)

*Source: Figure from Unicef Desk Review of Child Marriage*\(^6^4\)

Other key central government initiatives that are being implemented in Assam to curb child marriage include: child protection programs, such as the Integrated Child Protection Scheme (ICPS), social empowerment schemes, like Child Line Services and Kishori Shakti Yojana, economic empowerment schemes, like STEP, and rescue and rehabilitation empowerment schemes, such as Ujjawala, and Vocational Training. The following figure shows an overview of key State Social Welfare Board programs.

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\(^{63}\) *Id.* at 110.

\(^{64}\) *Id.* at 112.
Furthermore, the State of Assam is considering amending the Assam Hindu Marriage Rules and Assam Moslem Marriages, 1961, & Divorce Registration, 1935, so that the registration of marriage is compulsory as per the Supreme Court directive. The Assam Mahila Samata Society conducts literacy, social, and economic empowerment program, the Mahila Samakhya Programme, across nine districts for girls susceptible to child marriage. The Society also generates awareness about child marriage and mobilizes groups against child marriage.

The Department of Health and Family Welfare creates awareness about the age of marriage and associated risks of teen pregnancy. The Department recently began a state conditional cash transfer scheme, called Majoni, whereby a girl born in a government or charitable hospital that reaches the age of 18, unmarried, will be awarded Rs 5000. Unfortunately, now that the scheme has become publicized, the bride often never sees the award, as it goes straight to her dowry. The Department of Health and Family Welfare is also implementing two central government schemes promoting economic empowerment for men and women below the poverty line. Also, the District Rural Development Agency and UNICEF are conducting programs to

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65 *Desk Review of Child Marriage* at 116.
66 *Id.* at 112.
67 *Id.* at 119.
prevent child marriage in all seven blocks in Dibrugarh District. However, no such program has yet been implemented in Cachar District.

In terms of other civil society groups, few groups focus on child marriage in Assam. Of those that do, the Women Development Council, the Assam Board of Indian Tea Association, and the Bharitya Cha Parishad Tea Association are taking actions to address child marriage. These organizations perform a variety of vital activities, such as conduct sensitization trainings, facilitate adolescent girls clubs, form local child rights working groups, and advocate with member tea gardens and unions.

In order to effectively combat child marriage, the Government of Assam must tackle dropout rates by girls in school, provide better access to education, more vocational training, sensitize communities about the perils of child marriage, mandate accurate and standardized reporting of child marriage, and ensure enforcement of the 2006 PCMA. Unfortunately, many of these government and civil society schemes are still in their nascent stage and much remains to be done to combat child marriage at the local level.

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68 Id. at 120.
69 Id. at 120.

Situational analysis of child marriage and implementation of PCMA in Cachar district, Assam:

Cachar district is located in the southernmost part of Assam. Administratively the district is now divided into two subdivisions viz. Silchar (Sadar) and Lakhipur. The total number of census villages in the district is 1023 of which 895 are revenue villages. There are 163 Gaon Panchayats in Cachar district. There are five revenue circles and fifteen community development blocks (CD) in the district.  

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70 Baseline Survey of Minority Concentrated Districts: Study Commissioned by Ministry of Minority Affairs, GOI: Study Conducted by Omeo Kumar Das Institute of Social Change and Development: Guwahati
**Revenue Circles and Blocks in Cachar district**

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<thead>
<tr>
<th>Name of Revenue Circles</th>
<th>Name of Blocks</th>
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<tbody>
<tr>
<td>Katigorah</td>
<td>Katigorah</td>
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The fact finding team visited Bhuvan Valley tea garden, Lakhipur block.

**Case Studies:**

**Bhuvan Valley Tea Estate**

1. **Lakshmi Sabar**

On 1st November, 2015 the fact finding team visited Bhuvan Valley Tea Estate. The tea estate has been closed since 1st October, 2015 due to an ongoing wage dispute. It has about 472 permanent workers. There, the team spoke to Lakshmi Sabar’s mother-in-law, Kokila Sabar. Lakshmi was aged 20 years when she died on 9th October 2015. Lakshmi married her husband Rama Shankar Sabar about four years ago, around the age of 16 years. Lakshmi’s age is incorrectly recorded at 25 in her ASHA booklet. It is likely that the ASHA workers overestimated her age to avoid reporting child marriage and pregnancy. Rama reports that he is
28 years old but his age is recorded as 22 on his school certificate. It is likely that he married around the age of 18.

On 9 October 2015, Lakshmi Sabar died seven days after giving birth to her second child. (Her first child was stillborn one year ago.) The child is only one month old. We also spoke to Lakshmi’s mother-in-law; Kokila Sabar about the Lakshmi gave birth at home without a midwife. As the tea garden was closed, there was no tea garden ambulance available. Moreover, the family could not call an ambulance because they had no mobile phone. After the delivery, Lakshmi suffered from intense swelling of the whole body (but no bleeding). A doctor came two or three weeks after Lakshmi’s death, but could not identify the reason for her death.

**Observation:**

The above case study shows that state failure to provide adequate health services to Lakshmi during her pregnancy period. This shows clear violation of right to life and health (Article 21) and violation of the provision of international laws like ICESCR which recognizes ‘the right of everyone to the enjoyment of the highest attainable standard of physical and mental health’ (Article 21).

