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Marriages of Choice: Articulation of Agency, State Interventions and Feminist Locations

Flavia Agnes*

Introduction

This paper attempts to critically examine the contemporary feminist campaign child marriage in India in the context of its implications for young girls exercising their choice of marriage against the dictates of family and community. It urges that feminist positions need to be more nuanced, taking into consideration local realities rather than merely endorsing international agendas of human rights articulated in the Western / First World feminist discourse.

The Historical Basis of the Campaign Against Child Marriages in India

The social movement against child marriage and the demand for state intervention to curb this malaise was first articulated in the nineteenth century and the engagement with this issue continues even in the 21st century. While child marriage continues to be a concern, the solution to a problem rooted within socio-economic structures is sought within the domain of the law. This despite the ground reality that legal enactments have proved to be highly inadequate to make meaningful interventions.

The contemporary discourse on child marriage needs to be located within continuous structural shifts in the economic, cultural, and social frameworks. The concern of nineteenth century reformers was located within the structure of the new colonial legal order designed to usher in modernity and state control. It posed a challenge to Brahminical patriarchy within which a high premium was placed upon the virginity of brides. The opposition to this movement came from the revivalists who questioned the authority of colonial rulers to interfere in local customs, practices and religious beliefs.

During the early twentieth century, when women's organizations entered the political arena, the focus shifted to women's health, protection from early pregnancies and concern over women's education and general well being. To coincide with the reproductive cycle of women, the age of marriage under the *Child Marriage Restraint Act, 1929 (CMRA)* for girls was raised to 14, when biologically the female body would be more receptive to sexual intercourse and pregnancy. In 1949, the age was raised further to 15 years.

This became the basis while enacting the *Hindu Marriage Act* in the fifties which laid down a minimum age of 15 for girls and 18 for boys. But the enactment did not render under-age marriages void. This was due to the continued ideology of Hindu marriages being sacramental (despite the codification) and due to the grave social implication such a move would have upon innocent children born out of such unions. Within this context, the CMRA came to be viewed more as rhetoric or an aspiration than a moral code or a legal mandate. Socially sanctioned community norms and customs prevailed over the legal dictate. Hence, despite the prolonged and highly visible campaign prior to the enactment, the Act was a non-starter with scholars commenting that there were hardly a hundred odd prosecutions under the Act during the forty years of its enactment, as compared to the millions of child marriages taking place in the country. It was also noted that where the parties have been prosecuted, the motivations have come from family feuds and factional fights rather than from the diligent of the provisions of the Act (Sampath, 1969). So even the scarce prosecutions under the Act was confined within patriarchal paradigms and community controls over the female body rather than a safeguard against it as is popularly perceived.

In the seventies, the minimum age of marriage was raised to 18 for girls (and 21 for boys) as per the recommendations of the Committee on the Status of Women. But another contributory factor around this time was the belief that it would also serve as a measure of population control.¹

Several social factors such as urbanization, increased avenues of education of girls and loosening of the grip of conservative religious leadership over communities, Westernization among the urban middle class etc. have contributed to a gradual increase in the mean age of marriage of girls as the following table indicates:

Table 1

MEAN AGE OF WOMEN AT MARRIAGE 1901-1971 ²

¹ The enactment, *Medical Termination of Pregnancy Act, 1971 (MTP Act)* which gave women the right of legal abortion was also enacted within this context.

² For statistics of Mean Age of Marriage 1901 - 1971, source: *Towards Equality*, Report of the Committee On The Status of Women In India, 1974, p. 23, Table 14; for 1991- 1999, source: National Family Health Survey. For Literacy Rates, source: Census Reports

Time Frame	Age of consent / marriage	Mean Age at Marriage	Literacy Rate Women (General)
1901-11	12	13.2	-
1911-21	12	13.6	-
1921-31	12	12.6	-
1931-41	14	15.0	-
1941-51	14	15.4	8.86%
1951-61	15	16.1	13%
1961-71	15	17.2	18.04%
1981- 91	15/18	19.3	39.2%
1998-99	15/18	19.7	

