

WHO USES THE PROHIBITION OF CHILD MARRIAGE ACT 2006 (PCMA) MOST AND WHY?

**FINDINGS FROM CASE LAW ANALYSIS (2008 – 2017)
BY PARTNERS FOR LAW IN DEVELOPMENT**



OBJECTIVE OF THE STUDY

TO UNDERSTAND WHETHER THE CHILD MARRIAGE LAW SERVES THE PURPOSE FOR WHICH IT WAS ENACTED, THROUGH A QUALITATIVE ANALYSIS OF WHO USES THE LAW MOST, AND THE PURPOSE SOUGHT TO BE ACHIEVED.

ABOUT THE DATA

THE DATA ANALYSED COMPRISES OF 83 HIGH COURT AND DISTRICT COURT JUDGEMENTS AND ORDERS (FROM 2008 TO 2017) IN WHICH THE CHILD MARRIAGE LAW WAS EITHER INVOKED OR DISCUSSED. THE CASES WERE SOURCED FROM ONLINE DATABASES AND SELECTED RANDOMLY.

MOST (56) OF THESE CASES WERE FROM HIGH COURTS OF PUNJAB AND HARYANA, DELHI, KARNATAKA, GUJARAT, MADRAS, RAJASTHAN, BIHAR, KERALA, CALCUTTA, MADHYA PRADESH, JHARKHAND, AND MAHARASHTRA, WITH ALMOST HALF BEING FROM THE HIGH COURTS OF PUNJAB AND HARYANA, AND DELHI (38), AND OTHERS SPREAD ACROSS THE REST OF THE HIGH COURTS.

THE DISTRICT COURT CASES (20) WERE FROM COURTS OF PUNJAB, HARYANA, DELHI, AND RAJASTHAN, WITH A LARGE MAJORITY BEING FROM THE COURTS OF PUNJAB AND HARYANA.

SOCIO-ECONOMIC PROFILE OF THE LITIGANTS

ALTHOUGH JUDGMENTS AND ORDERS MOSTLY ADHERE TO LEGAL ISSUES AND REFERENCES TO PRECEDENTS, WE USED IDENTIFIERS SUCH AS INFORMAL MEANS OF LIVELIHOOD WITH LOW AND/OR ERRATIC INCOMES, POOR STANDARD OF LITERACY AND FORMAL EDUCATION, NON-AVAILABILITY OF BIRTH REGISTRATION RECORDS, AND RESIDENCES IN SLUM CLUSTERS OR INDUSTRIAL SITES, TO FIND THAT THE PARTIES INVOLVED IN SUCH LITIGATIONS ARE PREDOMINANTLY DRAWN FROM **POOR, PERI RURAL AND WORKING-CLASS BACKGROUNDS WITH LITTLE OR NO MEANS TO SECURE QUALITY EDUCATION, WHITE COLLAR, OR PROFESSIONAL CAREERS.**



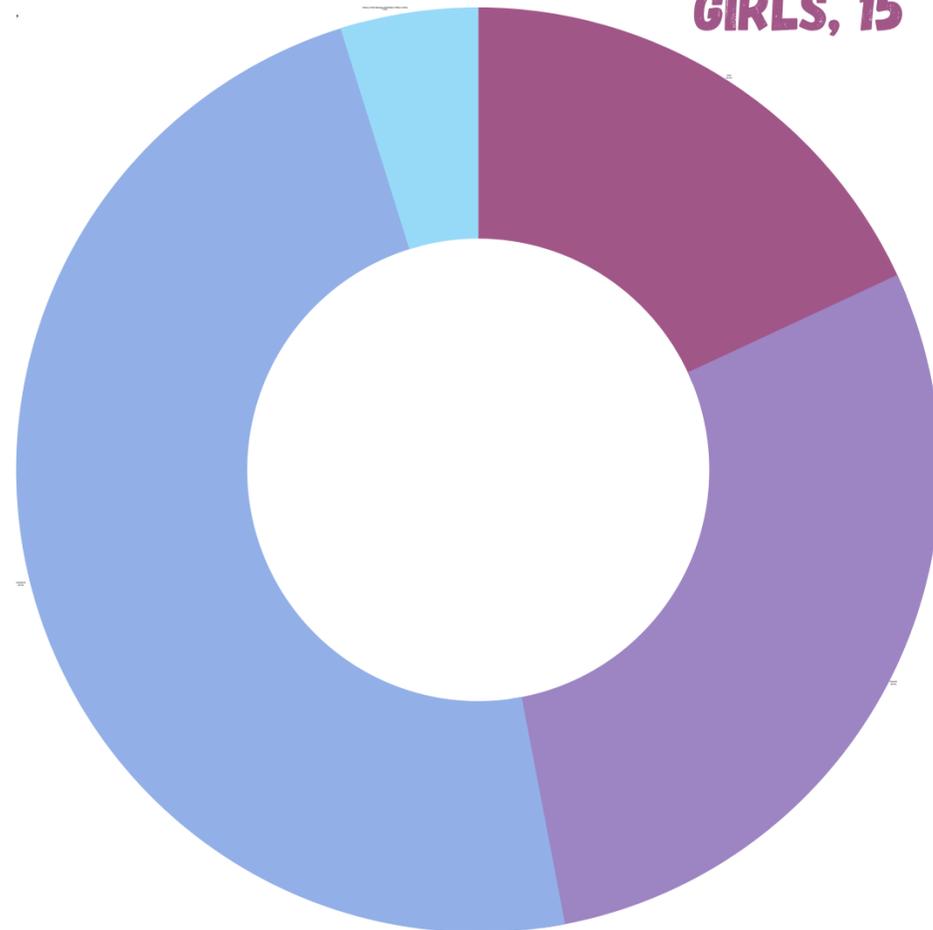
MAPPING THE DIFFERENT ACTORS WHO APPROACH THE COURTS