**2. Dipali Dati**

Dipali stated that she is around 25 years old, but she looks younger. She has been married for around six year and likely got married around the age of 18 or 19 years. She completed primary school up to fourth standard when her father passed away. After her father passed away, she gave up school to work and worked for ten to twelve year before marriage. She is now five months pregnant. She was not aware of PCMA act and her marriage was not registered.
Observation:
She was drop out at 4th standards. There was no monitoring or counseling the school authority to investigate the reason for her drop outs. Thus, the basic fundamental right to education (Article 21 (A)) was violated. Moreover, the state failed to make the community of the legal provisions of PCMA. It leads to violation of PCMA. Her marriage was not registered so this leads to violation of Registration of all marriage act, 2006. Under this act it is compulsory to registered all marriages.

3. Pratima Santhal

Pratima reports that she is 28 years, although she looks younger. She has been married for 13 years now. She was married around the age of 15 years. She has a son called Mintu. Her husband died of malaria seven or eight years ago. Two of her children died, but one is alive (Mintu). Mintu was born in 2007. First child, Rintu, was born in 2004 and died at the age of 4 due to a stomach infection. She delivered her first child after two years of marriage (around the age of 17). Then there was a three year gap for the second baby.
Her marriage was an arranged marriage. Pratima went to school up to Class 7. After she left school, she joined as a worker in the tea garden, worked there for three years, and then got married at the age of 15 or 16. She moved straight in with the husband’s family after marriage.
Her mother is a permanent labourer in Jalalpur tea estate, her father is a day labourer. Her brother-in-law (husband’s elder brother) has two children; her mother-in-law is also in the family. They all live together.
When asked whether she wanted to get married so young, she said her consent was not necessary. Her parents and other family members arranged for the marriage and she had to agree. She has nothing to say. She does not feel it was very early, nor does she feel it was good or bad. She says she has no opinion about this.
Generally the poorest families cannot afford the expense of sending a child to school after a certain standard. To earn extra money, their parents employ them in the tea garden, and then they get married.

**Observation:**

She was not aware of the legal provision of PCMA and her marriage was not registered under Registration of marriage Act, 2006.

4. **Ruma Tanti:**

Ruma reports that she is now 25 years old. However, she looks younger than 25. She says was married about 8 years ago, so she would have been 17 years old when she married. She has three children, a seven-year-old (in class three), a four-year-old (Deepali), and a two-year old. She was orphaned at a young age and raised by her village. Her village arranged her marriage for her and paid her dowry for her. The dowry consisted mostly of cooking utensils. Her father died of rabies when she was young and her mother died delivering her younger brother. Her mother’s name was Moniar Khal.
Her husband’s name is Bipol Tanti. He is approximately 30 years old. When asked if she was ready to marry she said she did not have an opinion on it and everything was OK after she got married.

5. **Lukhi Banwari:**
Lukhi got married in 2005 at around the age of 13. She is now around 26 years old. She has three children. Her husband’s name is Chand Muni. Her oldest child is in class three. She had her first child at the age of 16 and the second at the age of 18. Her parents were the ones that decided when she should marry but she gave her consent and she was not against it. It was just the system to marry at that age she says when I asked if she thought she got married too young.

*Observation:*
Lukkhi has no decision making power in her family and that’s why she was forced into marriage by her parents. She was not aware of legal provision of PCMA and her marriage was not registered. This shows clear violation of legal provision of PCMA where CMPO and District Collector are responsible for making the community aware about PCMA and also violation of provision of Registration of marriage, 2006

6. **Roshna Begum.**
Roshna reports that she 20 years old (although she looks younger). She has two children, a five-year-old, Hasna and a two-year-old, Rabia. Hasnia is a special needs child, she is deaf and dumb. She is currently eight-months pregnant with her third child. She was married five years ago and immediately after a year was pregnant with her first child in 2010.

Roshna was married around the age of 14 and delivered her first child around the age of 15. Her marriage was an arranged marriage. She is from Motinagar, which is about 10 minutes away from her current home. She says she wants
a boy child and once she has a boy child she will get sterilized. Her father and mother were day laborers and she has three brothers. She had not attended school. When asked if she felt ready to marry at such a young age she said that she didn’t have an opinion one way or another. She gave her consent for the marriage. She did not go to school because her parents did not have money to send her to school. Many girls from her village without means were not able to go to school.

Observation:
In this case we can see poverty was cause of her marriage. She was not aware of legal provision of PCMA and her marriage was not registered. This shows clear violation of legal provision of PCMA where CMPO and District Collector are responsible for making the community aware about PCMA and also violation of provision of Registration of marriage, 2006.

7. Jaymati Ree

Jaymati has two children; the oldest is six years old. She is from Didar Kush village and was an orphan. Both of her parents died when she was young. She was very poor when growing up. Thus, she did not go to school at all. Her mother died from dysentery and she does not know how her father died. She did not have brothers or sisters. Her husband sells firewood for money. She married him about 10-15 years ago. She must have married around the age of 10 or 15 years.
She says she is about 25 years old now. She clearly looks much younger than 25 years old. Her Asha card says she is 33 years old but she said she did not fill that out, she says the ASHA workers just put that age down themselves.