Despite the rise in the mean age of marriage, the steady increase in the minimum age of marriage has served to bring an increased number of marriages within the ambit of ‘child marriage’ and has resulted in a skewed statistical profile. Currently the age of marriage in India is set at a higher level than in U.K. where the minimum age of marriage is 16 for girls and 18 for boys. In this context, a marriage between a 17 year old girl and a 20 year old boy would be a valid and legal in the U.K., but it would be termed as ‘child marriage’ under the Indian law (Mensky 2003 : 371). The raising of the age has resulted in criminalising a large number of marriages of choice and resulted in greater family, community and state control over them.

Interrogating the contemporary Feminist Discourse

While child marriages still prevail in India, the concern raised during the nineteenth century reformist movement is no longer valid. Rather than dictates of Brahminical patriarchy, the contemporary concern over child marriage needs to be located within socio-economic factors such as extreme poverty among the urban and rural poor, lack of resources and access to education of girl children and fear of rape and sexual abuse of young unmarried girls. Rather than the elite and middle class segments of upper castes, it is the backward castes, the dalits and the Muslim communities who are burdened with these concerns. Ironically, these communities were not the focus of attention at the time when the debate was first initiated. Among many lower castes, adult marriages of women were the norm.³

Table 2

LITERACY RATES FOR WOMEN

³ Due to the process of sanskritisation and Hinduisation in the intervening years, many communities have started adopting upper caste Hindu practices. (Srinivas 1962)

Year	Literacy Rate Women (General)	Literacy Rate S.C. Women
1961	13%	3.3%
1971	18.04%	6.4%
1981	24.8%	10.9%
1991	39.2%	23.8%

Table 2

**MEAN AGE OF MARRIAGE 1961-71⁴
DIFFERENCE IN – URBAN / RURAL PROFILE**

Rural	16.7
Urban	19.2
Total	17.2

Though there has been a consistent demand from urban, middle class and upper caste legal scholars and social activists to declare child marriages as void, there is a legislative reluctance to give in to these demands even after the recent enactment of 2006 (discussed later). This has been done keeping in view the plurality of cultures and diverse socio-economic background of the Indian population. Some rural based social activists have highlighted the class and caste biases of the contemporary campaign against child marriage in the context of Rajasthan (Singh *at el* 1994 : 1377-9). The authors commented that within communities where child marriages are performed, the marriage itself is not a license for sexual intercourse. A further ceremony has to be performed after the girl attains puberty and is fit for sexual intercourse. This ceremony is referred to by various terms such as *gauna*, *gona*, *gohna*, *muklava*, *ana* etc. in different regions. Only after performance of this ceremony the girl is sent to the marital home for consummation of marriage. The facts of Rukmabai case⁵, who though married in childhood, was never sent to her husband's house for consummation of her marriage since the second ceremony had not been performed, validates this point. Many reported cases also contain a reference to this custom.⁶ Hence the official statistics on child marriage do not accurately reflect the instances of minors who cohabit / have cohabited with their husbands.⁷

⁴ Report of The Committee on the Status Of Women In India, *Towards Equality*, 1974, Table 15, p. 23.

⁵ *Dadaji Bhikaji v Rukmabai* (1885) ILR 9 Bom 529.

⁶ See for instance *Pushpabai v Pratap Singh I* (2001) DMC 110 MP and *Roop Narayan Verma v Union of India* AIR 2007 Chh

⁷ In any case, since most marriages are not registered, the official statistics on child marriage may not accurately reflect the ground reality.