CHILD MARRIAGE PROHIBITION
OFFICER, NGO, OTHERS, 4

GIRLS, 15

HUSBANDS, 40

PARENTS, 24

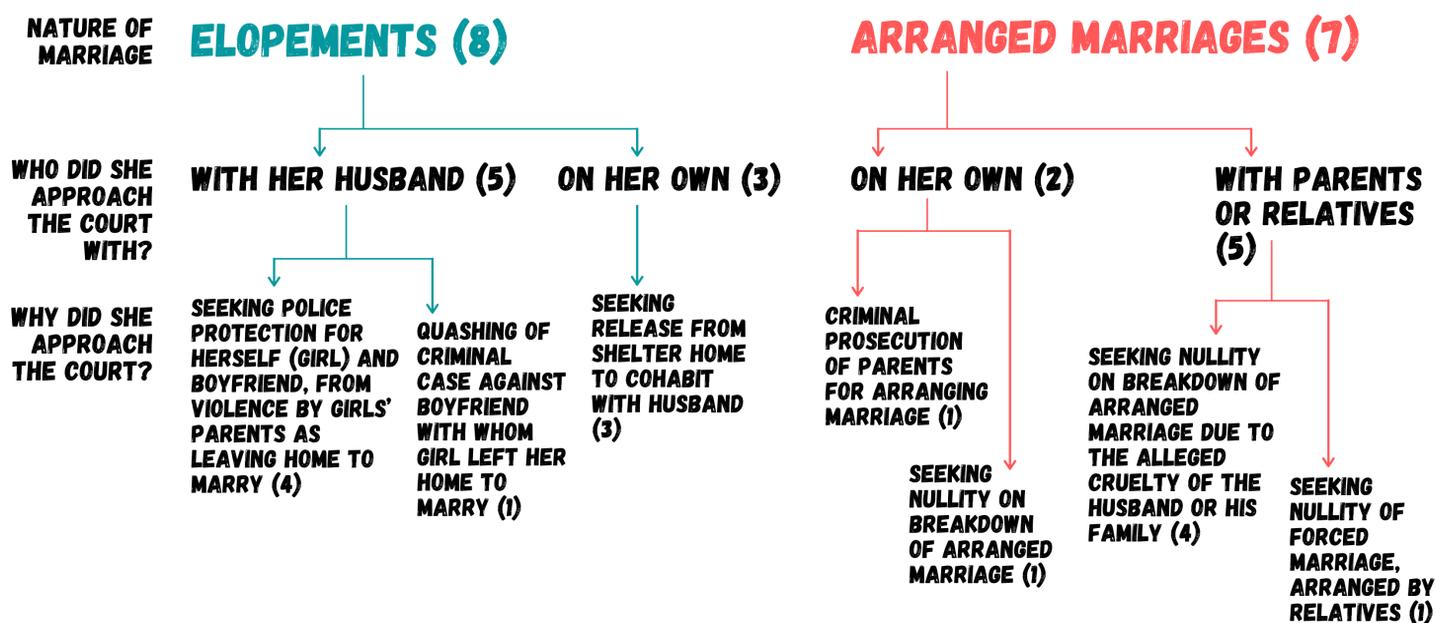


2. REASONS FOR INITIATING LEGAL ACTION AND NATURE OF RELIEFS SOUGHT

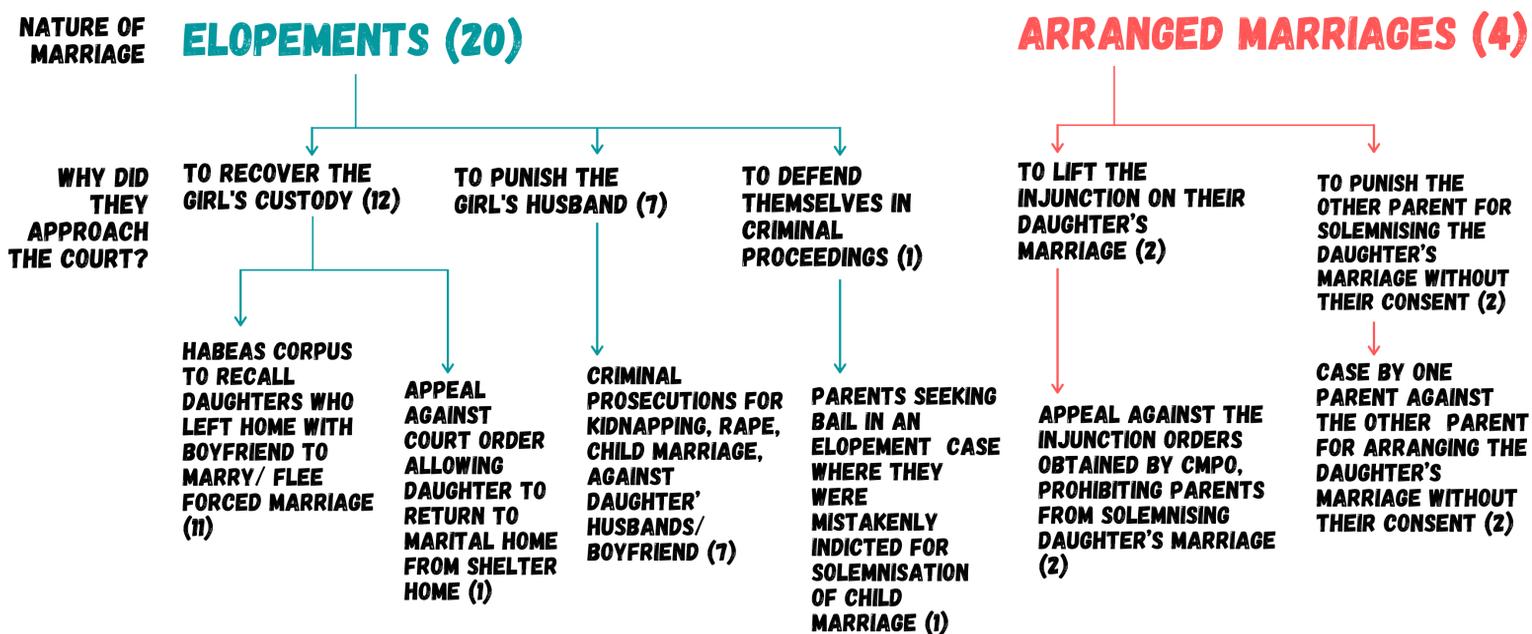
FOR COMPARATIVE OVERVIEW, THE FINDINGS IN THIS SECTION ARE CLUSTERED ACCORDING TO THESE TWO CATEGORIES OF MARRIAGES – ELOPEMENTS AND ARRANGED MARRIAGE.

THE FORMER (ELOPEMENTS) REFERS TO GIRLS RUNNING AWAY WITH THEIR BOYFRIENDS TO MARRY, AND MOST SUCH CASES PERTAIN TO SELF-ARRANGED MARRIAGES; WHEREAS THE LATTER (ARRANGED) REFERS TO MARRIAGES ORGANISED BY FAMILIES/ PARENTS.