Jaymati had her first child around 19 years old. Her first child was delivered at home, normally, but her second child was delivered at the PHC that was built near here. She is now 6 months pregnant with her third child. She will deliver at home if everything is normal. She is planning to get sterilized after this pregnancy. So far her pregnancy has been normal and she has had her antenatal checkups. Her husband’s name is PanchamRee. When the team asked if she felt she married at the right time and not too soon, she said she did not have an opinion on this. She married here in this village and gave her consent because her parents arranged the marriage.

**Observation:**
In this case study we see that she don’t have any decision making power in the family. She was not aware of effects of child marriage on her health. As mentioned above she gave her consent because her parents arranged it. She was not aware of legal provision of PCMA and her marriage was not registered. This shows clear violation of legal provision of PCMA where CMPO and District Collector are responsible for making the community aware about PCMA and also violation of provision of Registration of marriage, 2006

8. **Astami Bawri**
Astami is six months pregnant with her first child. Her husband’s name is BachanBawri and he says he is 22. However, according to the voter list, he is only 19 years old. He went to school until grade 8. Astami has been married for two years. She did not attend any school. When her father died, she was young, so she went to work at the tea garden to earn some money. She is from Didar Kush division 7. She said she is 20 and got married at the age of 18 but clearly looks younger than 18.
Observation:
In this case poverty was the main reason getting married at an early age. She was deprived of the basic right to education. She was not aware of legal provision of PCMA and her marriage was not registered. This shows clear violation of legal provision of PCMA where CMPO and District Collector are responsible for making the community aware about PCMA and also violation of provision of Registration of marriage, 2006.

9. Subna Bawri

Subna has been married for a year. She had a child about a month ago in her home but that child died within 2 hours. She does not know why. She had labor pains at around midnight or 11am and the baby was born around 8pm the next day. There was no unusual swelling or bleeding. Her husband is 20 years old she says. She is from Didar Kush. She did not attend school because her family didn’t have money to send her to school. She said she did not know how old she was but she guessed she is less than 18 years old. She looks around 16 years old. She gave consent for her marriage and does not have an opinion on whether or not she was ready to get married.

Observation:
In this case we see clear violation of fundamental right – Right to education. She was not aware of legal provision of PCMA and her marriage was not registered. This shows clear violation of legal provision of PCMA where CMPO and District Collector are responsible for making the community aware about PCMA and also violation of provision of Registration of marriage, 2006.
10. Sunita Tanti

Sunita has been married for about 7-8 years. She gave consent for her arranged marriage. Her husband is a shopkeeper for a small grocery store in town. She is from Rosekandi village. She said she is around 30 years old but looks much younger than that. She looks like she is in her early twenties. She has two children; the oldest is two years old. She is nine months pregnant. She did not attend school and worked as domestic help. Her mother and father died when she was young.

*Observation:*

In this case we witness the violation of Right to education which is one of the fundamental rights under Article 21 (A). She was not aware of legal provision of PCMA and her marriage was not registered. This shows clear violation of legal provision of PCMA where CMPO and District Collector are responsible for making the community aware about PCMA and also violation of provision of Registration of marriage, 2006

11. Upsai Bawri

Upsai has two children, ages 7 and 2 years old. She had a third child that died shortly after death. She is now 25 years old. She married around 17 years old and had her first child around the age of 18 years.

*Observation:*

In this case we see that there is no birth interval among her second child and third child. This can affect her health condition.
Lakhipur Block:

12. Amota Begum

She is delivering her second child. Her first child died about a year ago. She married about two years ago. She went to school until grade 9. Her husband is a private driver. When we asked how old she is the Asha said she was 22 years old but the girl said she was 19 years old. She married around age 17 years. Her husband’s name is Ajmer Hussein.

Observation:
In this case study we see that there is no birth intervals in her pregnancies. This may affect the health of child and mother. She was not aware of legal provision of PCMA and her marriage was not registered. This shows clear violation of legal provision of PCMA where CMPO and District Collector are responsible for making the community aware about PCMA and also violation of provision of Registration of marriage, 2006

13. Kulsuma Begu

She just delivered her second child two days ago. Her first child is two or three years old. Her husband’s name is Kabil Hussein. She married in 2012. She became pregnant after two months of marrying. Her husband is a cement maker and carpenter. She went to school until age 18. She said she married at age 18. She says she is 22 years old now, but she clearly looks younger than 22 and seemed to have to calculate her age when asked. She used temporary sterilization (a copper T). Both deliveries were normal.
Observation:
She was not aware of legal provision of PCMA and her marriage was not registered. This shows clear violation of legal provision of PCMA where CMPO and District Collector are responsible for making the community aware about PCMA and also violation of provision of Registration of marriage, 2006

14. Roshana Begum:
Roshna never went to school. She has two children. The oldest child, a girl, is two years and nine-months. Her husband also works as a cement-maker and carpenter. She said she was married at 18 and is now 22 years but she looks younger than 22 years.