Within the realm of matrimonial law, linked to the issue of validity of marriage is the concern of maintenance to minor wives and legitimacy of children born of this union. Hence there has been a great hesitancy on the part of the judiciary to declare minor marriages as void. The judges have consistently upheld the legal validity of child marriages by strictly interpreting the provisions of S.11 and 12 of the *Hindu Marriage Act*. In fact the authoritarian Supreme Court ruling on this issue, which has been relied upon by various High Courts to validate child marriages, *Lila Gupta v Lakshmi Narain*⁸ was concerned with the rights of a widow to inherit her deceased husband's property against the claims of her brother-in-law and nephew who had challenged the validity of her marriage. In this case, the Supreme Court laid down that though S. 5 (iii) of the *Hindu Marriage Act* prescribes a minimum age of marriage, a breach of this condition does not render the marriage void. The bench comprising of the Chief Justice Y.V. Chandrachud, Justice D.A. Desai and Justice R.S. Pathak commented that it would be hazardous in the case of marriage laws to treat a marriage in breach of a certain condition void even though the law does not expressly provide for it.⁹

The Demand to Declare Child Marriages Void

Rather ironically, some of these judgements invoked criticism from various women's rights groups notwithstanding the fact that the judges were upholding the rights of women through these pronouncements. These groups urged upon the government to bring in amendments to relevant statutes to declare child marriages as void. The demand itself has a long history. The view adopted by these groups was extremely shortsighted.

In 1994 the draft bill prepared by the National Commission for Women, *the Indian Marriage Bill*, also had proposed compulsory registration of marriages stipulated that a declaration of marriage must be sent to the registrar of marriages within three days of its performance. It was recommended that a fine of Rs.100/- per day should be levied for default for a period of one month and thereafter the marriage is deemed void.¹⁰

Twenty years prior to this, the Report of the Status of Women Committee, *Towards Equality* had also suggested as follows: We recommend legislation prohibiting courts from granting any relief in respect of a marriage solemnized in violation of the age requirements prescribed by law unless both the parties have completed the age of 18 years. (1974: 114)

Another proponent of this position, Jaya Sagade, in her book, *Child Marriage in India* (2005) has examined the issue from the perspective of International Human Rights principles, using, according to her, a 'feminist legal framework'. Advocating that child marriages should be declared void, she argues that though this approach may seem drastic, nothing else is likely to be effective for protection of young girls against the harsh physical, education, social and economic consequences (of child marriage). She

⁸ AIR 1978 SC 1351

⁹ pg. 1354, para 8 of the judgement

¹⁰ S.17 proviso of the draft Bill

substantiates her argument by stating that the institution of patriarchy operates in the name of culture for justifying child marriage of young girls and one cannot continue to raise the twentieth century arguments¹¹ in the twenty first century for not declaring child marriages void (Sagade 2005 : 54).).

In direct contrast to this position, Prof Mensky comments, "... an analysis of case law on child marriages clearly shows that the judges had taken up the challenge of developing the legislative foundations into a socially meaningful system of regulation. Their major concern, to prevent certain individuals, who tend to be men, from taking duplicitous advantage of the argument that child marriages are against public policy, and thus should be void. Unlike many social reformers and text-book writers, some judges realize the extent of their social responsibility." (Mensky 2003 : 367).

Those advocating for declaring child marriages as void are basing their arguments on the premise that some women may have to pay a price in order to bring in the necessary social transformation for the greater good of all women. There seems to be hardly any concern among those who advocate this position in the name of 'women's rights', that the women who are called to '*pay the price*' are poor, illiterate, teenaged girls upon whom marriage may have been thrust upon. The validity of marriage is contested only when women claim their rights of maintenance. These deserted young girls and their children would be deprived of their basic right of survival, if judges adopt the position of declaring these child marriages as void.

It is within this ground reality, even while bringing in the recent amendment to the *Child Marriage Restraint Act, 2006*, the state administration found it extremely difficult to give in to the demand of social activists for declaring child marriages as void. Further even while declaring the marriage void at the instance of the husband, the state was compelled to ensure that the rights of women to maintenance, custody of children, and rights of children to legitimacy and maintenance are not defeated. This position is contrary to the recommendation of the Committee on the Status of Women in 1974 as well as the provision in the draft bill of the National Commission for Women, discussed above and has been criticized by some of these organizations.