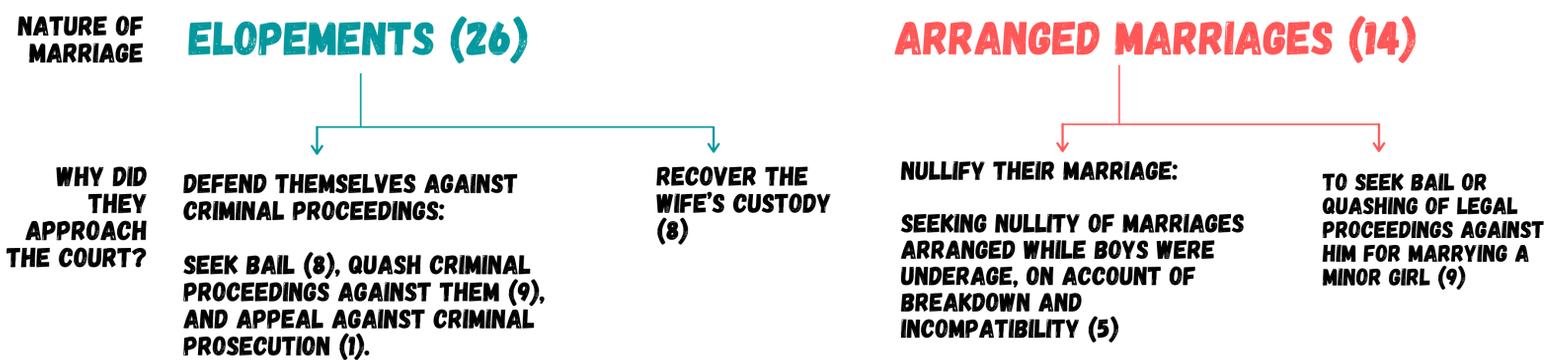
CASES FILED BY GIRLS



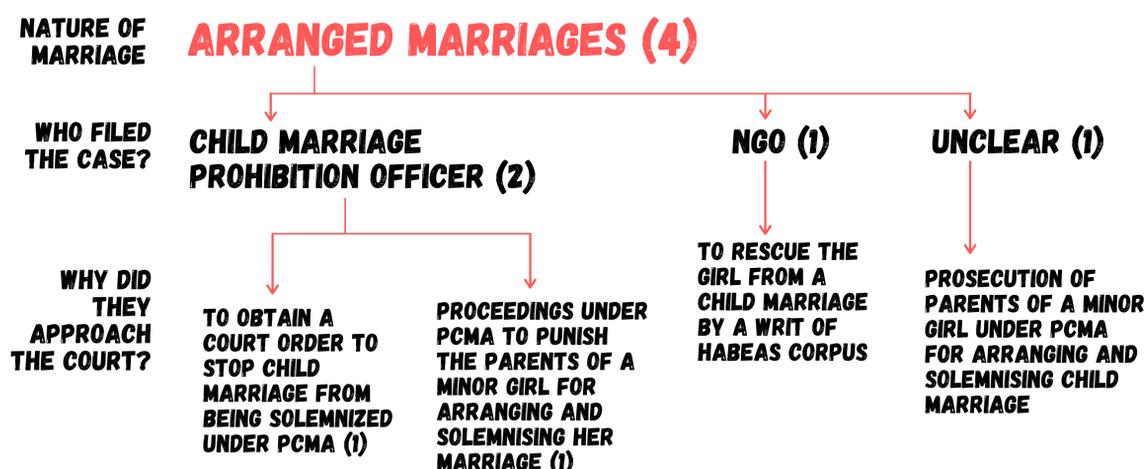
CASES FILED BY PARENTS



CASES FILED BY HUSBANDS



CASES FILED BY OTHERS



3.

OVERALL DISTRIBUTION OF REMEDIES SOUGHT



TYPES OF LEGAL ACTIONS SOUGHT IN RELATION TO ELOPEMENTS (54)

- DEFENDING AGAINST CRIMINAL PROSECUTION OF THE HUSBAND BY THE GIRLS' PARENTS, 31
- PARENTS SEEKING CUSTODY OF THE MINOR DAUGHTER, 12
- GIRLS SEEKING COHABITATION WITH THEIR HUSBANDS, 11

TYPES OF LEGAL ACTIONS SOUGHT IN RELATION TO ARRANGED MARRIAGES (29)

- PUNISHMENT TO PARENTS/HUSBAND FOR SOLEMNISING AN UNDERAGE MARRIAGE, 14
- NULLIFY AN ARRANGED MARRIAGE WHEN IT BROKE DOWN, 11
- ASSERTION OF PARENTAL RIGHT TO SOLEMNIZE MARRIAGE OF UNDERAGE DAUGHTER, 2
- INJUNCT THE SOLEMNIZATION OF AN UNDERAGE MARRIAGE, 1
- RESCUE THE GIRL IN AN UNDERAGE MARRIAGE, 1

4. OVERALL FINDINGS

THE PCMA IS USED TWICE AS MUCH AGAINST ELOPEMENTS OR SELF-ARRANGED MARRIAGES, THAN IT IS USED IN RELATION TO ARRANGED MARRIAGES.