Observation:
She was not aware of legal provision of PCMA and her marriage was not registered. This shows clear violation of legal provision of PCMA where CMPO and District Collector are responsible for making the community aware about PCMA and also violation of provision of Registration of marriage, 2006
Interview with ASHA worker:

Raina Begum Khan and Sultana Begum Laskar (ASHA workers)

It was stated that the average age for a first delivery is 17 years old. However, girls from remote areas are often as young as 15 or 16. The AHSA workers stated that patients have to buy all their own equipment. The government only pays for about thirty sets of gloves.

Lakhipur Police Station

Bhupen Borah, Inspector of Police

In his two years at Lakhipur, no FIRs have been filed regarding child marriage. He says that child marriage does not happen in the area, but that kidnapping cases are filed against boys who elope with girls (whether the girl is above or below 18). There have been two or three such cases in the past two years, and the prosecutions are ongoing. There have been no cases of child trafficking reported in the past two years.
When told that child marriage does indeed happen in the area, he says the “police cannot do anything if it is not reported.” He accepts that perhaps there is some unawareness regarding child marriage which explains why it is not reported. There is no Child Protection Officer at this police station.

**Interview with Senior Medical Officer, Lakhipur PHC:**

*Dr. Surendra Singha*

Dr Surendra Singha is the Senior Medical and Health Officer, and has been working here for 15 years (since 1995). He said the PHC serves about 2.5 lakhs of people. Many people that should be delivering at the Medical College end up delivering here instead.

There are emergency services and the hospital can perform minor surgeries. There is no gynecologist and no pediatrician. There is only one doctor, one ayurvedic doctor, and one trainee. There are ten nurses in total, with two on shift at any one time. The hospital does not do C-sections or abortions. They had 212 deliveries in October, and generally they have about 6 or 7 each day. He said there about 7 maternal deaths per month in the district but the women to not die at the PHC. They refer around one third of deliveries to the local medical college. There is no contraception counseling. Condoms are not distributed and they do not do IUDs.

The hospital has one ambulance, and does not provide reimbursement if people take private vehicles, as the hospital has inadequate finances. He said that ambulance services are free (contrary to what we have heard before) and that patients only pay a 250 rupee fuel charge fee. Both JSY and Majony schemes are paid. There is a functioning neonatal care unit.

He says delivery by minors is not very common, and that there is a low incidence of child marriage in the area. He also tells us that certain people, such as those living in tea estates, have no idea what age they are, and if prompted might say ‘20’ just because they heard someone else say the same thing. Some of them however, he said, do not even know what the concept of 20 years old entails.
Dr. Das acknowledged that Jalalpur PHC had many problems, and only one doctor. He said there is a wider problem throughout Assam, as doctors are not willing to serve in these rural parts. For instance, this year 500 doctors were selected to serve in Assam, but only 95 actually came. Thus, there are many vacancies, and only a policy decision from the central government - such as increasing salaries - can remedy this.

Dr. Das said that most tea garden hospitals do not have any doctors, and acknowledged that specialized services are available only in district hospitals or medical colleges. For instance, four doctors are needed for a hospital to perform a C-section (a surgeon, an anaesthetist, a gynecologist and a pediatrician), so it is no wonder PHCs cannot perform them - despite their being mandated to do so under NHM).

When told that bribes are routinely extracted from women who come in to deliver babies, Dr Das said that unless there is a formal complaint he cannot act on it. Moreover, he told us that sometimes patients withdraw complaints weeks or months later because they have come to an arrangement with the nurse or doctor concerned.

Dr. Das also told us that many pregnancies in Bhuvan Valley are identified as high-risk pregnancies because the women have such low levels of haemoglobin, but they refuse to be referred to the medical college. As for the closure of the tea garden hospital in Bhuvan Valley, he said the government has given the funds to the garden authority, and it is up to the garden authority to operate the hospital.

Child marriage is not such an issue in Cachar, he tells us. Moreover, under an incentive scheme started in 2011, ASHA workers get aRs. 500 bonus if they successfully encourage women to wait three years between births. He says there is no scheme for hospitals to reimburse patients who have taken private vehicles to a hospital because an ambulance was not available.
Deputy Commissioner / District Magistrate

Shri S. Viswanathan, Deputy Commissioner and District Magistrate for Cachar

Shri S. Viswanathan has been Deputy Commissioner and District Magistrate for six months, and in that time no cases of child marriage have been filed. He tells us child marriage is not really a problem in Cachar. When asked whether it is a problem that Assam was yet to appoint a single Child Marriage Prevention Officer, as per section 16 of the PCMA, he tells us that they already have CPOs, and that they do not need two people to do the same job.

Cachar District Police Station

Rajveer Singh, Superintendent of Police

Rajveer has been the Superintendent here since 4 August 2015. In that time, no FIRs relating to child marriage have been filed anywhere in Cachar. He began by saying that child marriage was not a problem in this area. We told him we had found many cases and asked him why these cases went unreported. First, he told us, the tea estates are very traditional societies where people are afraid to go the police, as they would be boycotted stigmatized by their neighbours. Secondly, they do not see child marriage as a problem; they are illiterate and do not understand the consequences of child marriage.

Rajveer told us there is supposed to be a Child Protection Officer in every police station, and told us he would investigate why there was none at Lakhipur Police Station. There is also an additional Superintendent of Police at Cachar District Police Station who supervises all the CPOs in the district, but unfortunately she was not available for interview.