It appears that the only new provision that the statute enacted following the campaign by women's groups and recommendations by the National Commission for Women, has been to provide an easy option for husbands to wriggle out of the marriage contracted when they were minors, by declaring such marriages as void without having to prove any other fault ground. Such option provided to husbands may not be in the best interest of the young girls for whom marriage still provides social status and legitimacy, economic security and shelter. One wonders whether in the name of protecting women, the amendment gave an easy option to men to wriggle out of marriages contracted when they were minors, a demand which the judiciary had declined to concede.

As far as the advantage to women is concerned, there was an option of puberty for marriages performed before they were 15 years of age. This option now extends to

¹¹ such as 'preventive measures should be adopted rather than invalidating the marriage'

marriages performed before they had reached the age of 18 years. This could easily have been effected by amending S.13 (2)(iv) of the *Hindu Marriage Act* and the corresponding provisions in other matrimonial statutes. In any case, if the woman wanted to dissolve her marriage, there are several other grounds which are available to her. As a lawyer concerned primarily with family law and women's rights, I can safely surmise that rarely does a teenaged girl dissolve her marriage only on the ground of minority. Usually there are other reasons such as cruelty, dowry harassment, adultery or desertion which prompt her to opt for the dissolution of her marriage.

Regarding declaration of marriage as void if the girl was enticed out of the custody of her lawful guardian or compelled or induced into marriage by deceitful means, this could be construed as lack of valid consent or vitiated consent which has always been a ground for annulment of marriage under all matrimonial laws.

Articulation of Agency and Feminist Locations

Sagade's argument that 'the institution of patriarchy operates in the name of culture for justifying child marriage of young girls' gets further problematised when we examine some recent reported cases. As against the socio-economic constraints of child marriage due to poverty discussed above, these cases concern marriages of choice by young girls. Here the legal provision becomes a weapon to control the expression of sexuality, and curb voluntary marriages, and is used to augment the patriarchal parental power. Even though the criminal provisions of kidnapping and statutory rape appear to be protecting the minor girl, these provisions are concerned primarily with securing the rights of the parent / guardian over the minor girl against her lover / husband. The young couple who has exercised the choice gets trapped within family feuds, or caste and community hostilities. There are no exceptions in the laws on abduction and kidnapping that allow a minor to opt out of guardianship or to leave her parental home on grounds of domestic abuse and neglect. (Baxi 2009) The use (and abuse) of police power at the instance of the parents in marriages of choice, is in direct contrast to women's autonomy, agency and free will.

The situation becomes precarious when an upper caste girl elopes with a lower caste boy or when a Hindu girl falls in love with a Muslim boy, crossing boundaries of Hindu upper caste dictates of purity and pollution. In a society ridden with prejudices against lower castes and strife with communal conflicts, a young couple who dares to cross the community dictates is severely punished. At times, the price for choosing a partner would be a gruesome murder or public humiliation of the couple or their relatives. (Chowdhry 2004, Welchman and Hossain 2005). The notion of women as sexual property of their communities is deeply internalized leading to violence not merely by the girls' families but also the community.

In order to criminalize the choice of marriage by young girls, at times the fathers file complaints against the boy / man of kidnap and rape by falsely projecting even major

girls as minors who are devoid of the legal authority to give their consent to marriage / sexual intercourse. Despite being aware of the fact that it is a marriage of choice and voluntary elopement, the police collude with the fathers to protect patriarchal interests and community honour. Only if the girl is able to provide clear and unequivocal proof of her majority will she be allowed to accompany her husband and cohabit with him. Or else the father's word regarding the age will be accepted and she will be reverted back to his custody and criminal charges will be pressed against the boy.