PCMA IN RELATION TO ARRANGED MARRIAGES, IS LESS ABOUT PROSECUTING PARENTS AND MORE ABOUT SEEKING DISSOLUTION OF MARRIAGES THAT DID NOT WORK OUT.

OF THE 35% OF CASES IN RELATION TO ARRANGED MARRIAGES, 48% INVOLVE PROSECUTIONS AGAINST PARENTS/ HUSBANDS FOR ORGANISING UNDERAGE MARRIAGE. THE REST OF THE 52% CASES PERTAINING TO ARRANGED MARRIAGES INVOLVE NULLIFICATION OF MARRIAGES THAT HAVE BROKEN DOWN FOR DOWRY, INCOMPATIBILITY OR DOMESTIC VIOLENCE, OR OTHER REASONS.

FOR PARENTS PROSECUTING ELOPEMENTS, AND FOR THOSE SEEKING TO NULLIFY ARRANGED MARRIAGES – ‘AGE’ OF MARRIAGE IS NOT THE PRIMARY MOTIVATION FOR USING THE LAW. REASONS SUCH AS PARENTAL DISAPPROVAL OF MARRIAGE, OR OF BREAKDOWN OF ARRANGED MARRIAGE ARE THE IMPULSE FOR LEGAL ACTION.

PARENTS HAVE THE MAXIMUM ACCESS TO THE LAW AND LEGAL PROSECUTION. NOT ONLY ARE ALL CASES AGAINST ELOPEMENTS INITIATED BY PARENTS, BUT PARENTS ALSO INITIATE CASES AGAINST ARRANGED MARRIAGES – FOR NULLIFICATION ON BREAKDOWN OF MARRIAGE; ONE PARENT PROSECUTING THE OTHER PARENT ON DISAGREEMENTS RELATED TO THE MARRIAGE; PARENTS ASSERTING THE RIGHT TO MARRY UNDERAGE DAUGHTER/ OR OVERTURN AN INJUNCTION.

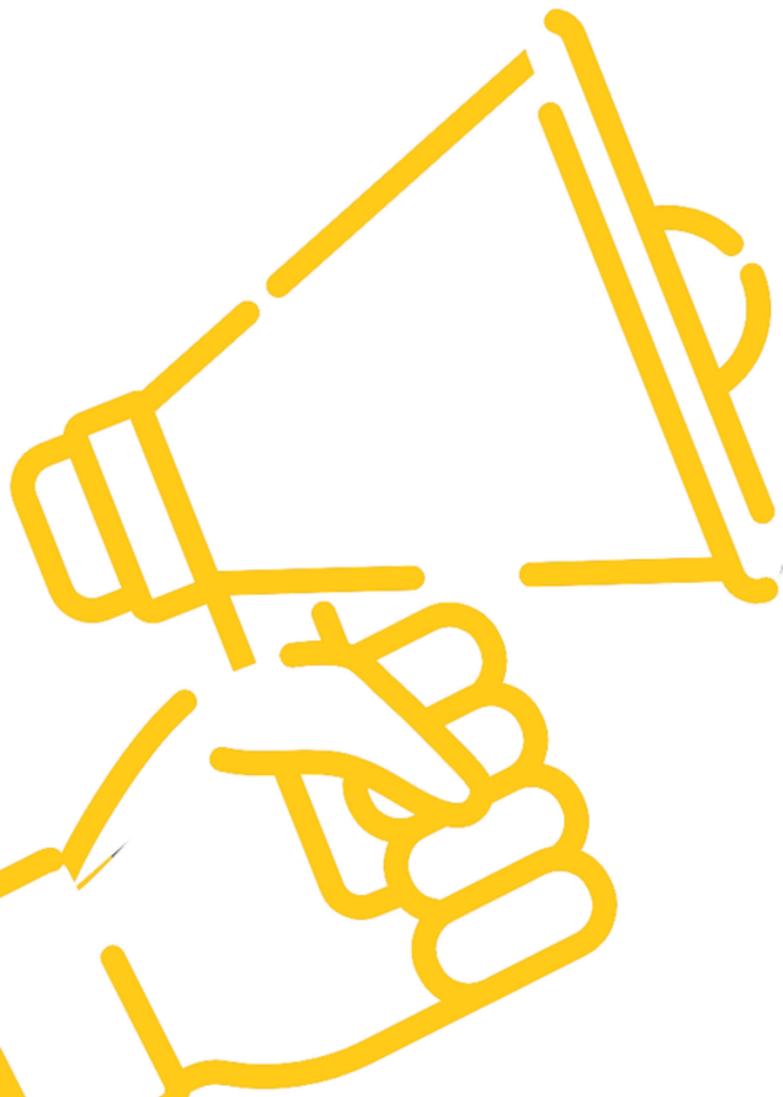
IN ALL, PARENTS AND RELATIVES OF THE GIRL ARE THE FIRST INITIATORS OF LEGAL PROCEEDINGS IN ABOUT 56 OF THE 83 CASES IN THIS STUDY.