Analysis of Findings

1. Fertility rate:
Child marriage leads to early child bearing which in turns leads to multiple pregnancies affecting women health. According to NFHS III, “among young women age 15-19 in Assam, 16 percent
have already begun childbearing. 3% of women age 15 have started childbearing, but among women age 19 years, almost two-fifths (39%) are already either mothers or pregnant. Young women in rural areas are more likely to have begun childbearing than young women in urban areas (17% and 13%, respectively). Teenage pregnancy and motherhood is more prevalent among women with no or little education and among women in lower wealth quintiles than among other women.”

From the total interviewed girls during our fact finding, 17 girls became pregnant with their first pregnancy at the age <18 years and now they have gone through multiple pregnancies. According one of the interviewed ASHA workers of Bhuvan Valley Tea Estate, Cachar district,” average age for a first delivery is 17 years old.”

• Birth intervals

The median interval between births is 37 months. The median birth interval in Assam is not only six months longer than the national average, but is also longer than in all other states of India except Kerala, Tripura, and Goa. Almost half (47%) of non-first-order births occur within three years of a previous birth, including 8 percent of births that take place within 18 months of the last birth and 12 percent that take place within 24 months. Research shows that waiting at least three years between births reduces the risk of infant mortality.

During our fact finding visit we found that the birth interval among child is less then three years. Likhi Banwari has three children. Her elder child is of 18 years, 2nd child is 16 years and third child is 9 years. Here we can see that there is birth interval between first child and second child. Amota Begum, is became pregnant with first child after a year of marrying. Her first child died about a year ago and now she is pregnant with her second child. Thus, there is only a year gap between her two pregnancies. Kulsuma Begum, became pregnant after two months of marrying and now she delivered her second child. Her first child is two years old. Inti Rani was has five children, four boys and one girl

71 NFHS III
Fertility preferences

In Assam, there is evidence of a preference for sons. 24% women and 18 percent of men want more sons than daughters, but only 2-3 percent of women and men want more daughters than sons. However, most men and women would like to have at least one son and most also want at least one daughter.

The desire for more children is strongly affected by women’s number of sons. For example, among women with two children, those with two sons are 27 percent more likely to want no more children than those with two daughters. Notably, however, the proportion of currently married women with two children who want no more children is higher in NFHS-3 than it was in NFHS-2, irrespective of women’s number of sons.

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72 ibid
This shows that women do not have decision making power in family planning and hence due to multiple pregnancies women are vulnerable to HIV, STI’s and other pregnancies related complications. It affects both the mother and child health.

2. **Maternal health:**

“Child marriage leads to early sexual activity and this leads to early child bearing. Girls younger than 15 are five times more likely to die in childbirth than women in their 20s, and pregnancy is the leading cause of death worldwide for women ages 15 to 19. Adolescent childbirth is dangerous for the infant as well as the mother. The underdeveloped bodies of girls can lead to complications during childbirth and the death of the child. Infants born to adolescent mothers are much more likely to die than those born to women in their 20s.”

Malnourishment, anemia and underweight are common among the tea tribe community in Assam. In one of the studies conducted by UNICEF and Assam Medical College found out that of the 14 meals in a week, only two are nutritional in a tea tribe family as reported in dnaindia, dated 24 April, 2014. Further, it was reported that “UNICEF sample survey study found 95 per cent women in the tea gardens to be anemic, which experts say is related to poor nutrition.” According to NFHS III (2005-2006), in Assam 72.0% women were anaemic and 36.5% women Body Mass Index (BMI) is below normal.

In a patriarchal society like India, preference of son is very high. So, women experienced significant pressure to become pregnant soon after marriage. This affects the health of child bride who are anemic and malnourished. Anemia makes women particularly vulnerable during pregnancy and child birth. This may also result in maternal death during delivery if adequate treatment is not given to mother and child.

Assam has one of the country's highest maternal mortality ratio (328 per 100,000 live births).” According to the latest Annual Health Survey (2012-2013), 41 per cent of young women in Cachar aged 15 to 19 have already begun childbearing. In turn, this exposes girls to many reproductive health risks. In 2010, the Delhi High Court found that:

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73 Child and Health: International Centre for Women
Young mothers face higher risks during pregnancies including complications such as heavy bleeding, fistula, infection, anaemia, and eclampsia which contribute to higher mortality rates of both mother and child. At a young age a girl has not developed fully and her body may strain under the effort of child birth, which can result in obstructed labour and obstetric fistula. Obstetric fistula can also be caused by the early sexual relations associated with child marriage, which take place sometimes even before menarche.74

Thus, early child bearing is one of the factors responsible for increasing rate of maternal morbidity in India. From our fact finding we found out that one of cause of Laxmi’s death is due malnourishment and child marriage. As mentioned above Laxmi was 16 years when she was married and she was pregnant with her second child at the age of 19 years. It is quite clear that since she was suffering from malnourishment she could not took the burden pregnancies and finally after seven days of birth of her child she could not survive. Like Laxmi there are many young girls who die during their delivery. Thus, state institutions failed to prevent consequences of child marriage.