In rare cases where the girls vehemently refuse to return to the custody of their fathers, they will be sent to state protection homes until they are majors. Even there after the girls are not automatically released. The concerned husband would have to initiate legal proceedings for the release of the girls. Judges have commented that many of the habeas corpus petitions filed by either the young husbands or fathers of the concerned girls for production of the girl in court are in fact cases concerning elopement marriages. This is a serious concern for the courts as the following recent judgements indicate.

in *Ajit Ranjan v State*¹², the Delhi High Court advised the state administration to view these types of cases more as a social problem than a criminal offence. The husband had filed a writ petition under habeas corpus seeking custody of his wife who was confined by her parents and was not permitted to return to him: The court commented that the changing social scenario in this country is leading to a situation where there are more inter caste and inter-religion marriages which meet with societal and familial resistance. What is required here is not action under criminal law but counselling of the parties concerned to arrive at an amicable understanding of the marriage of choice of the girl concerned.

In *Kokkula Suresh v State of Andhra Pradesh*¹³, the Andhra Pradesh High Court reaffirmed that the marriage of a minor girl below 18 years is not a nullity. The court further held that the husband is the natural guardian in respect of a married minor's person and property and he is entitled to her custody. Further the father of the girl cannot claim the custody of the minor girl.

In *Ashok Kumar v State*¹⁴ the Punjab and Haryana High Court commented that couples performing love marriage are chased by police and relatives, accompanied by musclemen. Often cases of rape and abduction are registered against the boy. At times the couple faces the threat of being killed and such killings are termed as 'honour killings'. Often the state is only a mute spectator. The court directed the state to speedily evolve compassionate mechanism to redress grievances of young couples and their parents.

¹² II (2007) DMC 136

¹³ I (2009) DMC 646 AP

¹⁴ I (2009) DMC 120 P&H

These judgements serve as a benchmark for the liberal interpretation of constitutional law on equality and individual freedom, and also restrain the police and magisterial administration from performing arbitrary actions such as forcing women into 'protective custody' of the state. For instance, in *Payal Sharma alias Kamla Sharma v Superintendent, Nari Niketan, Agra*¹⁵ the Allahabad High Court rejected the father's contention that the girl is a minor and instead accepted the woman's own contention that she is a major. Hence the court declared that since she is a major she has a right to go anywhere and live with anyone. "In our opinion a man and a woman, even without getting married can live together, if they wish. This can be regarded as immoral by society but it is not illegal. There is a difference between law and morality.", the court commented. Since the girl had stated that her life was in danger, the court also ordered the police to ensure her security

Some women's organisations such as Association for Advocacy and Legal Initiatives (AALI) have worked consistently over the issue of elopement marriages and have extended support to young girls in their struggle against parental authority. They have also appreciated the role the courts have played in strengthening the rights of young women against parental authority.¹⁶

While determining whether the choices made by young girls are valid, the courts have to counter allegations not just of minority but also of unsoundness of mind. To augment their claim the natal families base their arguments on phrases such as 'hormonal imbalances' and 'flush of youth' – terms which are presumably indicators of her immaturity and inability to make a prudent choice regarding her life partner. (Chakravarthy 2005)

Right wing Hindu mobilization in recent years has led to both ideological and organizational moves to counter inter-community marriages of choice. The following incident serves to highlight this point further. Members of Ram Sene, a Hindu fundamentalist organization unleashed violence on girls in a pub in broad day light in Mangalore, a small coastal town of Karnataka on 24th January, 2009, in the name of protecting Indian culture. This attempt at moral policing attracted the attention of the national and international media. Following this, there were several other incidents where young girls were dragged out of busses and were humiliated for befriending Muslim boys. The groups also spread terror among the youth in several cities and warned them against celebrating Valentine's day on the ground that it is a immoral 'Christian' festival and is against Indian tradition and culture. Just a few days prior to the Valentine's Day, on 10th February, 2009, a 17 year old girl was dragged out of the bus and taken to the police station. Her parents were informed and the boy was arrested on charges of rape and kidnapping. Unable to bear the humiliation, the girl committed suicide.¹⁷ Right wing forces in Gujarat and Maharashtra have also kept a strict vigil over

¹⁵ AIR 2001 All 254

¹⁶ AALI, *Choosing a Life...Crimes of Honor in India The right to, if, when and whom to Marry* Lucknow: AALI 2004 (Informal Publication of the NGO)

Hindu-Muslim unions by monitoring the notices displayed outside the office of the Registrar of Marriages and then threatening the Hindu girls with dire consequences if they refused to break off the relationship.