ONLY 14% OF THE CASES WERE INITIATED BY LEGAL FUNCTIONARY, THE CMPO AND THE NGOS. ALTHOUGH DESIGNATED BY LAW, THE CMPO IS THE LEAST ACTIVE IN IMPLEMENTING THE LAW.

THE PCMA IS INVOKED IN CONJUNCTION WITH PENAL OFFENCES OF KIDNAPPING AND RAPE UNDER INDIAN PENAL CODE AND THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, BOTH HEINOUS OFFENCES ATTRACTING LONG SENTENCES UPTO LIFE TERMS, IN CASES OF ELOPEMENTS – WHEREAS ARRANGED MARRIAGE CASES ARE PROSECUTED UNDER PCMA ALONE, ATTRACTING A MAXIMUM PENALTY OF 2 YEARS AND/ OR FINE.

AS A CONSEQUENCE OF LEGAL ACTION, THE HUSBANDS ARE ARRESTED, AND THE GIRLS SENT TO SHELTER HOMES.

THE LAW IS USED FOR DISPROPORTIONATE AND DISCRIMINATORY CRIMINALISATION OF BOYS IN SELF-ARRANGED MARRIAGES, WHILE CONSIGNING GIRLS TO SHELTER HOMES THAT ARE UNABLE TO PROVIDE NURTURANCE, EDUCATION, OR VOCATIONAL TRAINING. LEGAL ACTION IN RELATION TO ELOPEMENTS IS RETALIATORY AND INFLECTS LASTING UNINTENDED HARM ON YOUNG PERSONS, WHOSE INTERESTS IRONICALLY, THE LAW IS ENACTED TO PROTECT.



THE UNINTENDED EFFECT OF THE LAW IS TO RESTORE PARENTAL CONTROL OVER THE DAUGHTERS' LIFE AND MARRIAGE AND PUNISH THE HUSBANDS OF CHOICE, RATHER THAN PROSECUTE ARRANGED CUSTOMARY MARRIAGES.

ANY DELIBERATION ON AMENDING THE PCMA – MUST BE INFORMED BY THE DATA ON HOW THE LAW IS USED, AND ITS IMPACT ON YOUNG PEOPLE WHOSE INTERESTS THE LAW SEEKS TO PROTECT. THIS DATA INDICATES THAT LAW IS PREDOMINANTLY USED TO RETALIATE AGAINST ELOPEMENTS OR SELF-ARRANGED MARRIAGES, WHICH INCARCERATES BOYS AND FORCES GIRLS INTO SHELTER HOMES, EVEN IN CASES THAT END IN ACQUITTAL.

ANY LAW REFORM UNDERTAKEN IN RELATION TO PCMA, MUST SEEK TO STRENGTHEN THE LIFE CHANCES OF GIRLS MOST VULNERABLE TO EARLY MARRIAGE, THROUGH LINKAGES WITH GOVERNMENT SCHEMES THAT OFFER EDUCATIONAL AND VOCATIONAL OPPORTUNITIES; AND IN THE EVENT OF MARRIAGE, MUST INVEST GIRLS WITH SUPPORT SERVICES AND DECISION MAKING IN RELATION TO OPTING IN OR REPUDIATING THE MARRIAGE.



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PARTNERS FOR LAW
IN DEVELOPMENT

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