3.  Child Health

India recorded highest number of less than 5 years infant morbidity in South Asia. The causes of infant mortality in the country are due to infectious diseases like pneumonia and diarrhea. UNICEF report 2008 on the State of World Health Children highlights that poverty, malnourishment make the child health vulnerable to such diseases. Child marriage also endangers the lives of newborn babies. Data collected for NFHS-3 clearly demonstrate the link between early pregnancy and infant mortality in Assam:

Children born to mothers under the age of 20 years are at a much higher risk of dying in infancy than children born to mothers in the prime childbearing ages. Infant mortality is 94 deaths per 1,000 births for teenage mothers, compared with 50-68 for mothers age 20-39.75

Almost half of 20-24 year old women in India (44.5%) are married before age 18, and 22% of all 20-24 year old women have given birth by age 18 years. Such early motherhood, in India and elsewhere, is associated with increased likelihood of neonatal death and stillbirth, low birth

74 Association for Social Justice and Research v. Union of India, para.9 (Delhi High Court, 2010).
weight infants, and child and infant morbidity and mortality. Social vulnerability of early mother increases health risk for child. According to NFHS III, 41.1% children who are less than 3 years who are stunned and 35.8% children less than 3 years are underweight.

The following table represents the early childhood mortality rate in Assam

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<td>(14.5)</td>
<td>(81.7)</td>
<td>(31.5)</td>
<td>(110.7)</td>
</tr>
<tr>
<td>Scheduled tribe</td>
<td>(43.9)</td>
<td>(15.1)</td>
<td>(59.0)</td>
<td>(25.8)</td>
<td>(83.2)</td>
</tr>
<tr>
<td>Other backward class</td>
<td>39.2</td>
<td>20.4</td>
<td>59.6</td>
<td>17.9</td>
<td>76.4</td>
</tr>
<tr>
<td>Other</td>
<td>48.1</td>
<td>25.9</td>
<td>74.0</td>
<td>29.1</td>
<td>100.9</td>
</tr>
<tr>
<td>Wealth index</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lowest</td>
<td>67.7</td>
<td>27.8</td>
<td>95.4</td>
<td>37.2</td>
<td>129.1</td>
</tr>
<tr>
<td>Second</td>
<td>45.2</td>
<td>24.3</td>
<td>69.5</td>
<td>32.9</td>
<td>100.1</td>
</tr>
<tr>
<td>Middle</td>
<td>42.0</td>
<td>24.8</td>
<td>66.8</td>
<td>18.3</td>
<td>83.9</td>
</tr>
<tr>
<td>Fourth</td>
<td>(46.3)</td>
<td>(7.5)</td>
<td>(53.7)</td>
<td>(6.6)</td>
<td>(59.9)</td>
</tr>
<tr>
<td>Highest</td>
<td>(14.5)</td>
<td>(2.4)</td>
<td>(17.0)</td>
<td>(7.1)</td>
<td>(23.9)</td>
</tr>
<tr>
<td>Child's sex</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>45.5</td>
<td>23.8</td>
<td>69.3</td>
<td>22.6</td>
<td>90.3</td>
</tr>
<tr>
<td>Female</td>
<td>52.3</td>
<td>20.3</td>
<td>72.6</td>
<td>29.9</td>
<td>100.3</td>
</tr>
<tr>
<td>Mother's age at birth</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&lt;20</td>
<td>70.1</td>
<td>23.5</td>
<td>93.6</td>
<td>32.4</td>
<td>123.0</td>
</tr>
<tr>
<td>20-29</td>
<td>44.0</td>
<td>23.6</td>
<td>67.6</td>
<td>24.0</td>
<td>89.9</td>
</tr>
<tr>
<td>30-39</td>
<td>36.3</td>
<td>13.1</td>
<td>49.5</td>
<td>23.4</td>
<td>71.8</td>
</tr>
<tr>
<td>40-49</td>
<td>*</td>
<td>*</td>
<td>*</td>
<td>*</td>
<td>*</td>
</tr>
<tr>
<td>Birth order</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>61.9</td>
<td>15.7</td>
<td>77.7</td>
<td>12.2</td>
<td>88.9</td>
</tr>
<tr>
<td>2-3</td>
<td>46.0</td>
<td>24.7</td>
<td>70.7</td>
<td>29.6</td>
<td>98.2</td>
</tr>
<tr>
<td>4+</td>
<td>38.6</td>
<td>24.8</td>
<td>63.4</td>
<td>35.4</td>
<td>96.5</td>
</tr>
</tbody>
</table>

Source: NFHS III
• Thus, the above shows that under 5 mortality recorded 98.9% in rural areas of Assam;
• Women whose age is less than 20 years, the neonatal mortality rate among them was recorded at 70.1% and infant mortality rate was recorded at 93.6% which is comparatively high as compared to women within the age group 20-29. Infant mortality rate was recorded 44.0% and infant mortality rate was recorded 24.0%
• Infant mortality is also high among the minority community with 80.4% as compared to 63.5% among Hindus
• Infant mortality among female was recorded 72.6% whereas 69.3% are recorded for male.

Thus, early child bearing affects both mother and child health.