The inadequacy of the recent legislation prohibiting child marriage gets emphasized in another incident reported in the media. A 17 year old pregnant girl was confined to the State run institution awaiting the outcome of the complaint filed by her parents. There was also the concern that whether after the amended Act, when the parents of the girl have alleged rape and kidnapping, could the custody of the girl be handed over to her husband. While the court, burdened with backlogs and delays, took a long time to decide the issue, the girl was compelled to languish in the protective home and deliver her child in these adverse surroundings.¹⁸

While pondering over these recent incidents, one needs to address a complex legal question - since the girls were minors, were they juridical persons invested with the power to exercise a free choice, and would the consent given by the girls to the marriage be deemed as 'legally valid'? At times, our judges, with a concern for social justice, have resolved the issue by resorting to basic principles of human rights to save the minor girls from the wrath of their parents and from institutionalizing them in state run 'protective homes'. The only way they could do so was by holding these marriages as valid and by allowing the girls to cohabit with their husbands of their choice, thereby acknowledging the agency of minor girls and bestowing upon them the power of giving valid consent.

International Agendas and Local Realities

Examining these judgements through the prism of women's rights, could these judicial interventions in aid of the minor girls be termed as regressive and the demand by women's groups to declare these marriages as 'null and void' be termed progressive? Could the curbing of the freedom of these minor girls to express their sexual choices by their natal families, with the aid of the mighty power of the state, within a sexually repressive society, be termed as a 'progressive intervention' and a 'challenge to patriarchy'? Even more disturbing is the realization that the parents who were determined to break the sexual alliances that girls had contracted of their own choice were using the provisions of an apparently progressive law only to marry off the girls (while they were still minors) to a boy of their own choice within the confines of rigid caste and class hierarchies. It appears that choice – or desire – as expressed by a woman is somehow intrinsically illicit when it is against parental diktat and caste or community norms, and therefore needs to be disrupted. (Chakravathy 2005 : 311) The provisions of the Act appear to be invoked more to prevent voluntary marriages and augment patriarchal power than pose a challenge to it.

¹⁷ *Indian Express*, Bombay Edition, 12 February, 2009.

¹⁸ *Times of India*, Bombay Edition, 20 February, 2009.

The minor girls are not given a choice and marriages are thrust upon them, most often, resulting in marital rape on the nuptial night. The fortified terrain of family along with the interface of caste and community structures, works in tandem against the minor girl to strengthen traditional institutions and conservative notions. In a rare instance, as part of a governmental programme, when a community worker, Banwari Devi, intervened to stop a child marriage in an upper caste family, she was gang raped by upper caste men (Singh *et al* 1994 : 1377-9). Worse, the District and Sessions Court, Jaipur acquitted all the five upper caste men accused of raping her, in the criminal case filed against them.

It is not my aim here to encourage marriages of minors. The point one is trying to advance is simply that the law has not helped in interventions at the community level to curb child marriages arranged by natal families. Even public interest litigations filed by concerned individuals and groups have not yielded positive results.¹⁹ There is a need for community level sensitisation, greater security for girls in public spaces and better resources for education of girls in poverty stricken villages and urban slums. But the point which is being underlined is that the campaign by reformers for stringent laws has only strengthened patriarchal power and weakened the negotiating power of young girls contracting marriages of choice. We need to differentiate between marriages of choice by girls themselves and the marriages contracted by parents. It is very difficult for women's rights groups to enter the bastion of caste based patriarchal strongholds. The law comes into effect only when the parents or the community choose to act against the interest of the girls. Here the collusion of the state with local patriarchal powers is clearly visible.