4. Education

From our fact finding we found that most of the interviewed girls who were married at an early age were school drop outs. Thus, early marriage almost always leads to a withdrawal from education. 77 per cent of girls aged 11-14 in Assam attend school.76 However, by age 17, by the time a significant percentage are married, this figure drops to 43 percent. A small percentage of the women we encountered did not attend any school. Most of these women were orphans or their family did not have enough money to send them to school. The majority of women the team interviewed attended at least primary school. The reasons cited for dropping out of school by the women in Cachar were ease of access to employment at the tea garden and pressure to contribute to family earnings. Of the women that attended more school, all but one dropped out once she was married. According to DLHS-3, while 93 per cent of girls in Assam between the ages of 11-13 years are attending school, by the age of 17 the figure is just 77 per cent.77

The following chart represents that percentage of children who are attending school within the age 6-17 years in Assam:

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76 Desk Review of Child Marriage at 120.
The above chart shows that
- 91% of children within the age group (6-10 years) attended schools which drop to 76% for children age 11-14 years and is only 46 percent for children age 15-17 years.
- 89% girl child within the age group 6-10 years attended schools.
- Girl child (11-14 years) attending schools recorded 77% which is same as compared to male child (76%).
- The rate of girl child attending schools dropped to 43% for the age group 15-17 years.

One of the reason for such dropouts among girl child i.e. 89%-43% is due to prevalence of child marriage in the state. Also, we can witness in gender disparity among children who are attending schools.

The following table shows the no school drop outs for the year 2011-2014:

Source: NFHS III
Table 2: School Dropouts for the year 2011-2014

<table>
<thead>
<tr>
<th>Year</th>
<th>Boys</th>
<th>Girls</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011-2012</td>
<td>12.7</td>
<td>10.93</td>
<td>23</td>
</tr>
<tr>
<td>2012-2013</td>
<td>9.67</td>
<td>8.00</td>
<td>17.67</td>
</tr>
<tr>
<td>2013-2014</td>
<td>5.46</td>
<td>7.02</td>
<td>12.48</td>
</tr>
</tbody>
</table>

Source: Lok Sabha Unstarred Question No. 281, dated on 22.07.2015

Thus, from the above table it is clear that though there is decreasing trend from 23% to 12.48% for the year 2011-2014 but the girls drop outs is higher with 7.02% as compared to 5.46 % among boys. Thus, one of the reason for the increase girls drop out rate is due to high prevalence of child marriage in the state.

Under section 16 of PCMA “Every school teacher has been made liable to provide assistance to the Child Marriage Prohibition Officer to prevent child marriages. School teachers can play a key role in preventing child marriages. School teacher have the following some responsibility under PCMA

- Keep a direct check over the children in school who could be potential victims of child marriage, by keeping regular attendance at school.
- Make immediate visit to the house of the child if his/her absence is alarming and there is a potential of the child being married.
- Talk to the parents and try to convince them not to marry off their children early by informing them about its negative consequences.
- Inform parents about the law against child marriage, that the law declares child marriage an offence and lays down the legal consequences for parents who get their children married

But from fact finding we found that there is gap in the implementation of PCMA in the state. Out of total interviewed girl child who are married, 17 girls were dropouts because of child marriage. This shows failure of the school authority to monitor the school dropout’s in order to prevent child marriage in the area and violation of the provision of PCMA in the state. The fundamental right to education, Article 21(A) are violated by child marriage.
5. **Domestic violence**

Child marriage leaves girls vulnerable to domestic violence and sexual exploitation throughout their lives.\(^\text{78}\) According to NFHS-3, among women currently married between the ages of 15 and 19, some 48 per cent agree that a husband is justified in beating his wife for at least one specified reason;\(^\text{79}\) just 62 per cent agree that a wife is justified in refusing to have sex with her husband for all the specified reasons;\(^\text{80}\) and 31 per cent have experienced some form of emotional, physical or sexual violence committed by their husbands.\(^\text{81}\) Moreover, a recent study in India concludes that ‘women who married as adolescents remain at increased risk of [marital violence] into young adulthood’.\(^\text{82}\) Finally, the Delhi High Court found in 2010 that ‘[a]buse is sometimes perpetrated by the husband’s family as well as the husband himself, and girls that enter families as a bride often become domestic slaves for the in-laws.’\(^\text{83}\)

6. **Case registered under PCMA:**

The following table represents the number of cases registered under PCMA in Assam:

<table>
<thead>
<tr>
<th>Year</th>
<th>Cases registered</th>
<th>Person Convicted</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>2007</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2008</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2009</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2010</td>
<td>9</td>
<td>0</td>
</tr>
<tr>
<td>2011</td>
<td>5</td>
<td>9</td>
</tr>
</tbody>
</table>

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\(^{78}\) Child Marriage in South Asia at 16.

\(^{79}\)[http://rchiips.org/nfhs/assam_report_for_website.pdf](http://rchiips.org/nfhs/assam_report_for_website.pdf) at 107. Specified reasons are: she goes out without telling him, she neglects the house or children, she argues with him, she refuses to have sexual intercourse with him, she doesn't cook food properly, he suspects she is unfaithful, and she shows disrespect for in-laws.

\(^{80}\)[http://rchiips.org/nfhs/assam_report_for_website.pdf](http://rchiips.org/nfhs/assam_report_for_website.pdf) at 107. Specified reasons are: she knows husband has a sexually transmitted disease, knows husband has sex with other women, and is tired or not in the mood.