The collusion of the police with the criminal elements is another factor that has caused insecurity among the minds of the poor and more particularly single mothers and has led to an increase in the rate of child marriages. Madhu Kishwar, a feminist scholar, has argued that increasing violence and insecurity are making the lives of women more vulnerable and, therefore, making families feel that bringing up daughters is a high-risk job. This is in large part due to the increasing lawlessness of the police and other arms of the government, as well as the large-scale criminalization of politics. In this context, it is difficult for a community to exercise restraint over anti-social elements because of the police patronage to criminals. Even in villages, families with one or more sons in politics or government jobs, especially in the police, come to acquire tyrannical hold over the lives of others. This power is often reflected in increased sexual assaults against women. Kishwar argues that concern over safety of girl child is pushing families into marrying their minor daughters. Once married, the girl ceases to be the responsibility of her parents and the parents are no longer burdened with the fear of the girl getting violated and losing her chastity which would mar her chances of marriage. (Kishwar 2008 : 19)

Studies conducted in urban centres by the National Institute for Research in Reproductive Health, Mumbai, also subscribes to this view. A report published in a local tabloid

¹⁹ *Sushila Gothala v State of Rajasthan* AIR 1995 SC 90

mentioned that one in every five slum dwellers practices child marriage. One of the reasons attributed to this phenomenon is the lack of safety for girls in the slums.²⁰

Despite the fact that the law has not worked, some women's groups and legal scholars constantly demand for stricter laws which will make minor girls even more vulnerable to state and family dictates. There is a tendency to impose ideologically determined formulas upon people's lives without understanding the implication of such imposition, upon people whose interest is sought to be served.

At another level, there is an increasing discomfort among certain feminist legal scholars who are critically questioning whether an authoritarian state intervention in a top down manner is the only way through which social transformation can be brought about. For instance, Nandita Haksar comments that continual recourse to law is 'a substitute for the other harder option of building a movement for an alternative vision' (Haksar 1999).

A contradiction is generated by the mutual interaction of the language of rights and the law. It arises from the belief of social movements that they are articulating the universal values required by legal discourse when they use the language of rights, when in fact rights are constituted differently by the moral perspectives of different discourses. This opposition between the universality and uniformity required by the law on the one hand and the multi layered formulations of rights on the other, becomes particularly problematic when feminist politics attempts to use the law, through the language of rights to liberate women's bodies from the oppression of patriarchal structures and institutions (Menon 2004 : 16-7). There is a further problem in treating human rights as universal norms that are to be globally institutionalized by international intervention. Nivedita Menon comments, that we can no longer be innocent of the implications of 'international consensus and pressure', in the context of the prevailing global balance of power (Menon 2004).

Rather than merely transplanting the international agenda of human rights for local application, it is important to mould the values to suit local realities, in order for them to be acceptable and relevant to local communities (Merry 2009). In order to do this, contemporary feminist discourse needs to be far more nuanced than what one can observe in the recent campaigns against child marriages. Rather than blindly advocating a 'universally' accepted position framed by a First world feminist discourse, women's rights groups in India need to advance a position which is rooted within Third world realities, and is contextualised within the urban / rural divide, and is etched by other social realities such as caste prejudices and communal conflicts. In the final analysis, a feminist voice must lend credence to the claims of the weaker against the might of the *status quo* institutional authorities. The agency exercised by a young teenaged girl and her voice of protest against the dictates of patriarchy would need articulation and support. It is within this complex tapestry, the claims of feminist jurisprudence must essentially lie.

²⁰ "1 in 5 Slum Dwellers Practice Child Marriage" Mumbai: Midday 14th March 2009

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***Flavia Agnes** is a women's rights advocate and a public intellectual. A pioneer of the women's movement, she has worked consistently for over three decades on issues of gender and law reforms. She is the co-founder of Majlis, a Mumbai-based Centre for rights discourse and interdisciplinary arts initiatives. Her publications include *Law and Gender Inequality* and *Women and Law* (co-edit) both published by Oxford University Press.