\(^{83}\) Association for Social Justice and Research v. Union of India, para.9 (Delhi High Court, 2010).
<table>
<thead>
<tr>
<th>Year</th>
<th>Cases</th>
<th>Registered</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>9</td>
<td>0</td>
</tr>
<tr>
<td>2013</td>
<td>0</td>
<td>1</td>
</tr>
</tbody>
</table>

*Source: Lok Sabha Unstarred Question, 2014*

The above table shows that very few cases of child marriage are registered under PCMA in the state. This clearly shows the failure of the government to implement PCMA act in Assam. During our fact finding visit to the district we found out that 80% people are not aware of the provisions of PCMA act. We also found that there is no full time Child Marriage Prohibition Officers (CMPO) in the State of Assam which is a violation of PCMA. Under this act, CMPOs are to be appointed in every state to prevent child marriages, ensure protection of the victims as well as prosecution of the offenders.

7. **Awareness of PCMA:**

Under Section 16-3(d and e)

> “The CMPO and District Collector are responsible for sensitization and awareness creation in the community.”

From our fact finding we found out the community was not aware of the legal provision of PCMA. Hence, it shows the state failure to sensitize the people.

8. **Non implementation of Compulsory Registration of Marriage, 2005:**

The central government made compulsory registration of marriage to prevent child marriage and ensure minimum age of marriage. As mentioned above in total 14 cases, marriage was not registered.

9. **Shortfalls of PCMA and other law:**

The Act lays emphasis on the prohibition of child marriages by providing for the appointment of Child Marriage Prohibition Officers by the State Governments and gives powers to these Officers to prevent and prosecute solemnization of child marriages and to create awareness on the issue. However without the required financial allocations these Officers will probably not get appointed. The Act gives the District Magistrate powers to stop and prevent solemnization of
mass child marriages by employing appropriate measures and minimum police force apart from giving him all the powers of the Child Marriage Prohibition Officer.

The law, however, does not make a marriage invalid whether it is performed when the child is an infant or later at puberty or adolescence. The present act is criticized by many feminist and human rights groups. Following are the criticism:

Under section 3(1) of PCMA,

“Child marriage is voidable and can be annulled. But the annulment of child marriage can be sought within a period of 2 years after the child who was a party to the marriage has attained majority (Section 3(3), PCMA 2006).”

- One of the main criticisms of the new Act has been that it does not invalidate a marriage even below a certain age. Thus a child of 10,11,12 or 13 years of age can be married and subjected to sexual and other forms of abuse which normally have lasting and irreversible mental and physical consequences. Merely giving a girl child an option to end the marriage after the age of 15 years may not be sufficient. Also, though under the criminal law sexual intercourse with a wife under 15 years is punishable, the marriage is still held to be valid under the new Act. It has been proposed by some that the age of consent under the rape laws should be the same as the minimum age of marriage and all marriages below this age should be held void. Some others have proposed that in special circumstances a marriage may be allowed between over 16 years (hereinafter called the relaxed age of marriage) and the age for consent to sexual intercourse and the relaxed age of marriage should be the same and marriages below the age of 16 should be void.

- Another criticism that has been raised vis-à-vis the new Act is the fact that though a boy can opt out of the marriage till the age of 23 years, a girl can only do so till the age of 20 years (2 years after reaching the age of majority).

84 Section 2, PCMA, 2006
85 Proposal to amend the Prohibition of Child Marriage Act, 2006 and other allied laws :Report No. 205, Feb 2006: Law Commission of India
86 ibid
Recommendations:
From our fact finding visit and literature review like Child Marriage in South Asia: International and Constitutional Legal Standards and Jurisprudence for Promoting Accountability and Change following are few recommendations

1. Appointment of CMPOs in every district
2. Increase of awareness about PCMA and child marriage in the state. Centre for Reproductive Rights suggested to initiate campaigns in high risk communities like tea garden areas of Assam and other tribal areas to raise awareness among parents and young girls about the legal status of child marriage and the continuum of harms resulting from the practices.
4. Providing financial assistance to child marriage victims as compensation relief.
5. Monitoring and Evaluation of implementation of PCMA annually.
6. Implementation Compulsory Registration of all marriage. Centre for Reproductive Rights suggested to conduct nationwide public awareness campaigns about the registration of all marriages.
7. Acknowledgement of child marriage as severe form of discrimination and violence against children and advocates with governments in the regions to strengthen legal protection for girls in line with established international standards
8. Necessary legal action on the complaints filed by girls who are at risk of child marriage or have been married underage
9. 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.
10. Official recognition of 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, free legal support and counseling.
Conclusions:

In sum, the fact finding team found that child marriage is grossly underreported in the tea gardens of Cachar District, Assam. Most child brides dropped out of school shortly after marriage and lacked any kind of financial independence. A low standard of living and education correlated positively with child marriage. Unfortunately, child marriage is an accepted practice in the tea gardens and much remains to be done. The Government of Assam must educate the public about the negative effects of child marriage, ensure reporting of child marriages, and prosecute offenders. Thus, there is huge gap in the implementation of PCMA in the teagarden area of Cachar district.